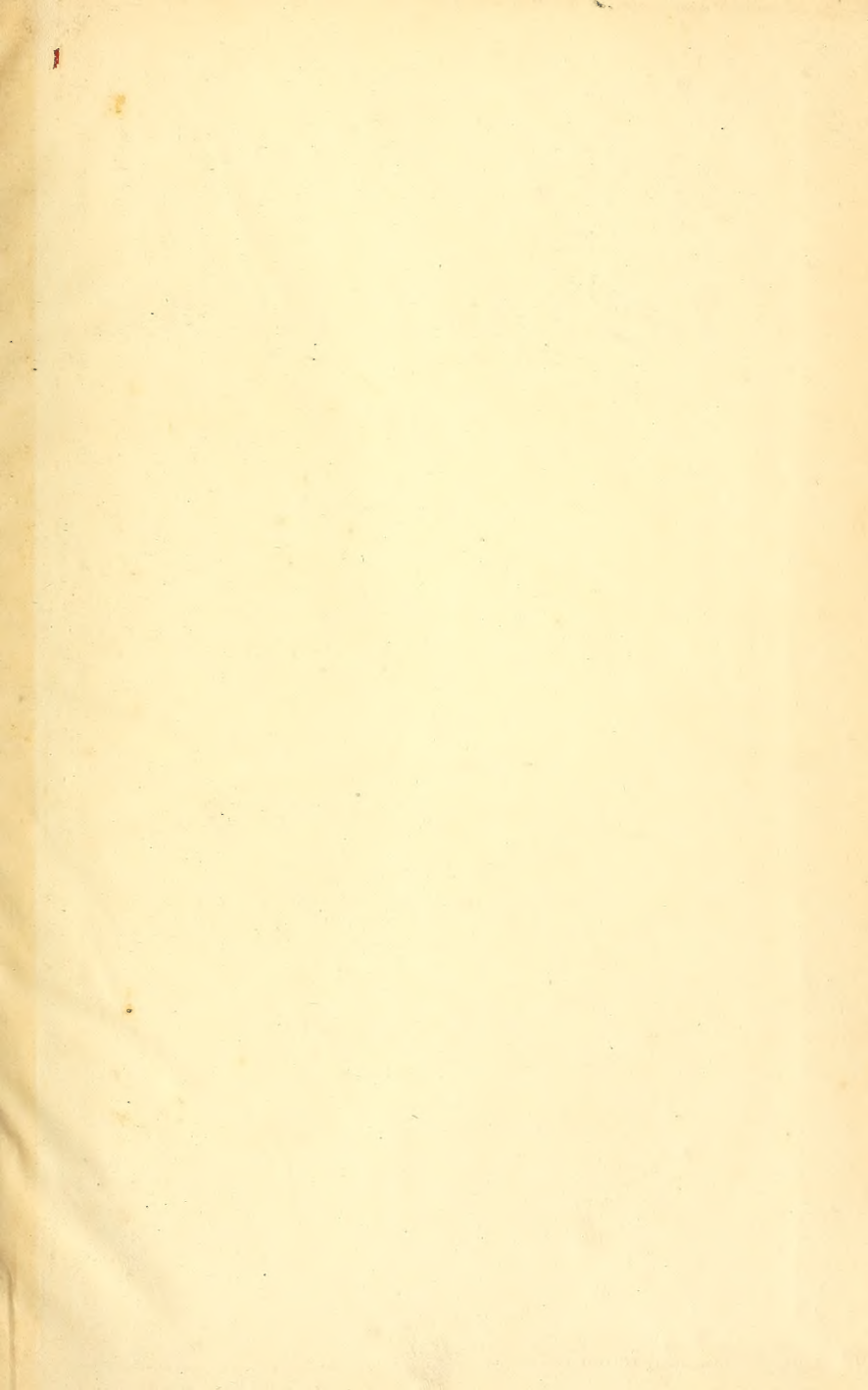


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CODE OF LAWS
OF
SOUTH CAROLINA
1922

IN THREE VOLUMES

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Attorney General

J. C. McLURE
Code Commissioner

W. W. LEWIS
*C. D. BARKSDALE
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Collaborators

VOLUME III

THE CIVIL CODE

THE R. L. BRYAN CO. AND THE STATE CO.
COLUMBIA, S. C.
1922

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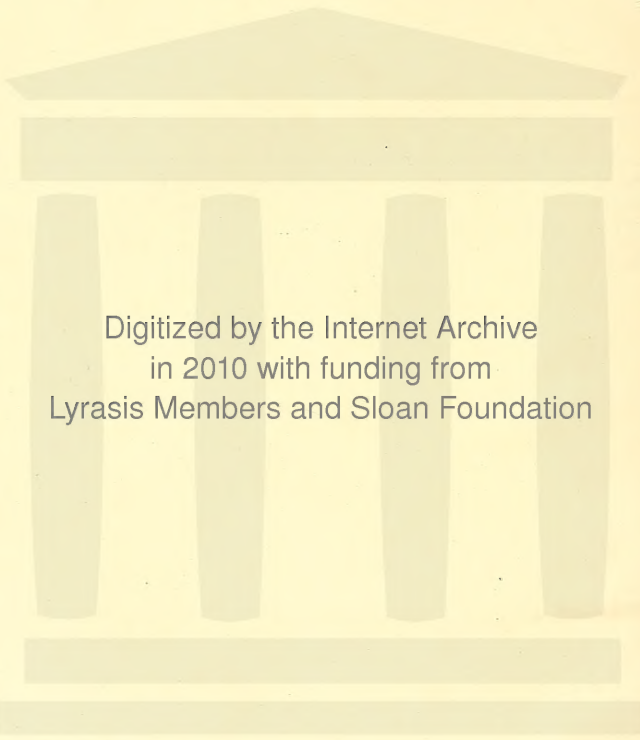
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S. M. WOLFE,
Attorney General
J. C. McLURE,
Code Commissioner
W. W. LEWIS,
S. M. WETMORE,
Code Collaborators



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ERRATA

- Sec. (268) Historic data should be—Civ. '12, Sec. 265.
Sec. (355) Historic data should be—Civ. '12, Sec. 302; Civ. '02, 273.
Sec. (450) Historic data should be—Civ. '02, Sec. 357.
Sec. (503) Historic data should be—Civ. '12, Sec. 452.
Sec. (595) Historic data should be—Civ. '12, Sec. 509.
Sec. (706) Historic data should be—Civ. '12, Sec. 623; Civ. '02, 562.
Sec. (991) Historic data should be—Civ. '12, Sec. 903.
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Sec. (1307) Historic data should be—Civ. '02, Sec. 764.
Sec. (1845) Historic data should be—Civ. '12, Secs. 1092, 1093.
Sec. (2241) The second paragraph of this section having been declared unconstitutional by the Supreme Court, should have been omitted.
Sec. (2399) Historic data should be—Civ. '02, Sec. 1112.
Sec. (3313) Historic data should be—Civ. '12, Sec. 2339.
In the table of comparative sections in the Appendix, this section should be made to appear as corresponding with Sec. 2339 of the Code of 1912 and not with Sec. 2309, as appears therein.
Sec. (4161) The word "status" should read "statutes."
Sec. (4163) The Historic data should be—1919, XXXI, 93, 176.
Sec. (4187) After the word "indicate" on the fourth line on top of page 1242, insert the words "the purpose."
The word "or" on the 17th line of the same section, same page, should be "of."
Sec. (4206) Sub-Sec. 6—The word "their" on the last line of said sub-section should be "other."
Sec. (4213) After the word "company" on the next to the last line on page 1251, insert the word "which."

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CHAPTER I.

Of the Jurisdiction of the State and Places Ceded to the United States.

• (1) **Section 1. Jurisdiction of the State of South Carolina.**—The sovereignty and jurisdiction of this State extends to all places within its bounds, which are hereby declared to be as follows:

The northern line, beginning at a point on the seashore, about a mile and a quarter east of the mouth of Little River, runs in a northwest direction, sixty-four and one-half miles, to a point two miles northwest of one of the branches of Little Pee Dee River; thence, in the same direction, twenty-two miles, to a stake in a meadow; thence, in a direction due west, a distance of sixty-two miles, to a point where the said line intersects the Charleston Road (at sixty-one miles) near the Waxhaw Creek; thence along the line extending from this point to the Tryon Mountain; thence from a stone set up and marked "S. C. and N. C., September 15th, 1815," running west four miles and ninety poles, to a stone marked "S. C. and N. C.;" thence south, twenty-five degrees west, one hundred and eighteen poles, to a chestnut on the top of the Ridge dividing the waters of the North Fork of Pacolet River from the waters of the North Fork of the Saluda River; thence along the various courses of the said Ridge (agreeably to the plat and survey of the Commissioners and Surveyors accompanying their report, dated 2d November, 1915), to the Ridge that divides the Saluda waters from those of Green River; thence along the various courses of the said Ridge, agreeably to the said plat and survey, to a stone set up where the said Ridge joins the Ridge which divides the eastern from the western waters, and which stone is marked "S. C. and N. C., September 28th, A. D. 1815;"

thence along the various courses of the said Ridge, agreeably to the said plat and survey, to a stone set up on that part of it which is intersected by the Cherokee boundary line, run in the year 1797, and which stone is marked "S. C. and N. C., 1813;" and from the said last mentioned stone, on the top of the said Ridge, at the point of intersection aforesaid, a direct line, south, sixty-eight and one-fourth degrees west, twenty miles and eleven poles, to the thirty-fifth degree of north latitude, at the rock in the east bank of Chatooga River, marked "Latitude thirty-five degrees, A. D. 1813;" which line, from the termination of the line of 1772 to the Chatooga River, is, in all, a distance of twenty-four miles and one hundred and eighty-nine poles.

From the State of Georgia, South Carolina is divided by the Savannah River, from its entrance into the ocean to the confluence of the Tugaloo and Seneca Rivers; thence by the Tugaloo River to the confluence of the Tugaloo and Chatooga Rivers; thence by the Chatooga River to the North Carolina line aforesaid, in the thirty-fifth degree of north latitude, the line being low-water mark at the southern shore of the most northern stream of said rivers where the middle of the rivers is broken by islands; and middle thread of the stream where the rivers flow in one stream or volume.

On the east, the State is bounded by the Atlantic Ocean, from the mouth of the Savannah River to the northern boundary, near the mouth of Little River, including all the islands.

Civ. '12, § 1; Civ. '02, § 1; G. S. 1; R. S. 1.

(2) § 2. Change of State Boundary.—Whenever the location of the State line has been or may be reestablished and corrected by competent authority, the lines of bordering lands which were established and fixed according to the previous location of the State line, shall not be changed by reason of such reestablishment and correction of the State line.

Civ. '12, § 2; 1906, XXV, 63.

(3) § 3. Reciprocity as to Chartered Privileges Between Georgia and South Carolina.—Any charter or franchise granted, or to be granted, by the State of Georgia, for the purpose of building and establishing bridges or ferries over the Savannah River, shall have full effect within the limits and jurisdiction of the State of South Carolina, to the same extent, in all respects, as if such charter or franchise had been granted by the State of South Carolina: *Provided*, That the State of Georgia do, by law, provide that equal effect be given in the State of Georgia to charters and franchises granted by this State; and that the legal validity and effect of a charter, granted by either of the said States for the purpose aforesaid, shall be subject to this limitation and restriction, that no such charter, from either State, shall prevent the other State from granting a charter for a bridge or ferry over the Savannah River at any place, however near the place where a bridge or ferry is or may be established, under a charter from the other State.

Civ. '12, § 3; Civ. '02, § 2; G. S. 2; R. S. 2; 1851, XII, 119.

(4) § 4. Places Ceded to the United States and Subject to Concurrent Jurisdiction.—In respect to the places within the boundaries ceded by the State to the United States, the jurisdiction of this State is concurrent with

that of the United States, according to the terms of cession in each case respectively.

Civ. '12, § 4; Civ. '02, § 3; G. S. 3; R. S. 3.

The places ceded are as follows:

1 LIGHT HOUSE ON MIDDLE BAY ISLAND, IN CHARLESTON HARBOR.—The light house on Middle Bay Island, within the bar of Charleston harbor, bounded, to the north, by a small inlet passing between the said island and Morris Island; to the south, by an inlet called Folly Inlet; to the east, by the Atlantic Ocean; and to the west, by a sound or creek passing between the said Middle Bay Island and the other island aforesaid; together with the lands and tenements thereunto belonging, and together with the jurisdiction of the same, as far as the same shall be incident and essential for the erection of forts, magazines, arsenals, dockyards and other needful buildings, and the appointment of officers, and general regulation of the said light house, forts, magazines, arsenals, and dockyards, in fee simple in as full, ample and effectual manner as the premises could be granted, aliened, transferred, conveyed and confirmed, by any deed or devise, in due form of law; upon the special proviso and condition, nevertheless, that the said United States shall sufficiently support, maintain, and keep in good repair, and rebuild, when necessary, the said light house, from time to time, and at all times hereafter; and shall also erect, or cause to be erected, proper leading marks to and for, or as appending to, the said light house, and cause buoys to be stationed in fit places for the further and better facilitating and securing the navigation; and that all expenses which shall accrue in, for, and about the said light house, or the leading marks and buoys above mentioned, shall be defrayed out of the Treasury of the United States.

1790, V, 148.

Survey of 1735; Survey of 1737; Survey of 1764; Survey of 1772; Gov. Swain; I., 409; 1815, I., 420.

Watkins' Digest, 737; Beaufort Convention P. L., 460; 1787, I., 411; Shultz v. Bank, U. S. S. C., 1882, MS., per Johnson, J.; Handy v. Anthony, Ohio River Case, U. S. S. C., 5 Wheat., 374; Original Charters, S. C. Trott's Laws.

Civil process of Federal Court does not run to that frontier or belt of water recognized by law of nations as under control of littoral owner for purposes of revenue and defense. The Hungaria, 41 Fed. Rep. 109.

2. SEVEN ACRES OF LAND ON NORTH ISLAND, GEORGETOWN COUNTY.—Seven acres of land on North Island, in Georgetown County, butting and bounding to the eastward on the sea, to the west and north by lands belonging to Paul Trapier, and to the south by Winyah Bay: *Provided, nevertheless*, That nothing contained in this cession shall be construed to exclude or prevent any process, criminal or civil, issuing from any of the courts of this State, from being served or executed within the limits of the said tract of seven acres of land.

1797, V, 309.

3. FORT MOULTRIE, ON SULLIVAN'S ISLAND, CHARLESTON COUNTY.—All the lands reserved for Fort Moultrie, on Sullivan's Island, in Charleston County—provided the same shall not exceed five acres—with all the forts, fortifications, and buildings thereon, together with the canal leading from

the cove on the back of the fort, nearly up to the same, as delineated on the plan of Charleston harbor by Col. Senf, in the Secretary of State's office at Columbia.

1805, V, 501, § 1.

4. FORT JOHNSTON, CHARLESTON COUNTY.—The high lands and part of the marsh belonging to Fort Johnston, as delineated on the said plan of Charleston harbor—provided the same shall not exceed twenty acres—including the present site of Fort Johnston.

1805, V, 501, § 1.

5. FORT PINCKNEY, CHARLESTON COUNTY.—The land on which Fort Pinckney is built, and three acres around the same—Charleston County.

1805, V, 501, § 1.

6. SANDBANK ON SOUTHEAST POINT OF CHARLESTON.—A portion of the sandbank marked "C," on the southeasternmost point of Charleston, as delineated on the said plan of Charleston harbor, not exceeding two acres.

1805, V, 501, § 1.

7. TEN ACRES ON BLYTHE'S POINT, SAMPIT RIVER, IN GEORGETOWN COUNTY.—A lot, not exceeding four acres, for a battery or fort, and necessary buildings, on Dr. Blythe's point of land, at the mouth of Sampit River, Georgetown County, and a quantity of land, not exceeding six acres, on Dr. Blythe's said point of land, at the mouth of Sampit River, adjoining, and in addition to, the said four acres, and for the same purposes.

1805, V, 501, § 1.

8. MUSTARD ISLAND, AND SEVEN ACRES ON ST. HELENA ISLAND, BEAUFORT COUNTY.—Mustard Island, opposite Paris Island, in Beaufort River, and a tract of land on St. Helena Island, opposite the same, not exceeding seven acres—Beaufort County.

1805, V, 501, § 1.

9. FIVE ACRES IN BEAUFORT, BEAUFORT COUNTY.—Five acres of the public lands, near the town of Beaufort, including the site of Fort Lyttleton, Beaufort County, for the purpose of erecting a fort.

1808, V, 576, § 4.

10. FORT MECHANIC, CHARLESTON COUNTY.—The lots or tracts of land whereon Fort Mechanic is erected, and such other lots and parcels of land as may be considered necessary to that establishment, so soon as they shall have been conveyed by Christopher Williman and William Holmes to the United States, for all purposes necessary to the maintenance of a military post: *Provided, however*, That nothing in this cession shall be construed to prevent any process, civil or criminal, issuing from any of the courts of this State, or any other competent authority, from being served or executed within the limits of the said lots or tracts of land so to be conveyed by the said Christopher Williman and Wm. Holmes to the United States: *And provided, also*, That nothing contained in this cession shall be so construed as to impair the rights and privileges vested in the City Council of Charles-

ton, under their charter of incorporation, who are hereby also authorized and empowered to relinquish their right or jurisdiction in and over the land aforesaid.

1813, V, 696, § 1.

11. ONE HUNDRED FEET ON HADDRELL'S POINT, CHARLESTON COUNTY.—One hundred feet square of land, on Haddrell's Point, Charleston County (conveyed by Mrs. Rebecca Bee Barksdale, for the use of the United States), for the purpose of erecting a beacon thereon: *Provided, nevertheless*, That nothing contained herein shall be construed to exclude or prevent any process, civil or criminal, issuing from the courts of this State, from being served or executed within the limits of the said cession.

1823, VI, 220.

12. ONE ACRE ON OTTER ISLAND, COLLETON COUNTY; ONE ACRE ON STATION CREEK, AND ONE ACRE ON BOB'S ISLAND, BEAUFORT COUNTY.—One acre of land on Otter Island, in Colleton County, for a light house; one acre of land on the north side of Station Creek, near St. Helena Island, in Beaufort County, for the erection of a beacon light; and one acre of land on Bob's Island, at the entrance of Scull Creek, in Beaufort County, for the erection of a beacon light: *Provided*, That the said lands, when purchased by, or vested in, the United States, and every person or officer residing or employed thereon, whether in the service of the United States or not, shall be subject and liable to the Government of this State, and the jurisdiction, laws, and authority thereof, in the same manner as if the cession had never been made; and that the United States shall exercise no more authority or power within the limits of the said land than they might have done perviously to the cession thereof, or than may be necessary for the building, erection, repairing or internal government of the said light house, and the regulation and management of the said light house and the said beacon lights that may be built and erected on the said lands, and of the officers and persons by them to be employed in and about the same.

The said lands shall be forever exempt from any taxes to be paid to this State.

1837, VI, 569.

13. FORTIFICATION SITES ON SULLIVAN'S ISLAND, JAMES' ISLAND, AND SHUTE'S FOLLY ISLAND, CHARLESTON COUNTY.—The lands, forts, fortifications and sites, for the erection of forts on Sullivan's Island, James' Island, and Shute's Folly Island, in Charleston County, as delineated in a plan of survey, made by Robert Q. Pinckney, on the 17th November, 1846, under direction of commissioners appointed under Resolution of 1845, which lands, sites, forts and fortifications so ceded shall be exempt from any tax to be paid to this State: *Provided*, That all process, civil or criminal, issued under the authority of this State, any officer thereof, shall and may be served and executed on any part of the lands and sites, forts and fortifications so ceded, and on any person or persons there being and implicated in matters of law: *And provided, also*, That nothing herein contained shall be construed to interfere with the rights and property of the citizens, or so as to affect any of the streets, thoroughfares, or public landings on the said islands.

1846, XI, 366; 1848, XI, 514, § 2.

14. A LOT ON SOUTH ISLAND, GEORGETOWN COUNTY.—A lot on South Island, in Georgetown County, on the southern edge of Winyah Entrance, for a light house, which lot shall, during the continuance of the said light house, be exempt from any taxes to be paid to this State: *Provided*, That the said lot, when purchased or vested in the United States, and every person and officer residing or employed thereon, whether in the service of the United States or not, shall be subject and liable to the Government of this State, and the jurisdiction, laws and authority thereof, in the same manner as if this cession had never been made, and that the United States shall exercise no more authority or power within the limits of the said land than they might have done previously to the cession thereof, or than may be necessary for the building, erection, repairing or internal government of the said light house, and of the officers and persons by them to be employed in and about the same.

1847, XI, 442.

15. FIVE ACRES IN CHARLESTON FOR A CUSTOM HOUSE.—A lot, not to exceed five acres, in the City of Charleston, for the erection of a custom house; which lot, and the buildings erected thereon, shall be exempt from any tax to be paid to this State: *Provided*, That all process, civil or criminal, issued under the authority of this State, or any officer thereof, shall and may be served and executed on any part of said land, and on any person or persons there being and implicated in matters of law.

1848, XI, 514.

16. A SITE ON MORRIS ISLAND, for a beacon or light house—Charleston County.

1853, XII, 295.

17. A SITE ON THOMAS' ISLAND, for a beacon or light house.

1853, XII, 295.

18. SITES ON NORTH AND SOUTH ISLAND POINTS, NEAR GEORGETOWN, GEORGETOWN COUNTY.—Sites for three beacons, to be placed on or near North and South Island Points, in the vicinity of Georgetown—Georgetown County

1853, XII, 295.

19. SITE ON CAPE ISLAND, CHARLESTON COUNTY.—A site on Cape Island, on some point in the immediate vicinity of the present light house, on Cape Romain, for a light house—Charleston County.

1853, XII, 295.

20. SITE IN CHARLESTON FOR HARBOR LIGHT.—A site on the East Battery, in the City of Charleston, for a beacon or harbor light.

None of the sites ceded in subdivisions 16 to 20, inclusive, to exceed ten acres in any one case; nor shall such sites be used for any other purpose than the purposes specified; and nothing shall exclude or prevent process, civil or criminal, issuing from the courts of this State, from being served or executed within the limits of said cessions.

1853, XII, 295.

21. SITE FOR BEACON, IN RANGE WITH CHARLESTON LIGHT HOUSE.—A site for beacon to range with Charleston light house.

SITE FOR DAY BEACON FOR ST. HELENA SOUND, BEAUFORT COUNTY.—A site for a day beacon for St. Helena Sound—Beaufort County.

1854, XII, 315.

22. SITES FOR BEACONS FOR CALLABOGUE SOUND, BEAUFORT COUNTY.—Two sites for two beacons, to serve as a range for Callabogue Sound—Beaufort County.

1854, XII, 316.

23. SITES AT NORTH EDISTO, CHARLESTON COUNTY.—A site for light house and beacon light on the main land, at North Edisto—Charleston County.

1854, XII, 316.

24. SITE ON HUNTING ISLAND, BEAUFORT COUNTY.—A site for a light house and beacon light on the North Point of Hunting Island—Beaufort County.

1854, XII, 316.

25. SITE ON OR NEAR HILTON HEAD, BEAUFORT COUNTY.—A site for a light house and beacon light, on or near Hilton Head—Beaufort County.

None of the sites ceded in subdivisions 21 and 25, inclusive, to exceed fifty acres in any one case; the said site shall be forever exempt from any taxes to be paid to this State, and the same restrictions shall attach thereto as attach to the cession of a lot on South Island, by the proviso in subdivision 14 of this Section. The cession of said sites shall not be construed to authorize their use for any other purpose than the purposes specified, nor to exclude or prevent any process, civil or criminal, issuing from the courts of this State, from being served or executed within the limits of the same.

1854, XII, 316; 1856, XII, 592, § 3.

26. FIFTY FEET ON SOUTH BATTERY, CHARLESTON.—A site, restricted to fifty feet square, on South Battery, in the City of Charleston, for a beacon or harbor light, which shall be forever exempt from any taxes to be paid to this State; and shall be subject to the same restrictions as attached to the cession of a lot on South Island, by the proviso in subdivision 14 of this section.

1854, XII, 315.

27. SITES AT MT. PLEASANT, CHARLESTON COUNTY.—A site for a light house, in or near Mount Pleasant, Charleston Harbor, not exceeding one acre.

1856, XII, 591.

28. SITE AT WHITE POINT, CHARLESTON COUNTY.—A site for a beacon light at White Point, in the City of Charleston, to be designated by the City Council of Charleston.

1856, XII, 591.

29. SITE AT FORT POINT, GEORGETOWN COUNTY.—A site for a light house on Fort Point, near Georgetown, not exceeding twenty acres—Georgetown County.

1856, XII, 591.

30. "CHARLESTON CLUB HOUSE," ON MEETING STREET, IN CHARLESTON.—A lot of land for a court house and office connected therewith, for the use of the United States Courts, or for any other purposes to which the Government of the United States may think proper to apply it, viz.: All that lot, piece, or parcel of land, with the buildings thereon, known as the "Charleston Club House," situate, lying, and being on the west side of Meeting Street, in the City of Charleston, measuring and containing in front, on Meeting Street, fifty-eight feet, more or less, by about two hundred and thirty-six feet in depth, more or less; bounding, north, on lands now or late of Wm. P. Greeland; to the east, on Meeting Street; to the south, on lands of M. C. Mordecai; and to the west, on lands of the French Protestant Church: *Provided*, That all process, civil or criminal, issued under the authority of this State, or any officer thereof, shall and may be served and executed on any part of the said premises, and on any person or persons there being, and implicated in any matter of law: *And provided, always*, That the said lot of land, and all the buildings and structures of every kind already thereon erected, or that may hereafter be erected thereon, shall be absolutely and forever exempt from all taxes of the County of Charleston, and the corporation of the City of Charleston, and of the aforesaid State.

1870, XIV, 213, § 1.

31. HALF AN ACRE IN COLUMBIA, CORNER RICHARDSON AND LAUREL STREETS.—A lot of land for a postoffice and court house, and offices, connected therewith, for the use of the United States, or for any other purpose to which the Government of the United States may think proper to apply it, viz.: All that lot, piece, or parcel of land in the City of Columbia, situate, lying, and being on the corner of the streets known as Richardson Street and Laurel Street, measuring one hundred and four feet, more or less, on Richardson Street, and two hundred and eight feet, more or less, on Laurel Street, and containing one-half an acre, more or less; bounded on the north by Laurel Street; on the east by Richardson Street; on the south by lot formerly belonging to Charles Beck, and now held by Hugh Weir; and on the west by lot formerly held by Robert N. Lewis, and, by his last will and testament, devised to Daniel B. Lewis, executor of said last will and testament of the said Robert N. Lewis: *Provided*, That all process, civil or criminal, issued under the authority of the State, of any officer thereof, shall and may be served and executed on any part of the said premises, and on any person or persons there being and implicated in any matter of law: *And provided, always*, That the said lot of land, and all the buildings and structures of every kind already thereon erected, or that may hereafter be erected thereon, shall be absolutely and forever exempt from all taxes of the County of Richland, and the corporation of the City of Columbia, and of the aforesaid State.

1870, XIV, 326, § 1.

32. THE NATIONAL CEMETERY IN FLORENCE COUNTY.—The jurisdiction of the State is hereby ceded to the United States of America over certain land situate in the County of Florence, and near the town of Florence, known as the "National Cemetery." The United States are to retain such jurisdiction so long as such lands shall be used as a National Cemetery, and no longer. Such jurisdiction is granted on the express condition that the

State of South Carolina shall retain a concurrent jurisdiction with the United States in and over said lands, so far as that civil process in all cases not affecting the real or personal property of the United States, and such criminal or other process as shall issue under the authority of the State of South Carolina against any person or persons charged with crime or misdemeanor committed within or without the limits of the said lands, may be executed thereon in the same way and manner as if no jurisdiction had been hereby ceded.

XV, 312.

33. CERTAIN LANDS IN BEAUFORT COUNTY.—That there is hereby granted to the United States a strip of marsh land not exceeding one thousand feet in width, lying in and along a tidal stream known as Archer's Creek, on either side thereof, and extending throughout the entire length of said creek, the exact limits to be determined by the Secretary of War: *Provided*, That this grant is made in order to facilitate the improvement of the said creek for the purposes of navigation, and the United States may dredge, fill in, occupy, and use the said strip of land in any way that may be necessary to execute any project for said improvement which Congress may hereafter adopt, and for no other purpose.

1912, XXVII, 653.

34. SHORE LINE OF MORRIS ISLAND AND OF SULLIVAN'S ISLAND FOR JETTIES FOR CHARLESTON HARBOR.—There is granted to the United States of America a quantity of land on Sullivan's Island, Charleston Harbor, not exceeding three hundred feet in length and two hundred feet in breadth, for the erection of the shore line of a jetty, to be erected for the improvement and deepening of the bar of Charleston Harbor. The land so granted is described and located as follows: Starting from the magistral of the northeast salient angle of Fort Moultrie, thence running south two degrees seven and one-half minutes ($2^{\circ} 7\frac{1}{2}'$) east, eight hundred and forty-six (846) feet, to a point near high-water line on the south shore of Sullivan's Island; thence north eighty-six degrees thirty-five and one-half minutes ($86^{\circ} 35\frac{1}{2}'$) east, two thousand eight hundred (2,800) feet, to a point near the same high-water line; thence north seventy-seven degrees thirty-eight and one-half minutes ($77^{\circ} 38\frac{1}{2}'$) east, two thousand one hundred and ninety and one-half (2,190 $\frac{1}{2}$) feet, to a point on the high-water line of said shore, which point is the southwest angle of the tract hereby conveyed; thence north seventy-seven degrees thirty-eight and one-half minutes ($77^{\circ} 38\frac{1}{2}'$) east, along said water-line three hundred (300) feet; thence north twelve degrees twenty-one and one-half minutes ($12^{\circ} 21\frac{1}{2}'$) west, two hundred (200) feet; thence south seventy-seven degrees thirty-eight and one-half minutes ($77^{\circ} 38\frac{1}{2}'$) west, three hundred (300) feet, thence south twelve degrees twenty-one and one-half minutes ($12^{\circ} 21\frac{1}{2}'$) east, two hundred (200) feet, to the high-water line at the beforementioned southwest angle of the tract herein conveyed; and the accretion on the three hundred (300) feet of water-front of said tract shall also belong to the United States for the purposes aforesaid.

XVI, 709.

There is hereby granted to the United States of America a quantity of land on Morris Island, Charleston Harbor, sufficient for the erection of a shore line of a jetty for the improvement and deepening of the bar of Charleston Harbor, not exceeding fifteen hundred feet in length, measured on the high-water line, and two hundred feet in breadth, which land so granted may be located and selected either from the land now owned by the State of South Carolina at the north end of Morris Island; and the accretion on the water-front of said land so granted shall also belong to the United States for the purposes aforesaid. That in addition to said lands herein granted, is also ceded to the United States of America such other quantity of land on Morris Island as may be needed for the shore line of the jetty aforesaid, belonging to any person or persons other than the State of South Carolina, so soon as such land has been or may be conveyed by the owner thereof to the United States of America: *Provided*, That a plat of all the lands herein granted and ceded shall be made and be deposited in the office of the Secretary of State under the supervision and direction of the proper officer of the United States in charge of the jetties.

XVII, 95.

LAND CEDED FOR CHARLESTON JETTIES.—So much land of the State as may be needed for the permanent construction of the shore end of the jetties in Charleston Harbor lying on and next adjacent to Morris Island and the creeks and marshes contiguous thereto, be, and the same are hereby, granted to the United States of America, for the purpose of the erection and construction of said shore end of said jetties: *Provided*, That same do not exceed one hundred and fifty acres: *Provided, further*, That nothing herein contained shall be construed to impair or affect the rights of owners or of any private individuals claiming the said lands, or any part thereof.

1899, XX, 290.

35. CERTAIN LANDS IN GEORGETOWN COUNTY BETWEEN WINYAH BAY AND SANTEE RIVER.—Such lands as may be required for the purpose of connecting Winyah Bay and Santee River, in Georgetown County, so as to facilitate commerce.

A. A. 1882.

36. LAND CEDED FOR GEORGETOWN JETTIES.—There is hereby ceded to the United States of America, for the purpose of constructing jetties for the improvement of the bar at the entrance of Winyah Bay, S. C., any and all rights of the State to the adjacent water-covered territory extending from high-water mark in certain lands granted by Bettie Mason Alexander and Edward P. Alexander to the United States of America, by deed bearing date the 17th of September, 1889, and recorded in the office of Register of Mesne Conveyances for Georgetown County, in Book K, page 692-695, outward about (500) five hundred feet, and also from the jetties to be constructed by the United States outward about five hundred feet in every direction into the Atlantic Ocean and Winyah Bay, respectively, and to any and all accretions to said territory growing out of the construction of said jetties, or from any other causes; this territory being at present bounded as follows, to wit:

DESCRIPTION OF LAND CEDED ON NORTH ISLAND.—North Island: Beginning at a point on the west side of the southern point of said island at the high-water line, about (1,600) sixteen hundred feet distant, and south 4 degrees 39 minutes east from the center of the Georgetown Light House; and running thence due west about (1,200) one thousand two hundred feet; thence south 47 degrees 16 minutes east (6,200) sixty-two hundred feet; thence south 63 degrees 45 minutes east (2,800) twenty-eight hundred feet; thence south 84 degrees east (10,200) ten thousand two hundred feet; thence north (1,000) one thousand feet; thence north 84 degrees west (9,900) ninety-nine hundred feet; thence north 63 degrees 45 minutes west (2,400) twenty-four hundred feet; thence north 47 degrees 16 minutes west (2,700) twenty-seven hundred feet; thence north 45 degrees east (2,500) twenty-five hundred feet; thence west to the high-water line on the east side of North Island Point; thence around said point toward Winyah Bay, with the various meanderings of said high-water line to the beginning.

It seems that high-water line is boundary of exclusive state territory. The *Hungaria*, 41 Fed. Rep. 110.

DESCRIPTION OF LAND CEDED ON SOUTH ISLAND—EXEMPTION FROM TAXES.—South Island: Beginning at a point on the beach of said island about (12,511) twelve thousand five hundred and eleven feet south of the eastern end of the southern boundary of land now belonging to W. C. Johnstone, and from which the Georgetown Light House bears north $28\frac{1}{2}$ degrees east, and the center of the U. S. dyke across Lagoon Creek bears north $33\frac{1}{2}$ degrees west, and runs thence in a southerly direction (800) eight hundred feet to a point on the high-water line; thence due east (22,100) twenty-two thousand one hundred feet; thence south (1,000) one thousand feet; thence due west to the high-water line on South Island; thence with the various meanderings of said high-water line to the second corner from the beginning (counting the beginning corner as the first corner): *And provided, also*, That all the above deeded lands and territory shall be exempted from all State taxes, assessments and other charges, as provided in Section 11, Chapter I of this Code, for the lands theretofore granted to the United States for similar purposes.

PLAT TO BE EXECUTED AND FILED.—The proper officers of the United States, in charge of said jetties, from time to time shall cause to be executed a plat of the lands which may be required for the purposes aforesaid, and file the same in the office of the Secretary of State of this State.

1899, XX, 291.

37. JURISDICTION OVER CERTAIN LANDS ON SULLIVAN'S ISLAND GIVEN TO THE UNITED STATES.—The right, title and interest of this State to, and the jurisdiction and control of this State over, the following described tracts or parcels of land and land covered with water, situated in the town of Moultrieville, on Sullivan's Island, in the County of Charleston, in this State, be, and the same are hereby, granted and ceded to the United States of America as sites for the location, construction and prosecution of works of fortifications and coast defenses, to wit: All that tract or parcel of land, and land covered with water, bounded as follows: Beginning at the point of intersection of the eastern boundary line of the Fort Moultrie military reservation with the line of the southern side of Beach Avenue, and running thence

along the southern side of said Beach Avenue, in an easterly direction, to its intersection with the western side of Sumter Street; thence along the western side of Sumter Street extended, in a southerly direction, to a point in the sea one hundred yards beyond low-water mark; thence in a westerly direction, following the meanderings or intersections of a line in the sea one hundred yards beyond low-water mark to the eastern boundary line of the Fort Moultrie military reservation extended and thence along the eastern boundary line of the Fort Moultrie military reservation extended, and along said eastern boundary line, in northerly direction, to the place of beginning. Also, all that tract or parcel of land, and land covered with water, bounded as follows: Beginning at a point in the sea on the prolongation or extension, in a southerly direction, of the dividing line between Lot T and Lot U, as laid down on the plan of said town of Moultrieville, one hundred yards beyond low-water mark, and running thence in a northerly direction, along the prolongation or extension of said dividing line, and the line that divides Lot No. 224 from Lot No. 225, as laid down on the plan of said town of Moultrieville, to the southerly side of Ion Street; thence in an easterly direction, along the southerly side of Ion Street, to the point of intersection of the southerly side of that street with the dividing line between Lot No. 256 and Lot No. 257, as laid down on the plan of said town of Moultrieville; thence in a southerly direction, along the dividing line between said Lots 256 and 257, and the dividing line between Lot No. 260 and Lot No. 261, as laid down on the plan of said town of Moultrieville, and the prolongation or extension of said dividing lines, to a point in the sea one hundred yards beyond low-water mark; thence in a southwesterly direction, following the meanderings or indentations of a line in the sea one hundred yards beyond low-water mark to the place of beginning, excepting from the tract or parcel of land so described and hereby ceded, the United States jetty reservation. Also, all that tract or parcel of land, and land covered with water, bounded as follows: Beginning at a point in the sea on the prolongation or extension, in a northerly direction, of the easterly side of Horry Street, one hundred yards beyond low-water mark, and running thence, in a southerly direction, along the prolongation of the easterly side of said Horry Street, and along the easterly side of said street to its intersection with the northerly side of East Middle Street or Beach Avenue; thence in an easterly direction, along the northerly side of said East Middle Street or Beach Avenue, to the point of intersection of the northerly side of that street with the dividing line between Lot No. 269 and Lot 270, as laid down on the plan of said town of Moultrieville; thence in a northerly direction along the dividing line between said Lots Nos. 269 and 270 and the dividing line between Lot No. 265 and Lot No. 266, as laid down on the plan of said town of Moultrieville, and the prolongation of said dividing lines, to a point in the sea one hundred yards beyond low-water mark; thence in a southwesterly direction, following the meanderings or indentations of a line in the sea one hundred yards beyond low-water mark, to the place of beginning.

1896, XXII, 390.

38. SAME.—Also, the right, title and interest of this State to, and the jurisdiction of this State over, the following described tract or parcels of land, and land covered with water, situated in the town of Moultrieville,

on Sullivan's Island, in the County of Charleston, in this State, be, and the same are hereby, granted, and ceded to the United States of America as sites for the location, construction and prosecution of works of fortifications and coast defense, and for the use of the garrison, to wit:

All that tract and parcel of land, and land covered with water, bounded as follows: Beginning at a point on the prolongation or extension, in a northerly direction of the westerly line of Lot 159, as laid down on the plan of said town of Moultrieville, on the back beach, one hundred yards beyond high-water line; thence in an easterly direction following the meanderings or indentations of a line one hundred yards beyond said high-water line to the intersection of the prolongation or extension in a northerly direction of the western line of Pettigru Street; thence in a southerly direction along said prolongation or extension of the said westerly line of Pettigru Street, along said westerly line of Pettigru Street, and along the prolongation or extension in a southerly direction of said westerly line of Pettigru Street, to a point one hundred yards beyond low-water line in the sea; thence in a westerly direction, following the meanderings or indentations of a line in the sea one hundred yards beyond low-water line to its intersection with the prolongation or extension, in a southerly direction, of the eastern side of Marion Street; thence in a northerly direction along said prolongation or extension of the eastern side of Marion Street, and along said eastern side of Marion Street to its intersection with the northern side of Central Avenue; thence in a westerly direction along the northern side of Central Avenue to the southwest corner of Lot 159 aforesaid; and thence in a northerly direction along the western line of said Lot 159 aforesaid, and along the prolongation or extension, in a northerly direction, of the western line of said Lot 159 to the place of beginning, excepting from the area described those portions which are occupied and in use by the public as highways, known as Central Avenue and Beach Avenue; and also all that tract and parcel of land, and land covered with water, bounded as follows: Beginning at a point on the prolongation or extension, in a northerly direction, of the westerly line of Lot 131, as laid down on the plan of said town of Moultrieville, on the back beach, and one hundred yards beyond high-water line; thence in an easterly direction following the meanderings or indentations of a line one hundred yards beyond said high-water line to the intersection of the prolongation or extension, in a northerly direction, of the eastern line of Marion Street; thence in a southerly direction along said prolongation or extension of said easterly line of Marion Street along said easterly line of Marion Street, and along the prolongation or extension in a southerly direction of the said easterly line of Marion Street, to a point one hundred yards beyond low-water line in the sea; thence in a westerly direction following the meanderings or indentations of a line in the sea one hundred yards beyond low-water line of its intersection with the prolongation or extension in a southerly direction of the eastern side of Sumter Street; thence in a northerly direction along said prolongation or extension of the eastern side of Sumter Street, and along said eastern side of Sumter Street to the place of beginning—excepting from the area described those portions which are occupied and in use by the public as highways, known as Central Avenue and Beach Avenue.

39. SAME.—Also the right, title and interest of this State to, and the jurisdiction of this State over, the lands comprising those portions of Central Avenue and Beach Avenue, in the town of Moultrieville, Sullivan's Island, in this State, which line between Pettigru and Sumter streets. in said town of Moultrieville, are hereby ceded to the United States of America for military purposes; and the portion of Beach Avenue herein ceded is vacated and discontinued as a public highway: *Provided*, That the portion of Central Avenue herein ceded shall be forever kept open as a public street; and this cession shall in no way interfere with any private rights, or any franchise heretofore legally granted with reference to said Central Avenue: *And provided, further*, That this State reserves the right to authorize the laying and maintaining of tracks for railroad or traction purposes on and across the portion of Central Avenue ceded or on lands contiguous thereto, and lying within 15 feet of the same: *Provided*, That there is hereby reserved to this State a concurrent jurisdiction for the execution within said lands mentioned in subdivisions 36, 37 and 38 of all process, civil or criminal, lawfully issued by the courts of the State and not incompatible with this cession.

CONDITION OF THE GRANT.—The grant hereinbefore made in subdivisions 36 and 37 is upon the condition that the said grant shall not be effectual as to any portion of the premises embraced in the foregoing description in which any person or persons have now any right, title or interest, or upon which any person or persons now own or have any structures or improvements, until the United States of America shall have compensated such person and persons for such right, title and interest, and for such buildings, structures and improvements, and acquired the title of such person and persons thereto; and said grant shall not be effectual until the United States of America shall have further compensated the parties who, at and before the cession of said jetty reservations, owned like interests or owned structures and improvements upon the territory heretofore ceded by this State to the United States of America for a jetty reservation.

1901, XXIII, 608.

COMPENSATION—HOW DETERMINED.—In case of the failure of the United States of America and any persons interested as aforesaid, or owner as aforesaid, to agree upon the proper compensation to be paid as above provided, the United States of America is authorized to have the same determined by the verdict of a jury upon application by petition to the Court of Common Pleas for Charleston County, which shall be served as by law a summons in a civil action in said court is required to be served, and the same shall be heard without delay at a term of said court and under the direction of the presiding Judge thereof, and such determination shall be final and without appeal; and upon the amount so found being paid, with the cost of Clerk and Sheriff, if any, the right and title of the parties thereto shall vest in the United States of America.

STREETS, ETC., INCLUDED IN ABOVE GRANT VACATED.—All streets, roads and highways within the said tracts or parcels of land except Central Avenue, as above stated, are vacated and discontinued from the time said grant becomes effectual.

1896, XXII, 390; 1890, XXIII, 422.

40. CERTAIN LANDS IN CHARLESTON HARBOR CEDED FOR SANITARIUM.—All those marsh lands next adjacent to Castle or Fort Pinckney, not already ceded to the United States of America, and consisting of fifty acres of marsh lands, more or less, be, and the same are hereby, granted unto the United States of America for the purpose of the erection, construction and maintaining of a Home or Sanitarium for disabled officers, soldiers and sailors of the army and navy of the United States of America.

LAND TO BE EXEMPT FROM TAXES.—Said lands shall be, and continue, so long as the same shall be used for the purpose aforesaid, exonerated and discharged from all taxes, assessments and other charges which may be imposed under the authority of the State of South Carolina.

PLAT OF LAND TO BE MADE AND FILED WITH SECRETARY OF STATE.—The proper officers of the United States in charge of such institution shall cause to be executed a plat of the lands which may be acquired for the purpose herein mentioned, and file the same in the office of the Secretary of State of this State.

1898, XXII, 962.

41. CERTAIN LANDS IN TOWN OF MOULTRIEVILLE, CHARLESTON COUNTY.—The right, title and interest of this State to, and the jurisdiction of this State over, the following described tract or parcel of land, and land covered with water, situated in the town of Moultrieville, on Sullivan's Island, in the County of Charleston, in this State, are hereby granted and ceded to the United States of America for the enlargement of the military reservations on said island, to wit: All that tract and parcel of land, and land covered with water, bounded on the west by Fort Moultrie Reservation and parade ground; on the south by lands recently acquired by the United States for fortification purposes; on the east by lands recently acquired by the United States for garrison purposes, and on the north by a line following the meandering or indentations of a line in the sea one hundred yards beyond high-water line; the easterly and westerly boundaries to be extended to meet this last mentioned line: *Provided*, That there is hereby reserved to this State a concurrent jurisdiction for the execution with said lands of all process, civil or criminal, lawfully issued by the courts of this State, and not incompatible with this cession: *Provided, further*, That the portion of Central Avenue within the tract herein ceded shall be forever kept open as a public street, and shall, together with its continuation through the government reservation, be kept in proper condition and repair by the government; and this cession shall in no way interfere with any private rights or any franchise heretofore legally granted with reference to said Central Avenue: *And provided, further*, That this State reserves the right to authorize the laying and maintaining of tracks for railroad or traction purposes on or across the portion of Central Avenue ceded, or on lands contiguous thereto, and lying within fifteen feet of the same.

CONDITION OF GRANT.—The grant hereinbefore made is upon condition that the said grant shall not be effectual as to any portion of the premises embraced in the foregoing description in which any person or persons have now any right, title or interest, or upon which any person or persons now own or have any structures or improvements, until the United States of

America shall have compensated such person or persons for such right, title and interest, and for such buildings, structures and improvements, and acquired the title of such person or persons thereto.

FAILURE TO AGREE ON COMPENSATION.—In case of the failure of the United States of America and any persons interested as aforesaid, or owner as aforesaid, to agree upon the proper compensation to be paid as above provided, the United States of America is authorized to have the same determined by the verdict of a jury, upon application by petition to the Court of Common Pleas for Charleston County, which shall have exclusive jurisdiction of the same, and which shall be served as by law a summons in a civil action in said court is required to be served, and the same shall be heard without delay at a term of said court and under the direction of the presiding Judge thereof, and such determination shall be final and without appeal, and upon the amount so found being paid, with all costs of the proceedings, if any, the right and title of the parties shall vest in the United States of America.

All streets, roads and highways, except Central Avenue, within the said tract or parcel of land, are vacated and discontinued from the time the said grant becomes effectual.

1903, XXIV, 4.

42. CERTAIN LANDS IN CHARLESTON COUNTY AND LANDS COVERED WITH WATER.—The right, title and interest of this State to, and the jurisdiction and control of this State over, a strip of land, and land covered with water, four hundred feet wide and lying two hundred feet on each side of the center line of the route selected by the United States of America for inland waterways between Charleston Harbor and a point opposite McClellanville, is hereby granted and ceded to the United States of America, for the purpose of constructing and improving the said inland waterways between Charleston Harbor and a point opposite the town of McClellanville, in the said Charleston County, and is described as follows, to wit: From the cove back of Sullivan's Island following the deepest water of Sullivan's Island Narrows to the bend next east of the point known as Spanish Fort; thence the route leaves the natural waterway, and a marsh cut is to be made across a long bend; thence along the deepest part of the natural waterway to Branch Inlet, and thence back of Isle of Palms to Meeting Reach, and through same to Seven Reaches; thence through Seven Reaches to Dewees Inlet; thence to and through Bull Yard Sound and into Capers Inlet; thence to and through Santee Pass to Price's Inlet; thence to and through Bull Narrows, having one marsh cut across a bend at or near the narrowest part of this passage; thence through Bull Creek and across the marsh to Sewee Creek; thence across marsh to Van Ross Creek; thence down same and across the marsh to Vanderhorst Creek and through marsh to Belvedere Creek; thence up Belvedere Creek and through marsh to Salt Pond Creek; thence up Salt Pond Creek and through marsh to Graham's Creek; thence up Graham's Creek, cutting across one sharp bend and through marsh to Owendaw Creek; thence down Owendaw Creek and Harbor River to Long Creek; thence by Long Creek and a marsh cut to Bull River; thence down Bull River to Five Fathom Creek, which junction is the nearest point in the

proposed route to McClellanville: *Provided*, That there is hereby reserved to this State a concurrent jurisdiction for the execution within said lands of all process, civil or criminal, lawfully issued by the courts of the State, and not incompatible with this cession.

DREDGING MATERIAL MAY BE DEPOSITED ON ADJOINING MARSH LANDS.—The material dredged from the proposed channel in order to widen and deepen the same may be disposed of by depositing such material upon the adjoining marsh lands outside of the strip of land designated herein, if such disposal be found necessary or desirable for construction or maintenance of said channel: *Provided*, That by the use of said adjoining lands for purposes aforesaid, the United States of America shall not acquire any right, title or interest in or to the said lands outside of the strip four hundred feet wide, excepting the right to deposit material thereon.

CONDITION OF GRANT.—The grant hereinbefore made is upon the condition that the said grant shall not be effectual as to any portion of the premises embraced in the foregoing description in which any person or persons have now any right, title or interest, or upon which any person or persons have now any legal structures or improvements, until title shall have been acquired by the United States of America to said right, title or interest, or to such structures or improvements.

All lands and tenements which may be granted as aforesaid to the United States of America shall be, and continue (so long as the same shall be used for the purposes hereinbefore mentioned), exonerated and discharged from all taxes, assessments and other charges which may be imposed under the authority of the State of South Carolina.

1903, XXIV. 6.

43. LOT IN FLORENCE FOR ERECTING PUBLIC BUILDING.—The right, title and interest of this State to, and the jurisdiction of this State over, the following described lot or parcel of land are hereby granted and ceded to the United States of America, for the erection of a public building, to wit: That lot of land in the City of Florence, County of Florence, and State of South Carolina, situate on the northwestern corner of Evans and Irby streets, fronting on each street one hundred and fifty feet, and known on the plat of the City of Florence, made by J. W. Brunson, surveyor, May 5th, 1896, as the eastern part of lot 21, in sectional block C, and bounded north by lot No. 20, east by Irby Street, south by Evans Street and west by part of lot No. 21: *Provided*, That there is hereby reserved to this State a concurrent jurisdiction for the execution within said lot of all processes, civil or criminal, lawfully issued by the courts of this State, and not incompatible with this cession.

1904, XXIV, 460.

44. SITES IN COLUMBIA, SPARTANBURG, ROCK HILL, AND GEORGETOWN.—The consent of the State of South Carolina is hereby given in accordance with the 17th clause of the 8th Section, of Article I, of the Constitution of the United States to the acquisition by the United States, by purchase, condemnation, or otherwise of the several lots or parcels of land in this State hereinafter mentioned or described, to wit: 1. A site in or near the City of

Columbia, County of Richland, for a weather bureau for the government.

2. A site in the City of Spartanburg, County of Spartanburg, for a post-office and court house, described as follows: Beginning at the southwest corner of North Church and Walnut streets, in said city, and running thence westerly with said Walnut Street, one hundred forty-one and two-tenths feet to stake; thence south 29 degrees east, one hundred and forty-seven feet to stake; thence easterly to North Church Street, one hundred thirty-nine and six-tenths feet; and thence northerly with North Church Street one hundred forty-seven and five-tenths feet to the beginning corner, being the lot conveyed to the United States of America by J. F. and J. B. Cleveland, by deed dated April 24th, 1903.

3. A site in the City of Rock Hill, County of York, for a postoffice and court house, described as follows: Beginning on the east corner of Caldwell and Main streets, and running along said Caldwell Street one hundred and thirty-six feet to corner, thence along the line of the Roach lot one hundred and thirty feet to corner; thence along the line of the estate of Fannie B. Reid to corner on Main Street one hundred and thirty-five feet; thence to beginning corner one hundred and thirty feet, bounded by said streets, the Roach lot and lands of the estate of Fannie B. Reid, being the identical lot conveyed to the United States of America by the heirs of the estate of John Roach, by deed dated the — day of —, 190—.

4. A site in the City of Georgetown, County of Georgetown, for a public building for the purposes of the government, described as follows: All that certain piece, parcel or lot of land, situate, lying and being at the corner of King and Front streets, in said City of Georgetown, and measuring on King Street one hundred and twenty feet, and on Front Street one hundred and thirty feet, and bounded by Front Street, King Street, and on all other sides by lands of the estate of George R. Congdon, deceased, being the same premises conveyed by said George R. Congdon, in his lifetime, to said United States of America, by deed bearing date the 9th day of May, 1903, and duly recorded in the office of the Register of Mesne Conveyances for said Georgetown County, in Book V, page 317.

JURISDICTION OF STATE CEDED.—The right, title and interest of this State to, and its jurisdiction over, the said lots or parcels of land are hereby ceded to the United States of America: *Provided*, That the jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation or otherwise, and shall continue so long as the said lands shall remain the property of the United States: *And provided, further*, That the State of South Carolina shall retain jurisdiction for the execution within said lands of all process, civil or criminal, lawfully issued by the authority of this State, and not incompatible with this cession.

LANDS EXEMPT FROM STATE TAXATION.—The said lands and all the buildings and structures of every kind which may be erected thereon shall be exempt from all State, county, and municipal taxation, assessments, or other charges which may be levied or imposed under the authority of this State so long as the same shall remain the property of the United States.

45. CERTAIN LAND IN TOWN OF MOULTRIEVILLE, CHARLESTON COUNTY—RESERVATIONS.—The right, title and interest of this State to, and the jurisdiction of this State over, the following described tract or parcel of land, and land covered with water, situated in the town of Moultrieville, on Sullivan's Island, in the County of Charleston, in this State, are hereby granted and ceded to the United States of America, for the enlargement of the military reservations on said island, to wit: All that tract and parcel of land, and land covered with water, on the eastern end of Sullivan's Island aforesaid, lying to the south of the right of way of the Seashore Division of the Charleston Consolidated Railway, Gas and Electric Company, and east of the street known as Sixth Street, and of the same extended southward to low-water mark on the plan of Moultrieville, made by Lamble, surveyor, in 1899, and recorded Book —, page —, R. M. C. office, Charleston County: *Provided*, That there is hereby reserved to this State a concurrent jurisdiction for the execution within said lands of all process, civil or criminal, lawfully issued by the courts of this State, and not incompatible with this cession: *Provided, further*, And the said grant is made subject to the following reservations and exceptions, to wit: that such portion of the front beach of said Sullivan's Island included within the limits of said grant, as lies below a line drawn along said beach twenty (20) feet above high-water mark, and parallel thereto, shall be always open to the public as a footway and driveway, so that the public shall have the free and unobstructed right of passage by foot and carriage upon, over and across the same, subject to the right of the said United States Government to close and exclusively occupy the same, so far as the reservations in this proviso are concerned, at the following times and under the following circumstances, to wit:

WHEN DRIVEWAY MAY BE CLOSED.—1. During hours of actual target practice in, over or upon the said portion of the said premises (during which time of closure, due and proper notice of the same shall be given to the public).

2. During hours of actual military drill in, over and upon the said portion of the said premises, and

3. During time of war.

GRANT NOT TO COVER PRIVATE PROPERTY.—The grant hereinbefore made is upon condition that the said grant shall not be effectual as to any portion of the premises embraced in the foregoing description in which any person or persons have now any right, title or interest, or upon which any person or persons now own, or have any structures or improvements, until the United States of America shall have compensated such person or persons for such right, title and interest, and for such building, structures and improvements, and acquired the title of such person or persons thereto.

HOW VALUE DETERMINED.—In case of the failure of the United States of America and any person interested as aforesaid or owner as aforesaid, to agree upon the proper compensation to be paid, as above provided, the United States of America is authorized to have the same determined by the verdict of a jury, upon application by petition to the Court of Common Pleas of Charleston County, which court shall have exclusive jurisdiction of the same, and which petition shall be served as by law a summons in a

civil action in said court is required to be served, and the said cause shall be heard without delay at a term of said court and under the direction of the presiding Judge thereof, and such determination shall be final and without appeal; and upon the amount so found being paid, with all costs of the proceedings, if any, the right and title of the parties shall vest in the United States of America.

STREETS AND ROADS VACATED.—All streets, roads, rights of way and highways within said tract or parcel of land are vacated and discontinued from the time the said grant becomes effectual, saving such as are expressly excepted or reserved in this subdivision.

1905, XXIV, 825.

46. CERTAIN LANDS IN MOULTRIEVILLE, CHARLESTON COUNTY—RESERVATIONS AND EXCEPTIONS.—The right, title and interest of this State to and in, and the jurisdiction of this State over, the following described lands, situated in the town of Moultrieville, on Sullivan's Island, in the County of Charleston, in this State, are hereby granted and ceded to the United States of America for the enlargement of the military reservations on said island, to wit: All those pieces or parcels or tract of land, lying and being in the said town of Moultrieville, and comprising, not only the two lots designated by the letters "O" and "P" on a plan of Moultrieville compiled from official maps and surveys by H. S. Lamble, Civil Engineer, in April, 1902, and recorded July 15th, 1902, at page 189 of Plat Book D, in the office of the Register of Mesne Conveyances for the said County of Charleston (on which or a part of which said two lots "O" and "P" is located the Life Saving Station), but also the land of the same width as that of the said two lots together and extending in front of and from the said two lots down to mean low-water mark; the said two lots "O" and "P" together measuring two hundred (200) feet, more or less, from rear to front and two hundred and twenty-five (225) feet, more or less, in width, and butting and bounding northeastwardly on Patrick Street, northwardly on Ion Street, southwestwardly on the lot designated by the letter "N" on said plan, and southeastwardly on Atlantic Street or the front beach: *Provided*, That there is hereby reserved to this State a concurrent jurisdiction for the execution upon or within said lands of all process, civil and criminal, lawfully issued by the courts of this State, and not incompatible with this cession: *And provided, further*, And the said grant is made subject to the following reservations and exceptions, to wit: That such portion of the front beach of said Sullivan's Island included within the limits of said grant as lies below a line drawn along said beach twenty (20) feet above high-water mark, and parallel thereto, shall be always open to the public as a footway and driveway, so that the public shall have the free and unobstructed right of passage by foot and vehicle upon, over and across the same, subject to the right of the United States Government to close and exclusively occupy the same, so far as the reservations in this proviso are concerned, at the following times and under the following circumstances, to wit: (1) During hours of actual target practice in, over and upon the said premises (prior to which time of closure due and proper notice of the same shall be given to the public). (2) During hours of actual military drill in, over and upon the said premises, and (3) During time of war.

UNITED STATES TO COMPENSATE LAND OWNERS.—The grant herein and hereby before made is upon condition that it (the said grant) shall not be effectual as to any portion of the premises embraced in the foregoing description in or to which any person or persons have now any right, title or interest, or upon which any person or persons now own or have any buildings, structures or improvements, until the United States of America shall have compensated such person or persons for such right, title and interest of such person or persons thereto or therein.

FAILURE TO AGREE AS TO COMPENSATION.—In case of the failure of the United States of America and any person interested as aforesaid or owner as aforesaid to agree upon the proper compensation to be paid as above provided, the United States of America is authorized to have the same determined by the verdict of a jury, upon application by petition to the Court of Common Pleas of Charleston County, which court shall have exclusive jurisdiction of the same, and which petition shall be served as by law a summons in a civil action in said court is required to be served, and the said cause shall be heard without delay at a term of said court and under the direction of the presiding Judge thereof, and such determination shall be final and without appeal; and upon the amount so found being paid, with all costs of the proceedings, if any, the right, title and interest of such person or owner thereto and therein shall vest in the United States of America.

STREETS AND ROADS VACATED.—All streets, roads, rights of way and highways within said lands are vacated and discontinued from the time this grant shall become effectual, saving such as are expressly excepted or reserved in this subdivision.

1906, XXV, 19.

47. SITES IN CHESTER, ANDERSON AND GREENWOOD.—The consent of the State of South Carolina is hereby given, in accordance with the 17th clause of the 8th Section of Article I, of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of the several lots or parcels of land in this State hereinafter mentioned or described, to wit: 1. A site in the City of Chester for a postoffice or court house building, described as follows: Beginning at the north corner of the intersection of Main and Wylie streets, thence north 46 deg. 00 min., west 130 feet along Wylie Street to west corner, thence north 44 deg. 15 min., east 120 feet to north corner, thence south 46 deg. 00 min., east to east corner 127 feet and 5 inches to the east corner, thence north 44 deg. 40 min., west 120 feet to the beginning corner, being the south corner of said lot, bounded by the said Main and Wylie streets and the lands of John J. Hemphill and G. Brown White. 2. A site in the City of Anderson for a postoffice building, at the northwest corner of North Main and a new street known as Federal Street, beginning at the intersection of the said streets and running along Federal Street south 79 deg., west 135 feet to corner on Federal Street, thence north 11 deg., west 150 feet to corner, thence north 79 deg., east 135 feet to corner on Main Street, thence south 11 deg., east 150 feet along Main Street to the beginning corner. 3. A site in the City of Greenwood for a postoffice building, described as follows: All and singular that certain lot or parcel of land, situate in the northwestern corner of Main

and Oregon streets, of the city of Greenwood, County of Greenwood, South Carolina, containing thirty-five one-hundredths of an acre, and bounded north one hundred and twenty feet by lot of Mrs. C. T. Bailey; east one hundred and thirty feet by Main Street; south one hundred and twenty feet by Oregon Street; and west one hundred and thirty feet by lot of Mrs. C. T. Bailey.

TITLE CEDED.—The right, title and interest of this State to, and its jurisdiction over, the said lots or parcels of land are hereby ceded to the United States of America: *Provided*, That the jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands, by purchase, condemnation, or otherwise, and shall continue so long as the lands shall remain the property of the United States: *And provided, further*, That the State of South Carolina shall retain jurisdiction for the execution within said lands of all process, civil or criminal, lawfully issued by the authority of this State, and not incompatible with this cession.

EXEMPTION FROM TAXATION.—The said lands, and all the buildings, and structures of every kind which may be erected thereon, shall be exempt from all State, county and municipal taxation, assessments, or other charges which may be levied or imposed under the authority of this State, so long as the same shall remain the property of the United States.

1907, XXV, 634.

48. TRACTS IN CHARLESTON, BEAUFORT AND GEORGETOWN COUNTIES FOR QUARANTINE PURPOSES.—The right, title and interest of this State to, and the jurisdiction of this State over, the following described tracts of land, and land covered by water, situated in the Counties of Charleston, Beaufort and Georgetown, in this State, is hereby granted and ceded to the United States of America for the purposes of quarantine, to wit:

A. A TRACT OF LAND ON JAMES ISLAND AND BUILDINGS.—1. A tract of land on James Island, Charleston Harbor, South Carolina, lying and being upon the easterly, southerly and westerly sides of the land belonging to the United States Government and known as the Fort Johnson Reservation, being ninety acres, more or less, and including the marsh land and tide flats east and south of said Fort Johnson Reservation to low-water line.

2. The buildings now on said ninety-acre tract, consisting of one two-story frame house, about 40 ft. x 35 ft., known as the medical officers' quarters, with a 20 ft. x 11 ft. semi-detached kitchen and a one-story frame storehouse in the immediate vicinity, about 20 ft. x 10 ft. in size, and the lazaretto buildings, on Shell Point, consisting of a pest house, one-story, frame, 15 ft. x 30 ft.; isolation hospital, one story, frame, 32 ft. x 20 ft., with a brick cistern in rear; keeper's house, one story, frame, 29 ft. x 36 ft., with 20 ft. x 12 ft. detached kitchen, and a small privy.

B. QUARANTINE STATION AT GEORGETOWN.—The Quarantine Station, at Georgetown, South Carolina, on South Island, entrance to Georgetown Harbor, consisting of five acres of land, more or less, a residence and out-buildings.

C. QUARANTINE STATION AT BUZZARD ISLAND, BEAUFORT COUNTY.—The Quarantine Station, on Buzzard's Island, at the entrance of St. Helena

Sound, consisting of ten acres, more or less, officers' quarters, two hospital buildings, and quarters for crew.

D. QUARANTINE STATION AT PARIS ISLAND, BEAUFORT COUNTY.—The Quarantine Station, on Paris Island, Port Royal Sound, consisting of fifteen acres, more or less, an officer's residence, two hospitals and outbuildings.

1907, XXV, 636.

STATE BOARD OF HEALTH TO TRANSFER LANDS.—The State Board of Health shall, and it is hereby authorized and directed, to convey and transfer to the United States, all buildings and appurtenances upon, or appertaining to said tract of land, and also all machinery, plant, boats, tools and other personal property used at or belonging to either or all of said quarantine stations, in consideration of a sum of money to be ascertained and fixed as follows: The value of the property to be assessed by a representative of the United States and the Chairman of the State Board of Health, or such person as he may appoint; and should these two differ, they shall have power to agree upon a third person, who shall act as arbitrator between the two.

1908, XXV, 1132.

49. LOT IN SUMTER.—The right, title and interest of this State to, and the jurisdiction of this State over, the following described lot or parcel of land are hereby granted and ceded to the United States of America, for the erection of a public building, to wit: That lot of land in the City of Sumter, County of Sumter, and State of South Carolina, situate on the south-eastern corner of Main and Caldwell streets, of said city, fronting and measuring on said Main Street one hundred and fifteen (115) feet, and on Caldwell Street one hundred and thirty (130) feet, and bounded on the north by said Caldwell Street; on the east by land of C. G. Rowland and others; on the south by land of C. G. Rowland and others; and on the west by said Main Street: *Provided*, That there is hereby reserved to the State of South Carolina concurrent jurisdiction for the execution within and upon the premises hereby granted of all processes, civil or criminal, lawfully issued by the courts of this State, not incompatible with this cession.

1907, XXV, 638.

50. LOT IN AIKEN.—The right, title and interest of the State of South Carolina to, and the jurisdiction of this State over, the following described lot or parcel of land are hereby granted and ceded to the United States of America, for the erection of a public building, to wit: All that certain piece, parcel or lot of land, situate, lying and being in the City of Aiken, in the county and State aforesaid, beginning at the southwest corner of Park Avenue and Laurens Street, running thence southerly with the west line of Laurens street one hundred and forty (140) feet; thence westerly at right angles with Laurens Street, one hundred and twenty (120) feet; thence northerly, parallel with Laurens Street, one hundred (100) feet, more or less; thence easterly with Park Avenue one hundred and twenty (120) feet, more or less, to the point of beginning. And has such forms, marks, courses and distances as is represented on a plat of the same, which is hereto attached, and made a part and parcel of this deed.

Exclusive jurisdiction in and over the said lot or parcel of land, when acquired as hereinafter provided by the United States, shall be ceded to the United States for the purposes mentioned, except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the United States shall own such piece of land.

The jurisdiction ceded shall not vest until the United States shall have acquired the title thereto, by purchase from its owner, and so long as the said lot or parcel of land shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State.

1907, XXV, 638.

51. PREAMBLE TO GRANT OF CERTAIN LANDS IN CHARLESTON HARBOR TO UNITED STATES.—I. Whereas, By and under the Act of the General Assembly of the State of South Carolina, entitled “An Act to grant to the City Council of Charleston and its successors the title and interest of the State to certain lands in Charleston County for the purposes of a Naval Station,” and approved the 8th day of February, A. D. 1901 (23d Volume of the Statutes at Large of South Carolina, page 607), the right, title and interest of the State of South Carolina in and to the following described tract or parcel of land, and land covered with water, situated in the County of Charleston, in the State of South Carolina, was granted and ceded to the City Council of Charleston and its successors, to wit: “All that tract or parcel of land, and land covered with water, situate, lying and being on the west bank of Cooper River, in the County of Charleston, in this State, measuring and containing seven hundred and sixty acres, more or less, butting and bounding to the north by lands of Mrs. W. W. Lawton, and by the Cooper River, on the east by the Cooper River, on the south by Ship Yard Creek, and on the west by Ship Yard Creek, as is delineated on a map of the City of Charleston and vicinity, made by J. H. Dingle, City Surveyor, December, 1900,” and so forth:

And whereas, By virtue and in pursuance of and under the foregoing Act of the General Assembly of the State of South Carolina, and a Resolution unanimously adopted by the said the City Council of Charleston on the 14th day of May, A. D. 1901, and in consideration of the sum of one dollar, J. Adger Smyth, as Mayor of the City of Charleston, did (by deed, dated the 12th day of August, A. D. 1901, and recorded on the 14th day of August, A. D. 1901, in the office of the Register of Mesne Conveyances for the said County of Charleston, at page 247 of Book X 23) convey in fee simple unto the United States of America the above described tract or parcel of land, and land covered with water, for the uses and purposes and in accordance with the limitations set forth in the above recited Act for the General Assembly of the State of South Carolina—and so forth—as will more fully appear on reference to the said deed and plat and the said record thereof:

II. And whereas, By virtue and in pursuance of and under a Resolution unanimously adopted by the said City Council of Charleston on the 14th

day of May, A. D. 1901, and in consideration of thirty-four thousand two hundred and six dollars, J. Adger Smyth, as Mayor of the City of Charleston, did (by deed, dated the 12th day of August, A. D. 1901, and recorded on the 14th of August, A. D. 1901, in the office of the said Register of Mesne Conveyances, at p. 245 of Book X 23) also convey in fee simple unto the United States of America all the right, title, interest and estate of the said City Council of Charleston in and to "All that certain piece, parcel and tract of land, containing one hundred and seventy-one three one-hundredths (171 3-100) acres, bounded north by Noisette Creek, on the east by Cooper River, on the south by lands of Cecilia Lawton, and on the west by other lands belonging to the said City of Charleston. The piece, parcel and tract of land hereby conveyed constitutes a portion of 'Chicora Park,' and is specifically shown and designated on the plat of the same made by A. J. Menocal, Engineer, U. S. Navy, being wholly within the red lines laid down on the said plat—and so forth—as will more fully appear on reference to the said last mentioned deed and plat and the said record thereof:

III. And whereas, In consideration of the sum of fifty thousand dollars, Cecilia Lawton did (by deed, dated the 12th day of August, A. D. 1901, and recorded on the 14th day of August, A. D. 1901, in the office of the said Register of Mesne Conveyances, at page 234, of Book X 23) also convey in fee simple unto the United States of America, "All that certain piece, parcel and tract of land, situate, lying and being in the said County of Charleston and State aforesaid, on the west bank of the Cooper River, measuring and containing two hundred and fifty-eight and eleven one-hundredths (258 and 11-100) acres, more or less, bounded on the north by lands of the said City of Charleston, known as 'Chicora Park,' on the east by Cooper River, on the south by land of Mappus, J. C. H. Claussen and the Old Clement's Ferry Road and a body of marsh land, and on the south by other lands of the said Cecilia Lawton; the land hereby conveyed being a portion of a certain plantation or tract of land conveyed to the said Cecilia Lawton by Gabriel E. Manigault, by his deed of conveyance bearing date the 2d of December, A. D. 1880, and having such courses, distances, metes, bounds and shape as is represented on a plat thereof made by A. J. Menocal, Engineer, United States Navy, and is fully delineated by and confined within the red lines of said plat, and including all the right, title and interest of the said Cecilia Lawton in and to the body of marsh land of ninety (90) acres, more or less, which she, the said Cecilia Lawton, took by virtue of said conveyance to her by Gabriel Manigault, as well as any claim or interest she, the said Cecilia Lawton, may have or could have in and to any portion of a body of marsh land ceded by the State of South Carolina to the City Council of Charleston by the Act of the General Assembly, approved February 8th, A. D. 1901"—and so forth—as will more fully appear on reference to the said last mentioned deed and plat and the said record thereof:

IV. And whereas, In consideration of the sum of one thousand dollars, Maria D. Winthrop did (by deed, dated the 21st day of March, A. D. 1902, and recorded on the — day of —, A. D. 1902, in the office of the Register of Mesne Conveyances for the County of Berkeley, in the State of South Carolina, at page —, of Book —) also convey in fee simple unto

the United States of America "All that piece, parcel or tract of marsh land, containing nine hundred and thirty-seven acres, more or less, situate, lying and being in the Parish of St. Thomas, in the County of Berkeley and State aforesaid, on the east side of Cooper River, according to a survey made for the purpose of this conveyance by J. H. Dingle, Surveyor—the said land being bounded on the south and west by the said Cooper River, on the east by Clouter's Creek and Broad Creek, and on the north by a similar tract of marsh land, now the property of this grantor, and being the southernmost portion of a body of marsh land originally granted by the State of South Carolina to Charles Parker by its grant, dated November 3d, 1845"—and so forth—as will more fully appear on reference to the said last mentioned deed and plat and the said record thereof:

V. And whereas, By virtue and in pursuance of and under a resolution unanimously adopted by the said City Council of Charleston on the 12th day of July, A. D. 1902, and in consideration of the sum of nineteen thousand three hundred dollars, J. Adger Smyth, as Mayor of the City of Charleston, did (by deed, dated the 20th of November, A. D. 1902, and recorded on the 21st day of November, A. D. 1902, in the office of the said Register of Mesne Conveyances for Charleston County, at page 30, of Book F 24) also convey in fee simple unto the United States of America, "All that certain piece, parcel and tract of land, situate, lying and being in the County of Charleston, in the State of South Carolina, westward of and adjoining the United States Navy Yard, and containing ninety-six and one-half (96.5) acres, more or less, and having such shape, metes, marks, bounds, dimensions and distances as is represented on a plat thereof made by J. W. G. Walker, Civil Engineer, United States Navy, on the 9th day of September, A. D. 1902"—and so forth—as will more fully appear on reference to the said last mentioned deed and plat and the said record thereof:

VI. And whereas, By virtue and in pursuance of and under the Act of Congress, entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1904, and for other purposes," and approved March 3, 1903, and in consideration of the sum of eight dollars and thirty-nine cents, the United States of America, through the Secretary of the Navy of the United States, did (by deed, dated the 16th day of April, A. D. 1903, and recorded on the 20th day of April, A. D. 1903, in the office of the said Register of Mesne Conveyances for Charleston County, at page 156 of Book F 24) reconvey in fee simple unto the said the City of Charleston, "All that certain piece, parcel and tract of land, situate, lying and being in the said County of Charleston and State aforesaid, on the south bank of Noisette Creek, containing one thousand eight hundred and twenty-six and seven-tenths square feet, more or less, and bounded as follows, that is to say: On the north by Noisette Creek, on the southeast by a line running in continuation of the northwestern boundary line of the present Naval Hospital tract from the point where said line intersects the western boundary line of the Navy Yard tract to said creek, on the southwest by the present western boundary line of the Navy Yard tract, from the point where said line is intersected by the northwestern boundary line of the Naval Hospital tract to said creek, as shown approximately on plat appended hereto"—and so forth—as will more fully appear on reference to the said last mentioned deed and plat and the said record thereof:

VII. And whereas, The State of South Carolina, in all cases in which grants of lands have been made by the State directly by and under Acts of her General Assembly unto the United States of America, hath also in such grants ceded to the United States of America the State's jurisdiction over the lands granted; therefore,

1907, XXV, 548.

STATE JURISDICTION OVER CERTAIN LANDS IN CHARLESTON COUNTY GRANTED AND RETAINED.—The jurisdiction and control of the State of South Carolina in and over the several above described pieces, parcels and tracts of land and land covered with water (less and other than the above described 1,826.7 square feet, more or less, reconveyed by the United States of America to the State of South Carolina, on the 16th day of April, A. D. 1903, as aforesaid) are hereby granted and ceded to the United States of America: *Provided*, That such jurisdiction and control are hereby granted and ceded upon the express condition that the State of South Carolina retain and shall retain jurisdiction (concurrent with that of the United States of America hereunder) in and over the said pieces, parcels and tracts of land and land covered with water (less and other than the said 1,826.7 square feet, more or less) so far as that civil process and writs in all cases not affecting the real and personal property of the United States of America, and any and all criminal or other process and writs lawfully issued in the name and under the authority of the State of South Carolina against any person or persons charged with crimes, felonies, or misdemeanors, committed against the peace and dignity of the State within and without the limits of the said pieces, parcels and tracts of land and land covered with water (less and other than the said 1,826.7 square feet, more or less), and not incompatible with the cession, may be executed at any and all times within the limits of the said pieces, parcels and tracts of land and land covered with water (less and other than the said 1,826.7 square feet, more or less) in the same manner, and may as if no jurisdiction had been hereby granted and ceded.

The said pieces, parcels and tracts of land and land covered with water (less and other than the said 1,826.7 square feet, more or less) so long as the same shall be and remain the property of the United States of America, and shall be used for the purposes for which they have been heretofore granted and conveyed as aforesaid, shall be and continue wholly exempt and exonerated from and of any and all taxes and assessments and other charges whatsoever which might otherwise be imposed by and under the authority of the State of South Carolina.

1907, XXV, 548.

52. CONSENT GIVEN TO UNITED STATES TO ACQUIRE LANDS.—The consent of the State of South Carolina is hereby given, in accordance with the seventeenth clause, eighth Section of the first Article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this State required for sites for custom houses, court houses, postoffices, arsenals, or other public buildings whatever, or for any other purposes of the government.

EXCLUSIVE JURISDICTION OVER LAND ACQUIRED CEDED TO UNITED STATES.—Exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.

JURISDICTION NOT TO VEST UNTIL TITLE ACQUIRED.—The jurisdiction ceded shall not vest until the United States shall have acquired the title to said lands by purchase, condemnation or otherwise; and so long as the said land shall remain the property of the United States, when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this State. 1908, XXV, 1127.

53. **LANDS IN TOWN OF MOULTRIEVILLE, CHARLESTON COUNTY.**—The right, title and interest of this State to and in, and the jurisdiction of this State over, the following described lands, situated in the town of Moultrieville, on Sullivan's Island, in the County of Charleston, in this State, are hereby granted and ceded to the United States of America for the enlargement of the military reservations on said island, to wit: All those pieces or parcels or tract of land, lying, being in the said town of Moultrieville, shown on a plan of Moultrieville compiled from official maps and surveys by H. S. Lamble, Civil Engineer, in April, 1902, and recorded July 15, 1902, at page 189 of Plat Book D, in the office of the Register of Mesne Conveyances for the said County of Charleston, comprising all the land lying to the westward of the United States Government Reservations at Old Fort Moultrie, and contained between these reservations on the east and the town lots Numbers 73, 74 and 77 on the west, embracing lots Numbers 78, 79 and 80, the Town Hall lot, portions of West Fort Street, Main Street and Middle Street, and marsh lands to the north of lot 78, more particularly described as follows: Beginning at low-water mark in the cove on the north side of Sullivan's Island at the northwest corner of United States Government Reservation and extending approximately south 21 degrees, 35 minutes, west 1,170 feet, following the west line of said United States Government Reservation to the western corner of the same, to the north of Middle Street; thence approximately south 52 degrees, 15 minutes, west 65 feet to the corner stone at the northwest corner of the Old Fort Moultrie Reservation; thence following the boundaries of this reservation approximately south 17 degrees, west 126 feet to a corner stone, approximately north 75 degrees, west 82.4 feet to a corner stone, and approximately south 15 degrees, 30 minutes, west 580 feet to low-water line on the south or ocean side of Sullivan's Island; thence westward along the low-water line approximately 100 feet to the extension of the west line of West Fort Street; thence along the west line of said West Fort Street approximately north 12 degrees, 30 minutes, east 695 feet to the southeast corner of Lot 74; thence approximately south 77 degrees, 30 minutes, east 80.8 feet along Middle Street to the eastern corner of the public square; thence approximately north 6 degrees, east 90 feet to the southeast corner of Lot No. 73 on West Fort Street; thence along the west side of West Fort Street and its extension

northward approximately north 12 degrees, 30 minutes, east 1,030 feet to low-water mark on the cove or north side of Sullivan's Island; thence along low-water mark eastward to the original point of beginning: *Provided*, That the portions of the streets and avenues within the tract herein ceded shall be forever kept open as public streets; and this cession shall in no way interfere with the private rights of any franchise heretofore legally granted, with reference to Middle Street and Central Avenue: *And provided, further*, That there is hereby reserved to this State a concurrent jurisdiction for the execution upon or within said lands of all process, civil and criminal, lawfully issued by the courts of this State, and not incompatible with this cession.

CONDITION OF GRANT.—The grant hereinbefore made is upon condition that it shall not be effectual as to any portion of the premises embraced in the foregoing description, in or to which any person or persons have now any right, title or interest, or upon which any person or persons now own or have any buildings, structures or improvements, until the United States of America shall have compensated such person or persons for such right, title and interest, and for such buildings, structures and improvements, and shall have acquired the right, title and interest of such person or persons thereto or therein.

1908, XXV, 1130; 1909, XXVI, 180.

CERTAIN STREETS ALSO CEDED.—The streets and avenues between the east and west lines of the original reservation of Fort Moultrie, as said reservation existed on January 1, 1894, are hereby granted and ceded to the United States of America, subject to the same provisos and conditions as are contained in this subdivision.

METHOD OF CONDEMNATION.—In case of the failure of the United States of America, and any person interested as aforesaid, or owner as aforesaid, to agree upon the proper compensation to be paid, as above provided, the United States of America be, and hereby is, authorized to have the same determined by the verdict of a jury, upon application by petition to the Court of Common Pleas of Charleston County, which court shall have exclusive jurisdiction of the same, and which petition shall be served as by law a summons in a civil action in said court is required to be served; and the said cause shall be heard, without delay, at a term of said court, and under the direction of the presiding Judge thereof, and such determination shall be final and without appeal; and upon the amount so found being paid, with all costs of the proceedings (if any), the right, title and interest of such person or owner thereto and therein shall vest in the United States of America.

1909, XXVI, 180.

54. LANDS IN MOULTRIEVILLE, SULLIVAN'S ISLAND, CHARLESTON COUNTY.—That the right, title and interest of this State to, and the jurisdiction of this State over, those parts or portions of the following described tract or parcel of land, and the land covered with water, situated in the town of Moultrieville, on Sullivan's Island, in the County of Charleston, in this State, not heretofore granted to the United States, be, and the same are hereby, granted and ceded to the United States of America, as sites for the

location, construction and prosecution of works of fortifications and coast defenses, and uses of the garrison, and for the enlargement of the military reservation on said island, and generally for any military purpose whatsoever, to wit: All that tract and parcel of land, and land covered with water, bounded as follows: Beginning at a point on the prolongation or extension, in a northerly direction of the westerly line of Pettigru Street, as laid down on the plan of the said town of Moultrieville, made by H. S. Lamboll in 1902, on the back beach, and one hundred yards beyond high-water line; thence in an easterly direction following the meanderings or indentations of a line one hundred yards beyond said high-water line to the intersection of the prolongation or extension in a northerly direction of the western line of Frost Street; thence in a southerly direction along said prolongation or extension of the said westerly line of Frost Street, along said westerly line of Frost Street, and along the prolongation or extension in a southerly direction of said westerly line of Frost Street to a point one hundred yards below low-water line in the sea; thence in a westerly direction following the meanderings or indentations of a line in the sea one hundred yards beyond low-water line to its intersection with the prolongation or extension, in a southerly direction, of the western side of Pettigru Street; thence in a northerly direction along said prolongation or extension of the western side of Pettigru Street, and along said western side of Pettigru Street in a northerly direction and along the prolongation or extension, in a northerly direction of the western line of said Pettigru Street, to the place of beginning: *Provided*, That the portion of Central Avenue and East Middle Street herein ceded shall be forever kept open as public streets; and this cession shall in no way interfere with any private rights, or any franchises heretofore legally granted with reference to said Central Avenue and East Middle Street: *And provided, further*, That this State reserves the right to authorize the laying and maintaining of tracts for railroad or traction purposes on and across the portions of Central Avenue and East Middle Street ceded, or on lands contiguous thereto, and lying within fifteen feet of the same. Also, all that piece, parcel or tract of land, and the wharf or wharves thereon, being situate on the extreme western end of said Sullivan's Island, formerly owned by the Charleston Consolidated Railway, Gas & Electric Company, and now the property of the Charleston Isle of Palms Traction Company, being wharf sites One (1), Two (2), and Four (4), and also the lot or wharf site number Three (3), between wharf sites Two and Four aforesaid, as per plat made by Louis Y. Dawson, Engineer, November 29, 1912, being traced from a plat of Sullivan's Island by William Hume, dated July, 1871, and such other property in the neighborhood thereof and contiguous thereto as may be needed by the United States Government for the purposes as hereinabove set forth: *Provided*, That there is hereby reserved to this State a concurrent jurisdiction for the execution within said lands of all process, civil or criminal, lawfully issued by the courts of this State, and not incompatible with this cession: *Provided, further*, And the said grant is made subject to the following reservations and exceptions, to wit: That such portion of the front beach of said Sullivan's Island included within the limits of said grant, as lies below a line drawn along said beach twenty (20) feet above high-water mark, and parallel thereto, shall be always open to the public as a footway and drive-

way, so that the public shall have the free and unobstructed right of passage by foot and carriage upon, over and across the same, subject to the right of the United States Government to close and exclusively occupy the same, so far as the reservations in this proviso are concerned, at the following times and under the following circumstances, to wit: 1. During hours of actual target practice in, over and upon the said portion of the said premises (during which time of closure, due and proper notice of the same shall be given to the public). 2. During hours of actual military drill in, over and upon the said portion of the said premises, and 3. During time of war.

2. **COMPENSATION REQUIRED WHERE PRIVATE PROPERTY DESIRED.**—The grant hereinbefore made is upon condition that the said grant shall not be effectual as to any portion of the premises embraced in the foregoing description in which any person or persons have now any right, title, or interest, or upon which any person or persons now own, or have any structures or improvements, until the United States of America shall have compensated such person or persons for such right, title and interest, and for such building, structures and improvements, and acquired the title of such person or persons thereto.

3. **HOW COMPENSATION DETERMINED.**—In case of the failure of the United States of America and any person interested as aforesaid or owner as aforesaid to agree upon the proper compensation to be paid, as above provided, the United States of America is authorized to have the same determined by the verdict of a jury, upon application by petition to the Court of Common Pleas of Charleston County, which court shall have exclusive jurisdiction of the same, and which petition shall be served as by law a summons in a civil action in said court is required to be served, and the said cause shall be heard without delay at a term of said court and under the direction of the presiding Judge thereof, and such determination shall be final and without appeal; and upon the amount so found being paid, with all costs of the proceedings, if any, the right and title of the parties shall vest in the United States of America.

4. **STREETS VACATED.**—Be it further enacted, That all streets, roads, rights of way and highways within said tracts or parcels of land are vacated and discontinued from the time the said grant becomes effectual by the United States Government acquiring the property aforesaid as herein provided, saving such as are expressly excepted or reserved in this Act.

1916, XXIX, 782.

55. Certain Lands on Sullivan's Island, in Charleston County, Ceded to the United States—Concurrent Jurisdiction and Rights of Occupants Reserved—Condemnation—Certain Ways Reserved.—Be it enacted by the General Assembly of the State of South Carolina: That the right, title and interest of this State in and to, and the jurisdiction and control of this State over the following described tract or parcel of land situated in the town of Moultrieville, on Sullivan's Island, in the County of Charleston, in this State, be, and the same hereby is, granted and ceded to the United States of America for the purpose of affording a clear field of view from

the fire control stations pertaining to the defenses at Fort Moultrie, and for such other purposes as shall render its use needful or desirable in connection with the works of fortification and coast defenses at Fort Moultrie established by the United States upon Sullivan's Island, to wit: All that tract or parcel of land bounded as follows: Beginning at the southeast corner of the main United States Government Reservation on Sullivan's Island, South Carolina, said point being located on the extension of the west line of Pettigru street in the town of Moultrieville, Sullivan's Island, South Carolina, one hundred yards to seaward from low water line in the Atlantic Ocean (wherever such low water line may now or hereafter be) thence northerly along the easterly boundary of said United States Government Reservations (said boundary line being the west line of said Pettigru street) to a point in the line with the southerly boundary of lots M, N, O and P, as shown on the Lamble map, recorded in the office of the Register of Mesne Conveyance July 15, 1902, in Plat Book "D"; thence easterly along said southerly boundary of said lots M, N, O, and P, to the east side of Patrick street, a distance of 500 feet, more or less; thence southerly along the west boundary of lot Q, shown on said Lamble map, a distance of 150 ft., more or less; thence easterly along the southerly boundary of lots Q, R, S, and T, shown on above mentioned Lamble map, crossing Wharf street, to the U. S. Government Reservation, known as Thomson Reservation, a distance of 490 feet, more or less; thence southerly along the boundary of said Thomson Reservation to a point one hundred yards to seaward from low water line in the Atlantic Ocean (wherever such low water line may now and hereafter be); thence westerly along a line in the Atlantic Ocean at all points one hundred yards to seaward from low water line (wherever such low water line may now and hereafter be) to a point of beginning; now containing in all, above low water line, eleven acres, more or less: *Provided*, That there is hereby reserved to this State a concurrent jurisdiction for the execution within said land of all process, civil or criminal, lawfully issued by the Courts of the State and not incompatible with this cession. The grant hereinbefore made is upon condition that the said grant shall not be effectual as to any portion of premises embraced in the foregoing description in which any person or persons have now any right, title or interest, or upon which any person or persons now own or have any structures or improvements, until the United States of America shall have compensated such person or persons for such right, title and interest, and for such buildings, structures and improvements, and acquired the title of such person or persons thereto. In case of the failure of the United States of America and any persons interested as aforesaid, or owner as aforesaid, to agree upon the proper compensation to be paid as above provided, the United States of America is authorized to have the same determined by the verdict of a jury, upon application by petition to the Court of Common Pleas for Charleston County, which shall have exclusive jurisdiction of the same, and which shall be served as by law a summons in civil action in said Court is required to be served, and the same shall be heard without delay at a term of said Court, and under the direction of the presiding Judge thereof, and such determination shall be final and without appeal, and

upon the amount so found being paid, with all costs of the proceedings, if any, the right and title of the parties shall vest in the United States of America: *Provided, further*, And the said grant is made subject to the following reservation and exception, to wit: That such portion of the front beach of said Sullivan's Island included within the limits of said grant, as lies below a line drawn along said beach twenty (20) feet above high water mark and parallel thereto, shall be always open to the public as a footway and driveway, so that the public shall have the free and unobstructed right of passage by foot and carriage upon, over and across the same, subject to the right of the said United States Government to close and exclusively occupy the same, so far as the reservations in this proviso are concerned at the following times and under the following circumstances, to wit:

1. During the hours of actual target practice in, over and upon the said portion of the said premises (during which time of closure due and proper notice of the same shall be given to the public).

2. When deemed necessary during time of war: *Provided, further*, That all streets and avenues now marked and indicated on the said Plat of Lamble, and the extensions thereof, on and over the ceded territory, be forever kept open and unobstructed as highways for the passage of the public to and from the beach and other portions of Sullivan's Island, and more particularly the extension of Atlantic street from lot "Q" westward to the main Government Reservation and the extension of Bayonne avenue eastward from the extension of Patrick street to the extension of Wharf street, and thence by a line parallel with the north line of the proposed ceded territory to the west line of said Thomson Reservation.

1921, XXXII, 181.

(5) § 5. Land May Be Purchased by United States for Arsenals and Magazines.—The United States, or such person or persons as may be by them authorized, shall have a right to purchase, in any part of this State that may be thought most eligible, the fee simple of any quantity of land, not exceeding two thousand acres, for the purpose of erecting arsenals and magazines thereon.

Civ. '12, § 5; Civ. '02, § 4; G. S. 4; R. S. 4; 1795, V, 260, § 1.

(6) § 6. If Parties Cannot Agree, Land to Be Valued.—If the person or persons whose land may be chosen for the above mentioned purpose, should not be disposed to sell the same, or if the persons appointed to make the purchase should not be able to agree upon terms with such owner or owners of the said land, the same shall be valued, upon oath, by a majority of persons to be appointed by the Court of Common Pleas of the county where such land is situated for that purpose; and the land shall be vested in the United States, upon their paying the amount of such valuation to the owner or owners of such lands.

Civ. '12, § 6; Civ. '02, § 5; R. S. 5; 1795, V, 260, § 2.
In re Rugheimer, 36 Fed. Rep. 369, 374.

(7) § 7. Concurrent Jurisdiction Retained by the State.—The said land, when purchased, and every person and officer residing or employed thereon, whether in the service of the United States or not, shall be subject and liable

to the Government of this State, and the jurisdiction, laws, and authority thereof; that the United States shall exercise no more authority or power, within the limits of the said land, than they might have done before acquiring the same, or than may be necessary for the building, repairing, or internal government of the arsenals and magazines thereon to be erected, and the regulation and the management of the same, and of the officers and persons by them to be employed in or about the same: *Provided, always*, That the said land shall forever be exempt from any taxes to be paid to this State.

Civ. '12, § 7; Civ. '02, § 6; G. S. 6; 1795, V, 260, § 3.

(8) § 8. Land for Public Uses of United States.—Whenever it shall be made to appear to any one of the Circuit Courts of this State, upon the application of any authorized agent of the United States, that the said United States are desirous of purchasing any tract of land, and the right of way thereto, within the limits of this State, for the public uses of the said United States, and that the owner or owners of said lands are unknown, nonresidents or minors, or from any other cause are incapable of making a perfect title to said lands; or in case the said owners, being residents and capable of conveying, shall, from disagreements in price, or any other cause whatever, refuse to convey the said lands to the United States, the presiding Judge of the said Court shall order notice of said application to be published in some newspaper nearest to where the said lands lie, also in one newspaper published in the City of Columbia, once in each week for the space of three weeks, which notice shall contain a general description of the said lands, together with the names of the owners or supposed owners, and shall require all persons interested in the said lands to come forward, on a day to be specified in said notice, and file their objections, if any they should have, to the proposed purchase; and at the time specified in said notice the said Court shall empanel a jury in the manner now provided by law, to assess the value of the said lands at their fair market value, and all damages sustained by the owner of the lands so appropriated by reason of such appropriation, which amount, when so assessed, together with the entire cost of said proceedings, shall be paid into the county treasury of said county in which said proceedings are held; and thereupon the Sheriff of the said county, upon the production of the certificate of the Treasurer of said county that the said amount has been paid, shall execute to the United States, and deliver to their authorized agent, a deed of the said lands, reciting the proceedings in said cause, which said deed shall convey to the said United States a good and absolute title to the said lands against all persons whomsoever. The money so paid into the county treasury shall there remain until ordered to be paid out by a court of competent jurisdiction. The Judge directing the money to be paid to a county Treasurer, in accordance with the provisions of this Act, shall require of such Treasurer a bond in double the amount of money so ordered to be paid by him, with two or more sufficient sureties, to be approved by said Judge. Said bonds shall be payable to the State of South Carolina, for the use and benefit of such persons, severally, as are entitled to said money. Said bond shall be exe-

cuted and approved and filed with the Clerk of said court before receiving said money. In all cases of publication of notice under this Section, the court shall require the same proof as in cases of publication of notice in civil cases.

Civ. 1912, § 8; Civ. '02, § 7; G. S. 7; R. S. 7; 1872, XV, 308; 1904, XXIV, 386; 1917, XXX, 41.

Acquiring land for lighthouse, etc., by United States.
In re Rugheimer, 36 Fed. Rep. 369, 374.

(9) § 9. Submarine Sites for Light Houses and Other Aids of Navigation.—Whenever the United States desire to acquire title to land belonging to the State and covered by the navigable waters of the United States, within the limits thereof, for the site of a light house, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the Governor of the State is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same: *Provided*, No single tract shall contain more than ten (10) acres, and that the State shall retain concurrent jurisdiction so far that all process, civil or criminal, issuing under the authority of the State, may be executed by the proper officers thereof upon any person or persons amenable to the same within the limits of land so ceded, in like manner and to like effect as if this Section had never been enacted. Any person or persons who shall moor any vessel, scow, boat, or raft, to any bouy, or beacon, or floating guide, placed by the United States Light House Board in the navigable waters of this State, or who shall, in any manner, make fast thereto any vessel, boat, scow, or raft, and any person or persons who shall wilfully destroy, injure, or remove any such beacon or guide, shall forfeit and pay a sum not exceeding one hundred dollars, or be imprisoned in the common jail not exceeding three months. Said forfeitures may be recovered by an action of tort, complaint, or indictment before any court competent to try the same; one-half accruing to the informer or complainant, and the other half to the county in which the trial shall be had.

Civ. '12, § 9; Civ. '02, § 8; G. S. 8; R. S. 8; 1874, XV, 790.

(10) § 10. Nature, Extent and Accrual of United States Jurisdiction Over Lands Acquired.—The jurisdiction of the State of South Carolina is hereby ceded to the United States of America over so much land as is necessary for the public purposes of the United States: *Provided*, That the jurisdiction hereby ceded shall not vest until the United States of America shall have acquired the title to the lands, by grant or deed, from the owner or owners thereof, and the evidences thereof shall have been recorded in the office, where, by law, the title to such land is recorded; and the United States of America are to retain such jurisdiction so long as such lands shall be used for the purposes aforementioned, and no longer; and such jurisdiction is granted upon the express condition that the State of South Carolina shall retain a concurrent jurisdiction with the United States in and over the said lands, so far as that civil process, in all cases not affecting the real or personal property of the United States, and such criminal or other process as shall issue under the authority of the State of South Carolina, against any person or persons charged with crimes or misdemeanors com-

mitted within or without the limit of the said lands, may be executed therein, in the same way and manner as if no jurisdiction had been thereby ceded.

Civ. '12, § 10; Civ. '02, § 9; G. S. 9; R. S. 9; 1871, XIV, 535, § 1.

Act Cong. Feb. 9, 1887, making appropriation for erection of public building at Charleston, S. C., provides that no part of appropriation shall be expended until title to site for building shall be vested in United States, nor until South Carolina shall cede to United States jurisdiction over site. Held, that provision that jurisdiction shall not vest until United States shall have acquired title to lands by grant or deed, etc., need not be fulfilled before appropriation could be used to pay for land, but that former act contemplated that delivery of deed and payment of consideration should be contemporaneous acts. In re Rugheimer, 36 Fed. Rep. 369.

(11) § 11. Lands Exempt from State Taxation.—All lands and tenements which may be granted, as aforesaid, to the United States, shall be and continue, so long as the same shall be used for the purposes in the last Section mentioned, exonerated and discharged from all taxes, assessments, and other charges which may be imposed under the authority of the State of South Carolina.

Civ. '12, § 11; Civ. '02, § 10; G. S. 10; R. S. 10; 1871, XIV, 536, § 2.

(12) § 12. Acquisition of Land by United States for National Forest Reserve.—The consent of the State of South Carolina be, and is hereby, given to the acquisition by the United States, by purchase or gift, or by condemnation according to law, of such forest lands or such other property as it may acquire by purchase, or deed, or otherwise, in this State, as, in the opinion of the Federal Government, may be needed for the establishment of such national forest reserve in that region: *Provided*, That the State shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases, and such criminal process as may issue under the authority of the State against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this Act had not been passed. Power is hereby conferred upon Congress to pass such laws as it may deem necessary to the acquisition, as hereinbefore provided for incorporation in said national forest reserve, such forest-covered lands lying in the State as, in the opinion of the Federal Government, may be needed for this purpose: *Provided*, "That unless the consent of the owner of said land had and obtained then," nothing herein contained shall be construed as giving the right to condemn any building, dwelling house or cultivated or pasture land. Power is hereby conferred upon Congress to pass such laws, and to make or provide for the making, of such rules and regulations of both civil and criminal nature, and provide punishment for violation thereof, as, in its judgment, may be necessary for the management, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this Act.

Civ. 1912, § 12; Civ. '02, § 11; XXIII, 609; Ex. Sess. 1914, XXIX, 1; 1915, XXIX, 63.

(13) § 13. Assent of This State Given to Act of Congress.—The assent of this State is hereby given to the purposes and provisions of an Act of Congress entitled "An Act to provide for an increased annual appropriation thereof," approved March 16, 1906.

Civ. '12, § 13; 1909, XXVI, 122.

CHAPTER II.**The General Assembly.**

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ARTICLE I.**General Provisions.**

(14) § 1. **Apportionment of Representatives.**—Until the next apportionment the representation of the several counties in the House of Representatives shall be as follows: Abbeville two, Aiken three, Allendale one, Anderson six, Bamberg two, Barnwell two, Beaufort two, Berkeley two, Calhoun one, Charleston eight, Cherokee two, Chester two, Chesterfield two, Clarendon three, Colleton two, Darlington three, Dillon two, Dorchester one, Edgefield two, Fairfield two, Florence three, Georgetown two, Greenville six, Greenwood three, Hampton one, Horry two, Jasper one, Kershaw two, Lancaster two, Laurens three, Lee two, Lexington three, Marion two, Marlboro three, McCormick one, Newberry three, Oconee two, Orangeburg five, Pickens two, Richland five, Saluda two, Spartanburg seven, Sumter three, Union two, Williamsburg three, and York four.

WHEN ACT TAKES EFFECT.—Representatives to the House of Representatives shall be elected from the several counties of the State, in accordance with the provision of this Section at the general election to be held on Tuesday after the first Monday in November of the year 1902, and every second year thereafter, in such manner and at such places as are now provided by law, or as the General Assembly may prescribe.

Civ. '12, § 14; Civ. 1902, § 12; G. S. 11; R. S. 11; 1901, XXIII, 611; 1902, XXIII, 1197; 1908, XXV, 1283; 1910, XXVI, 867; 1911, XXVI, 68; 1912, XXVII, 827; 1916, XXIX, 717; 1918 XXX, 881; 1919, XXXI, 5.

(15) § 2. **Oath to Be Taken by Members.**—All members elected to the General Assembly shall take the oath prescribed in Article III, Section 26, of the Constitution of the State, before entering upon the duties of their office.

Civ. '12, § 15; Civ. '02, § 13; G. S. 12; R. S. 12; 1880, XVII, 502.

(16) § 3. **Compensation of Members.**—Members of the General Assembly shall receive as compensation for their services the sum of four hundred dollars for each session and mileage at the rate of five cents per mile for the actual distance traveled in the most direct route going to and returning from the place where the session of the General Assembly shall be held; and the Speaker of the House of Representatives shall receive a salary of three hundred and fifty dollars per session, in addition to his compensation as a member: *Provided*, That this Section, as amended, shall not take effect until after the general election for members of the General Assembly for the year 1920.

Civ. '12, § 16; Civ. '02, § 14; G. S. 13; R. S. 13; XVI, 246; 1893, XXI, 417; 1908, XXV, 1079; 1920, XXXI, 875.

(17) § 4. **Stationery and Postage of Members.**—The Clerk of the Senate shall, on the first day of each session, draw a pay certificate of five dollars in favor of each Senator, and the Clerk of the House of Representatives shall likewise, on the first day of each session, draw a pay certificate of five dollars in favor of each member of the House of Representatives, which shall be given in lieu of all stationery and postage to be used by such Senator or Representative in his official capacity during each session, and to be in addition to his per diem and mileage.

Civ. '12, § 17; Civ. '02, § 15; G. S. 14; R. S. 14; 1893, XXI, 184.

(18) § 5. **Stationery for Each House.**—The Clerks of the Senate and of the House of Representatives shall each furnish for their Houses, respectively, for their use and for the use of their several Committees, such stationery as may be necessary for each session; the amount so to be furnished for the Senate not to exceed one hundred dollars, and that so furnished for the House of Representatives not to exceed one hundred and fifty dollars.

Civ. '12, § 18; Civ. '02, § 16; G. S. 15; R. S. 15; 1893, XXI, 234.

(19) § 6. **Fuel and Gas Furnished.**—The Secretary of State shall furnish for the Senate and House of Representatives, and for their respective Committee rooms, such supplies of fuel or coal and gas as may be necessary for their use at each session of the General Assembly; the amount for this purpose not to exceed the sum of eight hundred dollars.

Civ. '12, § 19; Civ. '02, § 17; G. S. 16; R. S. 16; 1093, XXI, 234, 385.

(20) § 7. **Officers Elected by Each House and Compensation of Same.**—The Senate and House of Representatives, immediately after assembling in the session following a general election, shall each proceed to the election of a Clerk, to be known as the Clerk of the Senate and the Clerk of the House of Representatives, respectively, who shall each receive a salary of eight hundred dollars per annum.

The Senate and House of Representatives shall also, at the same time, each for itself, elect a Reading Clerk, who shall each receive a salary of two hundred and fifty dollars, and a Sergeant at Arms, who shall receive a salary of two hundred dollars: *Provided*, That in case of an extra session or sessions of the General Assembly, the Sergeant at Arms, Clerk, Assistant Clerk and Reading Clerk shall also receive the same mileage and per diem of a member of the General Assembly.

The Senate and House of Representatives shall each elect annually, on the first day of the session, a Chaplain, who shall serve as such officer during the session, and shall receive a salary of fifty dollars during the session, to be paid in the same manner as the officers of the respective Houses are paid.

Civ. '12, § 20; Civ. '02, § 18; G. S. 17; R. S. 17; 1877, 294; 1890, XX, 661; 1893, XXI, 417, 418.

(21) § 8. **Officers and Employees of Each House.**—There shall be appointed at the commencement of the first session of every term of the General Assembly for the Senate, by the Clerk of the Senate, the following Clerks and attaches: An Assistant Clerk; a second Assistant Clerk;

a General Desk Clerk; a File Clerk, a Bill Clerk and a Journal Clerk; by the presiding officer of the Senate, a Clerk to the Committee on Judiciary; a Clerk to the Committee on Finance; three doorkeepers; two laborers; one porter; a keeper of the President's room; two pages; one mail carrier; and no others. In the House, by the Speaker of the House of Representatives: An Assistant Clerk, a Journal Clerk, one Bill Clerk, a Clerk to Committee on Ways and Means, a Clerk to Judiciary Committee; three doorkeepers; four pages, three laborers; one keeper of Speaker's room; two porters; one mail carrier; and no others.

Civ. '12, § 21; Civ. '02, § 19; 1920, XXXI, 766.

(22) § 9. Certain Appointed Clerks and Attaches Under Control of Sergeant at Arms—Salaries of.—The Bill Clerk, Doorkeepers, Laborers and Pages of each House shall be under the control and supervision of the Sergeant at Arms of the House to which he is appointed, and shall obey all reasonable orders made by him, and the salaries of the appointed Clerks and attaches of the General Assembly shall be as follows: Assistant Clerks of the Senate and of the House of Representatives, two hundred and fifty dollars, each; Journal Clerks, each, four dollars per day during the session of the General Assembly, and four dollars per day for each day's work after adjournment, not exceeding twenty days; Bill Clerks, each, four dollars per day.

In case of an extra session of the Legislature, the Assistant Clerks shall receive the same pay as members of the General Assembly.

Civ. '12, § 22; Civ. '02, § 20; 1893, XXI, 417, 418.

(23) § 10. Solicitors to Attend Sessions of and Assist in Preparation of Acts.—The Circuit Solicitors, or so many of them as are deemed necessary by the Attorney General, shall attend the sessions of the General Assembly, and shall, under his direction, assist the Attorney General in drawing and in supervising the engrossing of all Bills, and in the enrollment of all Acts and Joint Resolutions of each session; shall see that the work is done neatly, promptly and correctly; and one of the said Solicitors shall certify upon each Act, before it is ratified, that it is correctly enrolled. The Attorney General shall employ such clerical assistance in drawing, engrossing and enrolling Bills, Resolutions and Acts as he may deem necessary: *Provided*, That only competent stenographers and typewriters shall be employed for drawing, engrossing and enrolling Bills, Resolutions and Acts.

Civ. '12, § 23; Civ. '02, § 21; G. S. 21; R. S. 21; XVII, 290; 1916, XXIX, 672.

(24) § 11. Qualification for Appointment of Officers and Attaches.—No person, holding or exercising the duties of any office in this State, and no person not a permanent resident of this State, shall be eligible to election or appointment to any of the offices or positions provided for in this Chapter.

Civ. '12, § 24; Civ. '02, § 22; G. S. 22; R. S. 22; XVI, 296.

(25) § 12. Compensation of Officers and Attaches.—All persons elected or appointed under the provisions of this Chapter shall receive such com-

pensation as the General Assembly shall determine; in no case to exceed the compensation of a member, except the Clerks of the Senate and of the House of Representatives, whose annual salary is provided for by law, and except also the Circuit Solicitors.

Civ. '12, § 25; Civ. '02, § 23; G. S. 23; R. S. 23; XVI, 294.

(26) § 13.—Appointments to Be Furnished Clerks.—All officers making any of the appointments provided for in this Chapter shall forthwith, when each appointment is made, furnish a correct list thereof to the Clerks of the two Houses respectively; and a copy of the same, together with a list of the officers or attaches elected by the two Houses, shall be filed by the said Clerks with the Treasurer of the State.

Civ. '12, § 26; Civ. '02, § 24; G. S. 24; R. S. 24; XVI, 294.

(27) § 14. Pay Certificates for Members.—The Clerks of the Senate and House of Representatives are authorized and directed to furnish each member of their respective bodies a pay certificate for the amount of his mileage and compensation, to include such dates as the General Assembly shall, by Concurrent Resolution, direct.

Civ. '12, § 27; Civ. '02, § 25; G. S. 25; R. S. 25; XIV, 310.

(28) § 15. Certification and Attestation of Certificates.—Such certificates shall be certified by the President of the Senate, and attested by the Clerk of the Senate, for all members of that body, and by the Speaker of the House of Representatives, and by the Clerk of the same for all members of that body.

Civ. '12, § 28; Civ. '02, § 26; G. S. 26; R. S. 26; XIV, 310.

(29) § 16. Pay Certificates of Officers and Employees.—The subordinate officers and employees of the General Assembly shall, in like manner, be furnished with certificates of pay in such amounts as shall be fixed by that branch of the General Assembly to which such officers and employees shall respectively belong: *Provided, however,* That the pay certificates for services common to the two Houses shall be signed by the President of the Senate, and countersigned by the Speaker of the House of Representatives.

Civ. '12, § 29; Civ. '02, § 27; G. S. 27; R. S. 27; XIV, 310.

(30) § 17. Statement of All Certificates Furnished Comptroller General and Treasurer.—The Clerks of the Senate and of the House of Representatives on the day of the final adjournment of every session of the General Assembly shall furnish to the Comptroller General and State Treasurer, each, a statement of all certificates issued in behalf of their respective Houses, which statements shall show the numbers of the certificates issued, the amount in each, and the person to whom issued, in the following order: 1, of members of the General Assembly; 2, of officers and attaches; 3, stationery certificates; 4, of contingent expenses.

The Clerk of the Senate shall, in similar manner and at the same time, furnish the Comptroller General and the Treasurer, each, statements of all joint certificates issued on behalf of both Houses.

Civ. '12, § 30; Civ. '02, § 28; G. S. 28; R. S. 28; XVI, 825.

(31) § 18. **Sergeant at Arms of Senate and House to Have Charge of the Respective Chambers.**—The Sergeant at Arms of the Senate and the Sergeant at Arms of the House of Representatives, shall take exclusive care and charge of the Senate Chamber and Hall of House of Representatives and Committee rooms, respectively, and be held responsible for their keeping and the keeping and protection of the furniture and furnishings belonging to them, packing such as may need packing, and occasionally inspect and care for the same during the recess of the General Assembly, and shall receive as compensation therefor the same mileage and per diem for each day actually engaged as he receives during the sessions of the Legislature: *Provided*, He shall not be paid for more than ten days during any one year

Civ. '12, § 31; 1907, XXV, 651.

(32) § 19. **Members of Senate and House Committees Who Are Ex Officio Members of Boards to Hold Over.**—That every chairman of a committee of the House of Representatives or of the Senate who is *ex officio* a member of any commission or board shall continue to be a member of such commission or board after each general election and until his successor shall be appointed chairman of such committee of the House or Senate, and if a vacancy occurs in any such chairmanship or the chairman is unable to serve by reason of temporary disability or other cause when the General Assembly is not in session, the Speaker of the House or the President of the Senate shall designate some member of such committee of the House or Senate, as the case may be, to serve as such member of the commission or board in the place of such chairman until the next meeting of the General Assembly or until the temporary disability is removed, as the case may be.

1915, XXIX, 263.

ARTICLE II.

Claims Against the State.

(33) § 1. **Board of Claims for State.**—That the Comptroller General, the Attorney General and the Secretary of State be, and they hereby are, constituted and declared a Board of Claims for the State of South Carolina, of which Board the Comptroller General shall be chairman *ex officio*.

1913, XXVII, 199.

The State Co. v. Jones, Compt. Gen., 99 S. C. 218; 82 S. E. 1048.

(34) § 2. **Claims to Be Filed With Board—Proviso.**—All claims for the refunding of overpaid taxes, or for the payment for services rendered or supplies furnished to the State, shall be presented to the said Board by petition, fully setting forth the facts upon which such claim is based, together with such evidence thereof as said Board may require, which petition shall be filed with the Chairman of the said Board of Claims at least twenty days prior to the convening of the General Assembly. It shall be the duty of the said Board of Claims to thoroughly examine all claims so presented, looking to their correctness, validity and legality, and the said Board of Claims shall make a report of their findings on all claims so pre-

sented, to the Ways and Means Committee of the House of Representatives within ten days after the convening thereof, and the said Board shall recommend the payment, in whole or in part, or rejection of such claim or claims as in their judgment justice shall require. Upon the receipt of the said report, the Ways and Means Committee may thereupon make provision for the payment of all approved claims in the Appropriation Bill introduced by them: *Provided*, That the provisions of this Article shall not apply to the current or contingent expenses of either House of the General Assembly, or expenses common to both, which said claims shall be paid as now provided by law.

Civ. '12, § 32; Civ. '02, § 29; G. S. 29; R. S. 29; XVI, 459; 1885, XIX, 310; 1913, XXVII, 199.

(35) § 3. When Claims Against State Are Debarred Payment.—All claims against the State except the bonded debt of the State shall be forever barred unless presented within three years after the right to demand payment thereof accrues. And such claims shall also be forever barred if twice presented to the General Assembly or either branch thereof and rejected, or twice presented and withdrawn.

Civ. '12, § 33; Civ. '02, § 30; G. S. 30; R. S. 30; XVII, 769.

ARTICLE III.

Introduction of Measures for Private Purposes.

(36) § 1. Must Be by Petition, Accompanied by Draft of Bill or Joint Resolution; Reference to Committee.—No Bill to charter or incorporate, or to amend the charter of any society, company, organization, or body politic of any kind, or for the granting of any privilege or immunity or for any other private purpose whatsoever, shall be introduced or entertained in either House of the General Assembly, except by petition, to be signed by the person or persons seeking to be incorporated, or by the corporators or their officers, or duly appointed agents, seeking an amendment of a charter, or by the person or persons seeking such privilege, immunity or other private grant or relief. The petition must be accompanied in each instance by a draft of a Bill or Joint Resolution, as the case may be, to charter or incorporate such society, organization or body politic, or to amend the charter thereof, or to grant the privilege or immunity, or to carry out the private purpose prayed for in said petition; and, together with the said draft of the Bill or Joint Resolution, shall be referred to some appropriate Committee of the House in which such petition is presented, to be acted upon by such Committee as hereinafter provided.

Civ. '12, § 34; Civ. '02, § 31; R. S. 31; 1885, XIX, 309.

Each General Assembly possesses all the legislative power vested in the General Assembly by the Constitution, and is subject to no limitation not found in the Constitution. One legislature, therefore, cannot curtail or enlarge the power of any succeeding legislature. Hence, failure to comply with provisions herein does not invalidate act to authorize construction of dam across Kinlock Creek. *Manigault v. Ward*, 123 Fed. 716.

(37) § 2. Statement of Inapplicability of General Statute and Special Reasons for Charter or Incorporation.—In case of an application for a charter or incorporation, other than of a railroad or canal company, the petition shall state and set forth why the same cannot be obtained under the provisions of the General Statutes, in pursuance of the Constitution, relating to incorporations, and any other special reasons on which such charter or incorporation is sought.

Civ. '12, § 35; Civ. '02, § 32; R. S. 32; 1885, XIX, 309.

(38) § 4. Route of Road, Other Roads Crossed, Accompanying Map and Notice.—In case of an application for the charter or incorporation of a railroad, canal, tramway, plank road or turnpike company, and the grant of the right of way therefor, in addition to the foregoing requirements of other charters and incorporations, the petition shall set forth and describe approximately the route proposed for the said projected road, and state where the said route will cross any existing railroad or in the course of construction, and the said petition shall also be accompanied by a plat or map delineating the same: *Provided*, That in case of a railroad charter, the three month's notice required by law shall be given before the application for a charter is made.

Civ. '12, § 36; Civ. '02, § 33; R. S. 33; 1885, XIX, 309.

(39) § 4. Merits and Particulars, Rights of Others and Requisite Notice.—In any case other than that of a charter or incorporation, the petition shall set forth fully and distinctly the merits and particulars of the case, and if the same shall in any wise affect the rights of others directly who reside in this State, such petition shall be accompanied with proof that the parties, so far as known, who may be affected merely, have had sixty (60) days' notice of the presentation of such petition before such petition is presented, and also that notice of the intention of the petitioner or petitioners to make such application has been published in a newspaper having the largest circulation published in the county where the privilege or immunity is to be enjoyed, once a week for at least three weeks, the first of which particulars shall be at least sixty (60) days before such petition is presented.

Civ. '12, § 37; Civ. '02, § 34; R. S. 34; 1885, XIX, 309.

(40) § 5. Petition Signed by Freeholders in Bills to Amend Stock Law.—No Bill purporting to amend or alter the law regulating the fencing of stock in any portion of the State shall be considered unless the same be accompanied by a petition for such amendment or alteration signed by a majority of the freeholders of the section to be affected by such amendment.

Civ. '12, § 38; R. S. 35; 1889, XIX, 295.

This section is doubtless intended as guide to persons desiring to petition legislature for special privileges. *Manigault v. Springs*, 199 U. S. 473, 486, 50 L. Ed. 274.

Failure to comply with provisions herein does not invalidate act to authorize construction of dam across Kinlock Creek. *Manigault v. Ward*, 123 Fed. 716; *Manigault v. Springs*, 199 U. S. 486, 50 L. Ed. 274.

ARTICLE IV.**Special Provisions as to Legislative Enactments.**

(41) § 1. Time When Legislative Enactments Take Effect.—No Act or Joint Resolution passed by the General Assembly shall take effect or become of force until the twentieth day after the day of its approval by the Executive, unless some other day be specially named in the body of the Act or Joint Resolution as the day upon which it shall take effect.

Civ. '12, § 39; Civ. '02, § 36; G. S. 33; R. S. 36; XVII, 69.

(42) § 2. Effect of Repeal of Act.—The repeal of an Act or Joint Resolution shall not revive any law theretofore repealed or superseded, nor any office theretofore abolished.

Civ. '12, § 40; Civ. '02, § 37; G. S. 34; R. S. 37; XV, 37.

Addison v. Sugette, 50 S. C. 192, 28 S. E. 948.

(43) § 3. Construction of Words.—The words "person" and "party" and other word or words importing the singular number, used in any Act or Joint Resolution, shall be held to include firms, companies, associations and corporations, and all words in the plural number shall apply to single individuals in all cases in which the spirit and intent of the Act or Joint Resolution may require it. All words in an Act or Joint Resolution importing the masculine gender shall apply to females also, and all words importing the present tense shall apply to the future also.

Civ. '12, § 41; Civ. '02, § 38; G. S. 35; R. S. 38.

In re Roton's Will, 95 S. C. 118, 78 S. E. 713.

(44) § 4. Appropriations by the General Assembly.—Be it enacted by the General Assembly of the State of South Carolina: The General Assembly shall annually provide for all expenditures in the general Appropriation Act, and the appropriations made for any department, institution, board or commission shall be in a definite sum for each purpose or activity with such itemization under the activity as may be deemed necessary by the General Assembly.

1921, XXXII, 114.

(45) § 5. Unlawful to Contract Debt in Excess of Appropriation.—Only State Finance Committee May Borrow for State.—It shall be unlawful for any department, institution, commission or board of the State government to contract indebtedness in excess of the amount specifically provided in the annual Appropriation Act, and it shall further be unlawful for any officer, employee, departmental or institutional head, except the State Finance Committee, composed of the Governor, Comptroller General and State Treasurer, to borrow any money for State purposes.

1921, XXXII, 114.

CHAPTER III.**The Public Printing.**

(46) § 1. Joint Committee on Printing Established—Term—Vacancy.—There shall be a Joint Committee on Printing of the General Assembly consisting of two members of the Senate and two members of the House of Representatives to be appointed by the President of the Senate and by the Speaker of the House of Representatives, respectively, the Chairman of the Committee to be selected by the Committee from its Senate members. Each member shall serve for two years or until his successor is appointed. Any vacancy on the Committee shall be filled by the presiding officer of the branch of the General Assembly from which such vacancy occurs.

1916, XXIX, 709.

(47) § 2. Meeting of Committee—Per Diem.—The Joint Committee on Printing shall hold meetings during the sessions of the General Assembly for which the members shall receive no compensation, and the Committee may hold three other meetings during each year for the transaction of such business as shall properly come before it, the time of such meetings to be designated by the Committee or its Chairman, and for such meetings the members of the Committee shall receive as compensation each a per diem of five dollars and the same mileage they receive for attendance upon the sessions of the General Assembly: *Provided*, That per diem shall not be allowed the members for service upon the Committee for more than ten days in any one year.

1916, XXIX, 709.

(48) § 3. Committee to Have Control of Printing, Etc., for State.—The Joint Committee on Printing shall have control and supervision of all the Public Printing, Binding, Lithographing, and Engraving for the State or any department of the State Government.

1916, XXIX, 709.

(49) § 4. Committee to Prevent Unnecessary Printing, Etc.—To Have Control of Style of Public Printing.—The Joint Committee on Printing is hereby authorized to inquire at any time into all matters pertaining to the contracts for the public printing and the distribution of official reports and publications and to prevent unnecessary printing, binding, lithographing or engraving, and to see that all extraneous matter is omitted from any publication paid for out of the public printing fund or any fund of any State department or State institution, and to recommend from time to time to the General Assembly such remedial legislation as in its judgment may be fit and proper. The said Joint Committee on Printing shall have control of the style and arrangement of all Public Printing.

1916, XXIX, 709.

(50) § 6. Printing Clerk—Term—Salary—Duties—Oath—Punishment for His Misconduct.—There shall be a Printing Clerk, who shall be a practical printer and who shall be elected by the Joint Committee on Printing, for a term of four years, and he shall be *ex officio* a member of the Joint Committee on Printing, without a vote, and shall serve as its Secretary

and executive officer. His salary shall be one thousand dollars per annum, if in the judgment of the committee, so much be necessary, payable in monthly installments: *Provided*, That he shall perform such duties in connection with the public printing as shall be required of him by the Joint Committee on Printing, and that he shall be in the continuous service, at the State Capitol, of the said committee during the months of November, December, January, February and March of each year and at such other times as the committee may call upon him for official assistance. The said Printing Clerk shall be elected by the Joint Committee on Printing during the 1916 session of the General Assembly, and any vacancy in the office shall be filled by the committee. The Printing Clerk, before entering upon the discharge of his duties, shall, in addition to the constitutional oath required, take an oath that he is a practical printer and is skilled in, and acquainted with, the details of the printing business; that he will not in any manner, directly or indirectly, be interested in any contracts for printing, binding, lithographing or engraving, etc., let out by the Joint Committee on Printing, nor in the purchase of stationery for the State, and that he will not participate in the profits arising from the same. If he in any manner, directly, or indirectly, violate the provisions of this Section, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, he shall be fined or imprisoned in the discretion of the Court.

1916, XXIX, 709.

(51) § 7. **To Carry Out Present Laws.**—The provisions of law now applicable to the public printing, binding, lithographing and engraving so far as not inconsistent with the provisions of this Article shall remain of full force and effect, and shall be executed by the said Joint Committee on Printing.

1916, XXIX, 709.

(52) § 8. **Public Printing Regulated.**—The Joint Committee on Printing shall, as in their judgment may seem proper, and thereafter at such times as they may deem best for the interest of the State, cause to be published in at least one daily newspaper in each of the counties of Richland, Charleston, Spartanburg and Greenville, for at least one day in each week for three consecutive weeks, a call for sealed proposals to do the public printing for the General Assembly and reports of State officers, boards and commissions of the State. The proposals shall state at what price per page the bidder will execute the several classes of work, respectively, and what additional charge per page he will make for rule and figure work. The Clerk of the Joint Committee on Printing shall furnish bidders with specifications of the different classes of printing to be done. Proposal for the public printing, enclosed in envelope, sealed with wax, and endorsed "Proposals for the Public Printer," shall be filed with the Clerk of the Joint Committee on Printing within five days of the date advertised by the Joint Committee on Printing for the awarding of the contract for public printing, and said proposals shall be opened by the Chairman of the Joint Committee on Printing; or, in his absence, by the Chairman acting, in the presence of the said Committee; and the contract may be awarded by said Joint Committee on Printing to the lowest responsible

bidder. If the bids received be deemed unacceptable, the Joint Committee may reject all bids and call for new bids: *Provided*, That the Joint Committee on Printing is hereby prohibited from making a contract to extend beyond a period of two years: *Provided*, The Joint Committee on Printing is hereby directed to purchase with such funds as the General Assembly may from time to time provide, all stationery and office supplies (not including furniture and fixtures) as may be required by the General Assembly and the several departments, boards and commissions of the State Government and the heads of such departments, boards and commissions are hereby required to make purchases of all such supplies from the Joint Committee on Printing, payment for which shall be made by warrant drawn by the Comptroller General. The Clerk of the Joint Committee on Printing shall refund all collections from such sources to the State Treasurer: *Provided, further*, The Comptroller, before issuing his warrant for any bill or voucher for binding, engraving, lithographing, printing, stationery or office supplies, shall see that the same is duly approved by the Clerk of the Joint Committee on Printing, and shall refuse to issue his warrant for any not so approved, whether such are to be paid from moneys derived, fees, licenses, taxes or otherwise.

Civ. '12, § 42; Civ. '02, § 39; R. S. 39; 1898, XXII, 700; 1916, XXIX, 707; 1920, XXXI, 805.

(53) § 9. Bond of Public Printer.—The party to whom the contract for the public printing shall be awarded shall on or before the first day of July next after such award give bond, with sufficient sureties, in the sum of ten thousand dollars, for the faithful performance of the work; said bond to be approved by the Governor, the Attorney General and the State Treasurer.

Civ. '12, § 43; Civ. '02, § 40; 1898, XXII, 700, § 2.

(54) § 10. Vacancy; How Filled.—If by reason of death or any other cause the party to whom the contract for public printing shall have been awarded shall fail to undertake the work thereunder or shall fail to give bond in due time, it shall be the duty of the Joint Committee on Printing to call for proposals for said printing, and to award the contract therefor to the lowest responsible bidder, subject to all the conditions and regulations hereinbefore set forth.

Civ. '12, § 44; Civ. '02, § 41; 1898, XXII, 700, § 3; 1916, XXIX, 707; 1920, XXXI, 805.

(55) § 11. How Laws, Etc., Are to Be Printed.—The laws, journals and all other printing in book form, shall be set in long primer type, in pages to contain at least one thousand seven hundred ems each. All rule and figure work accompanying the Acts, Journals and Reports and Resolutions, to be in the same type as the body of the work; the side and footnotes to be in minion or nonpareil type, and the indexes to be in brevier or long primer type.

Civ. '12, § 45; Civ. '02, § 42; G. S. 32; R. S. 44.

(56) § 12. In What Manner Reports Shall Be Printed.—Heads of departments and other officials having reports to make to the General Assembly shall not hereafter have the right or authority to designate to the Public Printer the particular type in which each part of their report is to be

printed or the manner in which it is to be set up, but the said Printer shall be required to set up and print all such reports in as cheap a manner as is consistent with the public welfare, and the compensation therefor shall be on the basis of the long primer page of not less than one thousand seven hundred ems.

Civ. '12, § 46; Civ. '02, § 43; 1896, XXII, 203.

(57) § 13. **Standard of Measurement.**—When any part of the said report is set in other than the long primer type, the compensation therefor shall be determined by the relation which the types bear to each other, the work being counted for as many pages as one thousand seven hundred is contained in the number of ems of the type used.

Civ. '12, § 47; '02, § 44; 1884, XVIII, 871.

(58) § 14. **Contents of Reports.**—Heads of the various departments and boards in making their reports shall only give statistical matter and their recommendations in as brief form as possible, and the Railroad Commissioners shall not print the general correspondence of their office, railroad schedules, classification of freight, freight or passenger rates, but shall make their report in as concise and brief manner as may be compatible with the public welfare.

Civ. '12, § 48; Civ. '02, § 45; 1896, XXII, 202, § 1.

(59) § 15. **How Bills and Joint Resolutions Printed.**—Bills and Joint Resolutions of the two Houses shall be printed in ten point type, each line slugged or regletted to the space of one line nonpareil type, printed in pages of 30 ems of twelve point type in width, and 54 ems of twelve point type in length, including the folio and foot line, the lines to be numbered according to sections, the pages to be trimmed to seven by eleven inches, and the quality of paper to be No. 2 book.

Civ. '12, § 49; Civ. '02, § 46; G. S. 32; R. S. 46; 1916, XXIX, 706.

(60) § 16. **Acts and Joint Resolutions—How Printed—Unnecessary Fat**—Acts and Joint Resolutions of the General Assembly of this State shall be published without other head lines than the title of the Act or Joint Resolution, and nothing shall be appended after the last section thereof except the date of the Governor's approval. Not more than one inch of space shall be allowed between the ending of one Act or Joint Resolution and the beginning of the next Act or Joint Resolution (except where an Act or Joint Resolution ends within two inches of the bottom of the page); and there shall be no charge by, or payment to, the State Printer for any unnecessary fat in the publication of said Acts and Joint Resolutions.

PRINTING OF OFFICIAL REPORTS REGULATED—COMPACTNESS AND UNNECESSARY FAT.—In the publication of the Reports of the various officers required by law, there shall be no additional title pages nor any blank pages after the title page, unless such blank pages shall be necessary, from the insertion of a tabular statement which cannot be published upon the regular pages of Reports and is folded within such Report. All matter included in such Reports, whether reading or figures or tabulated, shall be compactly published, with no more intervening space than is necessary for the char-

acter of the work directed to be done, and no page shall be taken up by a mere statement of the Report which is to follow. No unnecessary fat shall be allowed in publishing these Reports.

Civ. '12, § 50; Civ. '02, § 47; R. S. 47; 1886, XIX, 310.

(61) § 17. Public Printer to Set Work Compactly.—The Public Printer shall, in publishing or printing any other kinds of State work, of whatsoever character, set the same as compactly and within as little space as the character of the work will permit.

Civ. '12, § 51; Civ. '02, § 48; R. S. 48; 1886, XIX, 310.

(62) § 18. Public Printer to Verify Bills and Joint Committee on Printing to Approve Them.—The Public Printer shall, with each bill rendered by him for public printing, upon oath certify that the provisions of this Act have been complied with in such work; and no such bill shall be paid until the work has been done, and a copy thereof filed with and examined by the Joint Committee on Printing, and its approval of the work and of the amount of the account endorsed on such bill, except bills for the current printing of the two Houses, which shall be likewise examined and approved by the Joint Committee on Printing, upon sworn accounts filed with it, before such bills shall be paid.

Civ. '12, § 52; Civ. '02, § 49; R. S. 49; 1886, XIX, 310; 1916, XXIX, 710.

(63) § 19. One Report Not to Be Embraced in Another.—No State officer shall embrace in his Report the Report of another State officer which is required to be published by law, but he may make such reference thereto as may be necessary, to embrace a brief recapitulation thereof, when necessary to the proper understanding of such Report.

Civ. '12, § 53; Civ. '02, § 50; R. S. 50; 1886, XIX, 310.

(64) § 20. Size of Paper for Reports.—In preparing the manuscript for the Public Printer, the State officers and Superintendents of public institutions shall use sheets of paper eight by ten inches in size, or legal cap, arranging it in such shape as will have due regard to the contents of the printed page.

Civ. '12, § 54; Civ. '02, § 51; R. S. 51; 1884, XVIII, 872.

(65) § 21. Printing for State Board of Health.—All printing done on Reports published by the State Board of Health shall be paid for out of funds appropriated to or belonging to that Department, and not otherwise.

Civ. '12, § 55; Civ. '02, § 52; R. S. 52; 1884, XVIII, 872.

(66) § 22. Annual Report—Tabulation by Comptroller General.—Each Department of the State Government, or person required by law to have printing done at the public expense, shall report annually to the Comptroller General the cost of such printing so done by such Department or persons, and such amounts consolidated into one table shall be included in the Annual Report of the Comptroller General.

Civ. '12, § 56; Civ. '02, § 53; R. S. 53; 1884, XVIII, 872.

(67) § 23. Certificate as to Printing for Each House.—The faithful performance of the printing for each House shall be certified by their respective presiding officers and clerks: *Provided*, That in the absence of said

officers from the seat of government, the Secretary of State, to whom the work may be delivered, shall certify to its proper execution: *Provided, further,* That a specimen copy of each class of work, with the accounts of the same verified by affidavit, be filed in the office of the Comptroller General.

The Clerks of the two Houses shall furnish the Printer corrected Journals daily for the permanent printing.

Civ. '12, § 57; Civ. '02, § 54; G. S. 32; R. S. 54.

(68) § 24. Acts and Joint Resolutions—Index, Notes and Arrangement—General and Special Laws.—The indexing and making marginal notes of Acts and Joint Resolutions shall be performed by the Code Commissioner. It shall be the duty of the editor or editors charged with the preparation of the Acts and Joint Resolutions for publication, in addition to indexing and making marginal notes thereof, to arrange the same for the Printer according to the subject matter thereof, so that all general laws and Joint Resolutions shall be collected and bound together separately in the first part of the volume, and be entitled "General Laws and Joint Resolutions;" and all Acts relating to matters other than public shall be collected and bound together in the latter part of the volume, and be entitled "Special Acts and Joint Resolutions," and also to index the same in one index. And all local Acts and Joint Resolutions shall be arranged according to counties in alphabetical order.

CROSS REFERENCES IN MARGIN—LIST OF CHAPTERS; HOW PRINTED.—Whenever an Act or Joint Resolution of a previous session is amended, repealed or referred to, a reference shall be made in the margin to the volume and page of the Statutes at Large where such Act or Joint Resolution is to be found. There shall be printed in alphabetical order as an appendix to the Acts and Joint Resolutions of every regular session the list of charters granted by the Secretary of State for the then next preceding fiscal year, such list to be printed in the same type as the body of the Acts, embracing only the name of the corporation in small caps, to be followed in lower case, and without paragraphs, with the location and purpose of the corporation, amount of authorized capital stock and date of charter.

Civ. '12, § 58; Civ. '02, § 55; G. S. 32; R. S. 55; 1889, XX, 280; 1892, XXI, 23; 1901, XXIII, 698.

(69) § 25. Public Printing; How Paid for.—The Comptroller General is hereby authorized and directed to draw his warrant, and the State Treasurer to pay the same out of any moneys in the State Treasury not otherwise appropriated, for the public printing, upon the production of proper vouchers, which shall consist of copies of the temporary printing executed, and signatures of the permanent printing as the work progresses.

APPROPRIATION NOT TO BE EXCEEDED.—In no fiscal year shall the Comptroller General draw his warrants or the State Treasurer pay same for an aggregate amount for printing in excess of the sum of twenty thousand dollars unless a larger amount has been appropriated, in which case such warrants shall not exceed the appropriation.

Civ. '12, § 59; Civ. '02, § 56; G. S. 56; R. S. 56; 1890, XX, 710.

CHAPTER IV.**The Statutes.**

(70) § 1. To Provide for Binding of Laws, Journals, Etc.—A sufficient number of the Journals, Reports and Acts of the General Assembly, for the use of the members of the General Assembly, and for the State Librarian to make the exchanges with other States, shall be bound in a good and substantial manner; and the Clerk of the Senate and the Clerk of the House of Representatives are authorized to have the same done immediately upon the close of the session, or as soon thereafter as practicable.

Civ. '12, § 60; Civ. '02, § 57; G. S. 37; R. S. 58; 1896, XXII, 203, § 2.

(71) § 2. Delivery of Permanent Work to State Librarian Who Shall Distribute Copies to Persons Entitled to Receive Them.—On the completion of the permanent work, they shall deliver the same to the State Librarian, who shall forward, by mail or otherwise, as he may deem expedient, a copy thereof to each of the members of the General Assembly, and a copy of the Acts and Joint Resolutions to the different States, institutions, and officers entitled by law to receive the same.

Civ. '12, § 61; Civ. '02, § 58; G. S. 38; R. S. 59; 1896, XXII, 203, § 2.

(72) § 3. When to Be Printed and Distributed.—The Acts and Joint Resolutions of each session of the General Assembly shall be printed, bound and delivered to the keeper of the Legislative Library, ready for distribution within forty-five days after the copy thereof for publication has been delivered to the State Printer by the Code Commissioner, as required by law, and the State Printer shall be liable to a penalty of one hundred dollars for each and every day that he may delay a compliance with this Section; and the keeper of the Legislative Library shall, within five days after the receipt of said printed copies of the Acts, send out, either by mail or express, copies thereof, addressed to each person, officer or corporation as now or hereafter provided by law to be entitled thereto.

Civ. '12, § 62; Civ. '02, § 59; R. S. 60; 1889, XX, 335; 1913, XXVII, 60.

(73) § 4. How Acts and Resolutions Should Be Distributed.—Copies of the Acts and Joint Resolutions shall be distributed as follows:

1. To the Legislative Council of the Province of Quebec, Canada, one copy.
2. To each Circuit Judge, one copy.
3. To each Solicitor, one copy.
4. To each Clerk of Court, one copy.
5. To each Judge of Probate, one copy.
6. To each County Sheriff, one copy.
7. To each County Auditor, one copy.
8. To each County Treasurer, one copy.
9. To each County Superintendent of Education, one copy.
10. To each County Supervisor, one copy.
11. To the Supreme Court at Columbia, one copy.
12. To each Magistrate in the State, one copy.
13. To each of the chartered Colleges of the State, one copy.

14. To the Library of the Legislature, one hundred and fifty copies.
 15. To the University of South Carolina, two copies.
 16. To the Charleston Library, two copies.
 17. To the Governor of each State of the Union, for the use of the State, one copy.
 18. To the Legislature of each State, one copy.
 19. To the Library of Congress, two copies.
 20. To heads of Departments at Washington, for the use of their Departments, one copy.
 21. To the Historical Society of New York, one copy.
 22. To the Athenæum, Philadelphia, one copy.
 23. To the Library of Harvard University, Cambridge, one copy.
 24. To the Yale College Library, one copy.
 25. To the Libraries of the University of Virginia and Alabama, one copy each.
 26. To the Colleges at Athens, Ga., Princeton, and Chapel Hill, N. C., one copy each.
 27. To the Athenæum, Boston, one copy.
 28. To the Committee of Public Records, London, one copy.
 29. To the London Museum, one copy.
 30. To the King's Library, in Paris, one copy.
 31. To the University Library at Heidelberg, one copy.
 32. To the Royal Library at Berlin, one copy.
 33. To the University Library at Gottingen, one copy.
 34. To the Historical Societies of South Carolina, Maryland, Virginia and Pennsylvania, each one copy.
 35. To each Master, one copy.
 36. To the University of the South, Sewanee, Tenn., one copy.
- Civ. '12, § 63; Civ. '02, § 60; G. S. 40; R. S. 61; VI, 648; 1883, XVIII, 588; 1889, XX, 335; 1894, XXII, 1076; 1897, XXII, 458; 1902, XXIII, 964.

(74) § 5. Amendments May Be Made by Reference to Revised Statutes or This Code.—Whenever in any Act heretofore or hereafter passed reference is made to the Revised Statutes or this Code for the purpose of altering, amending, adding to or repealing any part thereof, such reference, alteration, amendment, addition or repeal shall be construed to apply to the original law purporting to be revised in said revision as fully and specifically as though such original laws were mentioned in the Act containing such reference, alteration, amendments, addition or repeal.

Civ. '12, § 64; Civ. '02, § 61; 1896, XXII, 3.

(75) § 6. Code Commissioner to Be Elected—Term and Salary.—A Code Commissioner shall be elected by the General Assembly of 1911, for the term of ten years, and his salary shall be four hundred dollars per annum, payable quarterly, by the State Treasurer on the warrant of the Comptroller General, *Provided*, That the Code Commissioner elected at the session of the General Assembly for 1901 shall hold office for a term of ten years, and shall receive a salary of five hundred dollars for the fiscal year commencing January 1, 1901, and thereafter annually until the expiration of the term of his office a salary of four hundred dollars, to be paid quarterly by the

State Treasurer upon the warrant of the Comptroller General. In case of a vacancy from any cause, the General Assembly shall as early as practicable elect a Code Commissioner for the unexpired term: *Provided*, That if a vacancy shall occur during the interim of the meeting of the General Assembly, the Governor shall appoint the Code Commissioner, who shall hold office until the General Assembly meets.

Civ. '12, § 65; Civ. '02, § 62; 1901, XXIII, 697; 1918, XXX, 798.

(76) § 7. **Duties of Code Commissioner.**—It shall be the duty of said Code Commissioner, immediately after his election, to examine the report made by his predecessor in office to the General Assembly, and, if any, correct all errors appearing in the revision submitted with said report; supply all omissions; omit redundant and obsolete enactments, and such as have no influence on existing rights and remedies; and to reduce the public statutes of this State, inclusive of such as are passed at the present session, into as concise and comprehensive a form as is consistent with clear expression of the will of the General Assembly; and, in addition thereto, he shall prepare indices and cross-indices to said codification, publishing the same in the appropriate volume as hereinafter provided, note by annotation the decisions of the Supreme Court of the State of South Carolina under the different sections of the statutes codified as herein provided, and also of the Constitution of 1895 of said State and Rules of Court as herein provided to be published; annex to the volume containing the general laws a list of all general public statutes repealed since the enactment of the General Statutes of 1882, giving the title and date of approval, of the repealing statute; and he shall annually prepare for publication and deliver to the State Printer within thirty days after the adjournment of the General Assembly in any regular or special session, the Statutes and Joint Resolutions passed at the preceding session, dividing the same into such as may be of a general and permanent kind and such as may be local and of temporary nature, with a correct index and cross-index of same; and side notes thereof and that he also publish with such statutes, alphabetically arranged and with date of granting same, a list of all charters granted by the Secretary of State, the same so prepared for publication and delivered to the State Printer shall consist of a true copy or copies thereof in neatly written or typewriting form on one side of each sheet. He shall annually report to the General Assembly, at each session, all changes made in the Statute Law embraced in the Code at its previous session, together with a note of or reference to the decision of the Supreme Court, on the sections of said Code published during the current year, said report to be annually published by the State Printer in such form as the Code Commissioner may prescribe.

Civ. '12, § 66; Civ. '02, § 63; 1913, XXVII, 68.

(77) § 8. **Decennial Report.**—The Code Commissioner shall collect and revise all the General Statute law of the State now of force, as well as that which shall be passed from time to time, and shall properly index and arrange the said Statutes when so passed. He shall also reduce into a systematic Code the General Statutes, including the Code of Civil Procedure, with all the amendments thereto, and shall on the first day of the session for the year nineteen hundred and eleven, and at the end of every

subsequent period of ten years, report the result of his labors to the General Assembly, with such recommendations and suggestions as to the abridgment and amendments as may be deemed necessary and proper. The said report, when ready to be made, shall be printed and laid on the desks of the members of both Houses of the General Assembly on the first day of the first session, but shall not be taken up for consideration until the next session of the General Assembly.

Civ. '12, § 67; Civ. '02, § 64; 1896, XXII.

HOW CODE DECLARED LAW.—The Code thus prepared by the Commissioner shall be declared by the General Assembly, in an Act passed according to the forms in the Constitution of 1895 for the enactment of laws, to be the only general statutory law of the State, and no alterations or additions to any of the laws therein contained shall be made except by Bill passed under the formalities required in the said Constitution.

Civ. '12, § 67; Civ. '02, § 64; Const., Art. VI, § 5.

CHAPTER V.

Reports and Documents and Committees to Examine State Offices and Penal and Charitable Institutions.

(78) § 1. Time for Making Reports to General Assembly.—The Comptroller General and all other officers required by law to report annually to the General Assembly shall make such reports on or before the twentieth day of January in each year.

Civ. '12, § 68; Civ. '02, § 65; G. S. 41; R. S. 62; XV, 457.

(79) § 2. When Reports to Be Handed Printer—Time of Printing—Penalties.—All State officers are required to place their Reports in the Printer's hands by the tenth day of January, except the Comptroller General and State Treasurer, who shall place their reports in the Printer's hands on the twentieth day of January, and the Printer is required to have Reports printed and ready for delivery on the day of the meeting of the General Assembly, and on his failure to have such Reports ready he shall forfeit five dollars (\$5.00) per day on each Report delayed: *Provided*, That the Public Printer shall not be subject to said forfeiture when the State officers do not place their Reports in the Printer's hands on the day required.

Civ. '12, § 69; Civ. '02, § 66; R. S. 63; 1896, XXII, 204.

(80) § 3. Persons Disbursing Public Money Must Publish.—Every person authorized to disburse any funds for the State shall publish in some newspaper of general circulation in the county in which such disbursement is authorized to be made, a monthly statement of all funds received and the date of such receipt, and of all funds paid out, to whom, and on what account.

Civ. '12, § 70; Civ. '02, § 67; G. S. 43; R. S. 64; XVI, 166.

(81) § 4. Persons Having Distribution of Public Money Must Report Quarterly to Comptroller General.—All persons having the distribution

of public money shall quarterly, to wit, on the last days of October, January, April and July, in each and every year, render to the Comptroller General an account setting forth the funds committed to them, respectively, and the disbursement of them.

Civ. '12, § 71; Civ. '02, § 68; G. S. 44; R. S. 65; VI, 512; 1890, XX, 713.

(82) § 5. Public Officers Having Evidences of Indebtedness to State Must Report to Comptroller General.—All public officers having in their possession the evidences of any debts due to the State shall, on the last day of December in every year, furnish the Comptroller General with a statement of all such debts, showing the names of the debtors, the amounts of the debts, the interest, the payments made, and the balance due to the State. And in case of failure on the part of any public officer to furnish the Comptroller with the statement aforesaid, he shall forfeit and pay the sum of two hundred dollars, to be recovered in any court having competent jurisdiction.

Civ. '12, § 72; Civ. '02, § 69; G. S. 45; R. S. 66; VI, 108; 1896, XXII, 204.

(83) § 6. Comptroller General to Make Report to General Assembly of All Debts Due State.—The Comptroller General shall make a statement of all debts due the State and lay it before the General Assembly with his Annual Report.

Civ. '12, § 73; Civ. '02, § 70; G. S. 46; R. S. 67; 1896, XXII, 204.

(84) § 7. Secretary of State's Report to General Assembly of Corporations Formed Under General Laws.—The Secretary of State shall annually prepare, cause to be printed, and submit to the General Assembly a true abstract from the certificates deposited with him by corporations formed under the laws regulating the formation of corporations. Said abstract shall contain, under proper headings, the corporate name of said corporation, the date of its charter, the purpose for which it was incorporated, the names of its corporators, its location and amount of capital stock, together with such remarks as he may deem necessary; said abstract shall be published as an appendix to the Acts and Joint Resolutions of the session of the Legislature to which such abstract is submitted, and the names of all corporations therein contained shall be included in the index to the said Acts and Joint Resolutions.

Civ. '12, § 74; Civ. '02, § 71; G. S. 47; R. S. 68; 1883, XVIII, 447.

(85) § 8. Annual Report of State Superintendent of Education.—The State Superintendent of Education shall make his report through the Governor to the General Assembly at each regular session thereof in the manner required by law.

Civ. '12, § 75; Civ. '02, § 72; G. S. 48; R. S. 69; 1876, XIV, 342; 1878, XVI, 574.

(86) § 9. County Superintendents' Reports Consolidated by State Superintendent and Forwarded to General Assembly.—It shall be the duty of the State Superintendent of Education to consolidate the reports received from the County Superintendents of Education, and to forward them to the General Assembly at its next regular session.

Civ. '12, § 76; Civ. '02, § 73; G. S. 49; R. S. 79; 1868, XIV, 23.

(87) § 10. Annual Report of Directors of the State Penitentiary.—The Directors of the State Penitentiary shall make an annual report to the Governor, on or before the first day of January in each year, of the state and condition of the prison, the convicts confined therein, of the money expended and received, and, generally, of all the proceedings during the last year, to be laid before the General Assembly.

Civ. '12, § 77; Civ. '02, § 74; G. S. 50; R. S. 71; 1868, XIV, 95; 1896, XXII, 204.

(88) § 11. Annual Report of Attorney General.—The Attorney General shall annually make a report to the General Assembly of the cases argued, tried, or conducted by him in the Supreme Court and Circuit Courts during the preceding year, with such other information in relation to the criminal laws, and such observations and statements, as, in his opinion, the criminal jurisdiction and the proper and economical administration of the criminal law warrant and require.

Civ. '12, § 78; Civ. '02, § 75; G. S. 51; R. S. 72; XIV, 89.

(89) § 12. Annual Report of Regents of the State Hospital for the Insane.—It shall be the duty of the Regents of the State Hospital for the Insane to report annually to the Legislature the state and condition of the institution, fully and particularly; and they shall also annually report to the Comptroller General the amount of income of said institution, and the amount of expenditures, and the items thereof.

Civ. '12, § 79; Civ. '02, § 76; G. S. 52; R. S. 73; VI, 323.

(90) § 13. Commissioners of the Deaf and Dumb and the Blind to Report Annually.—The Commissioners of the Deaf and Dumb and the Blind shall annually report to the Legislature an exact statement of their various proceedings during the past year, showing precisely how they disbursed money expended, the names of the persons who have received the bounty, the ages and places of residence of such persons, and information as to their progress, which statement shall be accompanied by the vouchers of all sums expended.

Civ. '12, § 80; Civ. '02, § 77; G. S. 53; R. S. 74; XVI, 707.

(91) § 14. Work of Code Commissioners to Be Examined.—At each session of the General Assembly a Joint Committee consisting of three members shall be appointed, whose duty it shall be to inquire into the progress of the Code Commissioner in the work and to make a report to the two Houses.

Civ. '12, § 86; Civ. '02, § 82; 1896, XXII, 2.

(92) § 15. Census Commission.—When the census takers shall have made returns, the Secretary of State shall forthwith report the results of such registration to the Governor of the State for the time being, and shall make a collated return of the statistics to the General Assembly, at its next regular session.

Civ. '12, § 87; Civ. '02, § 83; G. S. 56; R. S. 77; 1896, XXII, 280; XV, 934.

(93) § 16. Commissioners of Sinking Fund to Make Annual Report.—The Commissioners of the Sinking Fund shall annually report to the General Assembly the condition of the Sinking Fund, and all sales or other transactions connected therewith.

Civ. '12, § 88; Civ. '02, § 84; G. S. 57; R. S. 78; XIV, 388.

(94) § 17. Railroad Commissioners to Make Annual Report.—The Railroad Commissioners shall make an annual report to the Legislature of their official acts, including such statements, facts and explanations as will disclose the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the State; and such suggestions as to the general railroad policy of the State, or as to any part thereof, or as to the condition, affairs or conduct of any of the railroad corporations, as may seem to them appropriate, with a special report of all accidents, and the causes thereof for the preceding year.

Civ. '12, § 89; Civ. '02, § 85; R. S. 79; 1882, XVII, 819.

(95) § 18. County Commissioners to Report to Comptroller General.—The Commissioners of each county shall on or before the fifth day of January in each year report to the Comptroller General, to be incorporated in his annual report, and laid before the General Assembly, a detailed account of all their doings, in such form as the Comptroller General shall direct or prepare and forward to them for such purpose.

Civ. '12, § 90; Civ. '02, § 86; G. S. 58; R. S. 80; 1986, XXII, 206.

(96) § 19. Health Officers to Keep Records and Report Monthly.—The Health Officers at Georgetown, Charleston and Hilton Head shall keep a faithful record of all their doings required by law, and report the same to the Governor at the end of each month.

Civ. '12, § 91; Civ. '02, § 87; G. S. 59; R. S. 81; XIV, 117.

CHAPTER VI.

The Public Property.

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ARTICLE I.

Charge of the Property of the State—The Sinking Fund Commission.

(97) § 1. All Public Property Under Charge of Secretary of State, Unless Otherwise Provided.—The Secretary of State shall take charge of all property of the State, the care and custody of which is not otherwise provided for by law. He shall hold the same subject to the directions and

instructions of the Commissioners of the Sinking Fund, and act as their agent in such redemption, lease, and sale, as they may make, for forfeited and vacant lands, and lands purchased by the late Land Commissioners of the State, and in the negotiations therefor and arrangements in relation thereto.

Civ. '12, § 92; Civ. '02, § 88; G. S. 60; R. S. 82; 1878, XVI, 558; 1883, XVIII, 380.

Title of lands purchased by Land Commissioner were properly not made to the State, but to that officer, and passed to his successor in office. *State v. Evans*, 33 S. C. 184, 11 S. E. 697. The Statute of Uses did not vest such title in the State. *State v. Evans*, 33 S. C. 184, 11 S. E. 697.

Suit against the Sinking Fund Commissioners on contract for sale of land made by their predecessor, the land commissioner, cannot be maintained, being in effect a suit against the State. *Lowry v. Thompson*, 25 S. C. 416, 1 S. E. 141. The Secretary of State is the custodian of the State's property. *Tindal v. Wesley*, 167 U. S. 211; *Wesley v. Tindal*, 81 Fed. 614.

(98) § 2. Vacant Lands Grantable to Purchasers for Value; Control of Sinking Fund Commission.—No grant of vacant lands shall be issued except to actual purchasers thereof for value; and all vacant lands and lands purchased by the late Land Commissioners of the State shall be likewise subject to the directions and instructions of the Commissioners of the Sinking Fund.

Civ. '12, § 93; Civ. '02, § 89; G. S. 61; R. S. 83; 1878, XVI, 559.

Wesley v. Tindal, 81 Fed. 614.

(99) § 3. Who Constitute the Sinking Fund Commission, and Their Duties.—For the purpose of paying the present indebtedness of the State, the Governor, Comptroller General, State Treasurer, and the Attorney General of the State, the Chairman of the Finance Committee of the Senate, and the Chairman of the Committee of Ways and Means of the House of Representatives, are constituted Commissioners, to be known and designated as "the Commissioners of the Sinking Fund," to receive and manage the incomes and revenues set apart and applied to the Sinking Fund of the State; and the State Treasurer shall be Treasurer of the Commissioners of the Sinking Fund; and all moneys arising from the redemption of lands, leases and sales of property, or otherwise coming to said Commissioners of the Sinking Fund, shall be paid into the State Treasury, and shall be kept on a separate account by the Treasurer as a fund to be drawn upon the warrants of the Commissioners of the Sinking Fund for the exclusive uses and purposes which have been or shall be declared in relation to the said Commissioners of the Sinking Fund: *Provided*, That the Chairman of the Senate Finance Committee and the Chairman of the Committee of Ways and Means of the House of Representatives, shall, after each general election, continue to be members of the Commissioners of the Sinking Fund until their successors shall be elected or appointed.

Civ. '12, § 94; Civ. '02, § 90; G. S. 62; R. S. 84; 1870, XIV, 388; 1883, XVIII, 380.

Wesley v. Tindal, 81 Fed. 614.

(100) § 4. Sales of Property Not in Actual Public Use—Disposition of Proceeds—Exception.—It shall be the duty of the Commissioners of the Sinking Fund to sell and convey, for and on behalf of the State, all such real or personal property, assets and effects belonging to the State as are not in actual public use; and all such lands sold under execution for delinquent taxes as have been or may hereafter be purchased for and conveyed and delivered to them pursuant to the provisions of Section (523); said sales

to be made from time to time, in such manner, and upon such terms, as they may deem most advantageous to the State. The purchase money of said lands or other property shall be paid in the following kinds of funds, and no other, to wit: Gold and silver coin, United States currency, National Bank notes, and coupons which shall be due and payable on the consolidated bonds of this State known as Brown Bonds. The proceeds of all such sales shall be set aside, and awarded to the Sinking Fund of the State. This shall not be construed to authorize the sale by the Commissioners of any property held in trust for a specific purpose by the State, or the property of the State in the phosphate rocks or phosphatic deposits in the beds of the navigable streams and waters and marshes of the State.

Civ. '12, § 95; Civ. '02, § 91; G. S. 63; R. S. 85; XVI, 558, 811; 1887, XX, 863; 1892, XXI, 87.

Tindal v. Wesley, 167 U. S. 211; *Wesley v. Tindal*, 81 Fed. 614.

(101) § 5. Annual Report of Sales and Transactions—Investments—Compensation.—The Commissioners shall annually report to the General Assembly the condition of the Sinking Fund and all sales or other transactions connected therewith; and all the revenues derived from such sales shall be applied to the extinguishment of the public debt, by investing the same in the public securities of the State. Each of the Commissioners, except those who as State officers reside in Columbia, shall receive five dollars a day for each day actually engaged in attending the meetings of said Commission, and in going to and returning from the same, and a mileage of five cents per mile for each mile of travel in going to and returning from each session; the same to be paid out of any funds in their possession.

Civ. '12, § 96; Civ. '02, § 92; G. S. 64; R. S. 86; XIV, 388; 1884, XVIII, 864.

(102) § 6. Sinking Fund Commission May Lend Money on Bonds, Etc.—The Sinking Fund Commission are hereby authorized when unable to purchase valid bonds of this State at par to lend the sinking fund at such a rate of interest as may be agreed upon between them and the borrower, not less than $4\frac{1}{2}$ per centum per annum, on the security of the said bonds, sufficient to cover the loan and interest at the par value of the bonds, the bonds to be deposited with the State Treasurer as security for the loan and as collateral to the personal obligation of the borrower, to be taken by said Commission, showing the terms and maturity of the loan.

Civ. '12, § 97; Civ. '02, § 93; 1896, XXII, 184.

(103) § 7. Sinking Fund Commission May Lend Money to Counties.—The Sinking Fund Commission are hereby authorized and required, when in the judgment of said Commissioners of the Sinking Fund valid bonds of the State are not offered or attainable at a reasonable price, to lend the money of the Sinking Fund Commission, both accumulated and ordinary, for a period of one or more years at a rate of interest of five per cent. per annum.

Civ. '12, § 98; Civ. '02, § 94; 1897, XXII, 440; 1911, XXVII, 223.

The said loan shall be made by the said Commissioners upon the valid securities of the several States of the United States, giving preference thereto, or upon the note of the County Treasurer and County Supervisor

of any of the counties of this State, who shall make application for a loan, provided the said loan be not more than two-thirds of the tax levy of said county, and the whole of the taxes of the said county shall be pledged for the repayment of the money so borrowed of the said Sinking Fund Commission.

1898, XXII, 725; 1911, XXVIII, 223.

WHEN LOAN PAID.—The County Treasurers of the respective counties borrowing funds of the Sinking Fund Commission shall pay the note so given out of the first taxes collected for the fiscal year for which the said money is borrowed.

1897, XXII, 441.

(104) § 8. Application for Loans—When Received and How Loans May Be Made.—The Sinking Fund Commissioners shall receive applications for the various counties and file the same until the first day of March of every subsequent year hereafter, and if the applications aggregate more than the entire fund in the hands of the Sinking Fund Commissioners, said Commissioners shall prorate the loan to be made to the several counties in proportion to the taxes paid by the respective counties: *Provided*, That no loan shall be made to any county in excess of two-thirds of the amount of the tax levy for such county for county purposes.

Civ. '12, § 99; Civ. '02, § 95; 1897, XXII, 441; 1898, XXII, 725; 1911, XXVII, 223.

(105) § 9. County Treasurers Violating § 7 to Be Punished.—Any County Treasurer who shall violate the provisions of Section 7 of this Article shall be fined, on conviction thereof, a sum not exceeding one thousand dollars, and his bond shall be liable to said Sinking Fund Commission for the amount of the loss sustained by said Commission, together with all costs and expenses thereof.

Civ. '12, § 100; Civ. '02, § 96.

(106) § 10. In What Money Loans Must Be Paid.—In the case of all loans, to whatsoever person, corporation or county, made by the Commissioners of the Sinking Fund of the State, whether of the ordinary sinking fund, or of the cumulative sinking fund (for the reduction and payment of the South Carolina $4\frac{1}{2}$ per cent. Brown Bonds and Stocks), and in the case of all bank deposits of said sinking fund, the principal thereof, and the interest and other charges, costs and dues accruing on said loans and deposits, shall be payable in, and shall always be paid to the said Commissioners of the Sinking Fund in the following kinds of funds and in no other, to wit: in gold and silver coin of the United States, in United States currency, and in National Bank notes.

Civ. '12, § 101; Civ. '02, § 97; 1899, XXIII, 119.

(107) § 11. Title of State by Forfeiture Renounced—Reservation as to Dues and Acceptance.—The State of South Carolina hereby renounces all title by forfeiture for nonpayment of taxes to each and every parcel of land in the several counties of the State listed on the forfeited land record on the twenty-fourth day of December, 1887, and will treat them hereafter

as the lands of the former owner, his heirs or assigns; but this renunciation of title is upon the reservation and condition that the State may hereafter collect by suit at law, or other legal method, from said lands a sum equal to the aggregate amount of all annual assessments for taxes with the penalties that might and would have been assessed and charged against the said lands in case the same had never been declared delinquent and forfeited; and the retention of the possession and use of said lands for ninety days after the said 24th day of December, 1887, by said former owner, his heirs or assigns, shall be deemed sufficient evidence of his or their acquiescence in and acceptance of the reservations and conditions of said renunciation of title.

Civ. '12, § 102; Civ. '02, § 98; 1887, XIX, 864.

(108) § 12. Sinking Fund Commission to Hear Petition for Relief.—

The Sinking Fund Commission is hereby authorized to hear and determine upon satisfactory proof the petition of any taxpayer praying relief on ground that all taxes, as described in last Section, have been paid or that portions of such taxes have been paid and an offer to pay the balance, accompanied by the sum admitted to be owing. And the said Sinking Fund Commission shall grant such relief in the premises as may be just.

Civ. '12, § 103; Civ. '02, § 99; 1888, XX, 52.

(109) § 13. Lien of State for Taxes—How Enforced.—To secure the entire debt due the State for prior taxes or other dues accrued to the State to and including the levy of 1886, or for any other purpose whatsoever, and for the levy of 1887, and for all subsequent levies, as they may have accrued or shall accrue upon each parcel of said land, and the costs and penalties due thereon, the State shall have a prior and preferred lien upon said lands, to be enforced and asserted in any court of competent jurisdiction by the Commissioners of the Sinking Fund, in such cases, at such time, and to such extent, as they may deem most advantageous to the interests of the State. The proceeds of any sale ordered by the court in such suit shall be applied first to the payment to the Sinking Fund Commission of the taxes, costs and penalties charged against the property, and next to the payment of the taxed costs in the suit and expenses of sale, and the surplus, if any there be, shall be paid over to the former owners or parties in interest as their interest may appear.

Civ. '12, § 104; Civ. '02, § 100; R. S. 372; 1889, XX, 345; 1887, XIX, 865, § 6; 1888, XX, 52, § 3.

(110) § 14. Lands Not on Tax Books to Be Surveyed, Listed and Charged.—

The Commissioners of the Sinking Fund are hereby authorized to have surveyed any lands that they are informed or believe have been continuously for ten or more immediately preceding years upon neither the Tax Duplicate or Forfeited Land List of this State; and if after such survey the said absence from said tax books be found to exist, to cause the said land to be placed upon the Tax Duplicate in the owner's name, if known, or in the name of "Unknown," if the owner's name be not known, charged and taxed with the entire cost of the survey and investigation, and fifty per cent. penalty additional thereto, and with the taxes for five years immediately preceding, and collecting the same under existing laws for collec-

tion of taxes. The County Treasurer shall pay to the Sinking Fund Commission said costs of survey and said fifty per cent. penalty additional thereto from amount collected, and apply the residue as provided by law.

Civ. '12, § 105; Civ. '02, § 101.

DESCRIPTION OF SINKING FUND COMMISSION.—This Section shall be by the Sinking Fund Commission applied to such extent and in such cases as they may deem most advantageous to the State.

Civ. '12, § 105; Civ. '02, § 101.

Lands listed as "unknown" by "D. S. Agent" represents the agent as owner, and tax sale is void. *Hudson v. Schumpert*, 80 S. C. 23, 61 S. E. 104.

(111) § 15. Settlement of Tax Execution.—The County Auditors and Treasurers shall annually have a full and final settlement as to tax executions issued by said Treasurers within twelve months after the expiration of the time allowed by law for the payment of taxes in any year.

Civ. '12, § 106; Civ. '02, § 102; 1896, XXII, 255.

(112) § 16. Nulla Bona Tax Executions to Be Returned to Auditors.—All executions issued for the collection of taxes by the County Treasurers and returned "nulla bona" for any reason or "double entry," or which are not collected for any reason, shall be filed in the Auditor's office within one year from the expiration of the time for the payment, without penalty, of the taxes for the collection of which the executions are issued.

Civ. '12, § 107; Civ. '02, § 103; 1898, XXII, 726.

AUDITORS TO RECEIPT THEREFOR.—The Auditor, on the filing of the said executions, shall give a receipt to the County Treasurer for the same, stating the amount due on each execution and the name of the party against whom the execution is issued, the kind and location of the property, the nature of the Sheriff's return and as full description of the property as he can furnish from his records, and he shall at the same time furnish a duplicate of said receipt to the Secretary of State, as agent of the Sinking Fund Commission.

Civ. '12, § 107; Civ. '02, § 103; 1898, XXII, 726.

(113) § 17. Auditors', Sheriffs', and Treasurers' Books Accessible to Sinking Fund Commission's Agents—Duties and Powers of Agents.—Any agent of the Sinking Fund Commission shall be allowed free access by the Auditors, the Treasurers and Sheriffs to said executions, and to the tax books, and to all records in their respective offices relating to tax matters, and may proceed to collect all tax claims pertaining to said execution, and also which pertain to such executions for taxes uncollected which may be lost or otherwise unaccounted for by the Sheriff or Treasurer in any year prior or subsequent to the passage of this Article, and all back taxes on lands and buildings, and on railroad property, real and personal, which are off the tax books, or being on the tax books are found to have escaped the payment of taxes in any year or years, from any cause, said taxes being past due and unpaid for twelve months, and not stayed by the action of any judicial process, including all cases of partial returns and payment of taxes on lands by any taxpayer who returns and pays in less than his titles call for, whose whole estate shall in all such cases be held liable under the prior and pre-

ferred lien for unpaid taxes under the provisions of this Article for any such shortage in returns and payments in proportion to the said shortage, and turn the proceeds into the ordinary sinking fund of the State under proceedings now provided by law; and the Secretary of State, as agent of the Sinking Fund Commission, is hereby authorized, in cases of railroad property, real and personal, to fix the value thereon for the purposes of this Article, subject to the right of the taxpayers to appeal to the State Board of Equalization of railroad property, to be convened in extra session at the request of the Secretary of State, and the decision of said Board shall be final, and shall proceed to issue his execution against said property for the collection of said back taxes, costs and penalties, and collect the same under the provisions of Sections 18 to 24 herein, inclusive.

Civ. '12, § 108; Civ. '02, § 104; 1898, XXII, 726.

(114) § 18. Powers of Secretary of State as to Forfeited Lands—Valuation.—It shall be lawful for the Secretary of State, as agent of the Commissioners of the Sinking Fund, or for his authorized agent, to prepare a statement of the simple taxes, with fifteen per cent. penalty thereon for each and every levy which to him or his agent appears past due and unpaid upon any land, buildings, and railroad property, real or personal, upon which any levy made by the Legislature appears past due and unpaid for twelve months; the calculation of taxes due shall be made at such valuation as the Secretary of State may deem just and equitable.

Civ. '12, § 109; Civ. '02, § 105; 1892, XXII, 82.

(115) § 19. Entry on Lands and Proceedings.—The Secretary of State shall then, by himself or his agent, enter upon the lands and personally serve a copy of such statement of dues, with a demand for payment of same, together with the necessary mileage, advertisement, and other costs and charges accrued thereon, upon any person whom he finds in possession of the land, or of any part thereof; and if he fails to find any one in possession of the land, or any part thereof, upon such entry he shall post a copy of such statement and demand upon the premises, and shall serve such person or persons as to him or his agent appears to be the last owner, with a copy of the said statement and demand, if such owner or party in interest be a resident of the county in which said land is located; otherwise he shall, for three consecutive weeks, insert in some paper published in the county, or having a circulation therein, an advertisement, briefly describing the land, with the total amount due thereon, together with the mileage, advertisement and other costs, and a demand for the payment of the same within three weeks from the date of the first insertion, under pain of distress and sale of the land to satisfy said demand, with costs. If payment in gold, silver or paper, national currency of the United States, be not made within three weeks from the date of personal service, posting or first insertion of advertisement as above provided, then it shall be lawful at any time thereafter for the Secretary of State, as agent of the Commissioners of the Sinking Fund, to issue, in the name of the State, a warrant or execution in duplicate against the said land upon which said taxes, penalties, costs and charges are due, signed by him in his official capacity, directed to the Sheriff of the county in which the said land is situated, or to his lawful deputy, requiring

and commanding him to levy the same by distress and sale of all of the said land in default to satisfy the taxes, State, school, county or other special levies, penalties, costs and charges against the property in the statement, together with the Sheriff's fees and costs, which warrant or execution shall run substantially in these words (filling the blanks to suit each case), viz.:
Secretary of State as *ex officio* agent of the Commissioners of the Sinking Fund, to the Sheriff of County, or to his lawful deputy: Whereas, it appears that that lot or parcel of land, described as acres, more or less, situate in Township and County, bounded by lands of, is in default for taxes, penalties and costs to the amount of \$....., as will more fully appear by the attached statement and demand, and by the return of the Secretary of State, or his agent, endorsed thereon, as to the service, posting, or advertisement of same as law requires, and the neglect of owner or person in interest to pay the above charges: These are, therefore, in the name of the State, strictly to charge and command you to levy by distress and sale of the said land the sum of dollars, together with dollars, the penalties, costs and charges thereof, and for so doing this shall be your sufficient warrant. Given under my hand and seal this day of, A. D. 19....

Secretary of State and *ex officio* Agent of the Commissioners of the Sinking Fund.

Civ. '12, § 110; Civ. '02, § 106; 1892, XXII, 82.

(116) § 20. **Fees, Costs and Expenses.**—For every such statement and demand prepared, and so personally served or advertised by the Secretary of State, there may be collected for the Commissioners of the Sinking Fund, to be used for the benefit of the State, not more than three dollars, five cents per mile for every mile actually traveled, in entering upon the premises or service of the statement of dues and demand in going and returning, and not more than one dollar for advertising, and for every warrant issued by the Secretary of State, not more than two dollars. And the Sheriff shall take out of said land in default the following fees in the execution of his office: For serving warrant, one dollar, besides mileage at the rate of five cents for each mile actually traveled in executing the warrant; for advertising sale, twenty-five cents; for making sale and executing deed, three dollars; and for all sums levied as the simple taxes, as aforesaid, five per cent.: *Provided*, The printer's charge for advertising shall not exceed fifty cents for each tract of land levied on under execution; and the Sheriff is prohibited from demanding or collecting any greater sum therefor than is hereby allowed; nor shall he receive fees upon *null bona* returns, nor from any other source than from the particular parcel upon which the particular fees, costs and charges accrue.

Civ. '12, § 111; Civ. '02, § 107; 1892, XXII, 82.

(117) § 21. **Sheriffs' Possession, Sale, Proceedings and Distribution of Proceeds.**—Under and by virtue of said warrant or execution the Sheriff shall seize and take exclusive possession of said land in default, and, after due advertisement, sell the same before the court house door of the county,

on a regular sales day, and within the usual hours for public sales, for cash; make title therefor to the purchaser complying with terms of sale, and annex to said title the duplicate warrant, with endorsement thereunder; put the purchaser in possession of the property sold and conveyed, and, after deducting from proceeds of sale the amount of taxes, penalties, costs and charges, shall pay over to the former owner, or to parties in legal interest, as their interest may appear upon conclusive proof thereof, the surplus, if any there be, and shall pay to the Secretary of State, as agent of the Commissioners of the Sinking Fund, within ninety days from the date when the execution was placed in his hands, all the taxes, penalties, costs and charges other than the Sheriff's costs for levy, advertisement, and sale: *Provided*, That if the surplus be not paid over by the Sheriff within six months, to the former owner of land, or to the party formerly of legal or equitable interest in the land, upon a conclusive proof of the Sheriff of such ownership or legal interest, then, at the expiration of the said six months, it shall be the duty of the Sheriff to pay over said surplus to the Secretary of State, with an accompanying statement, certified to by him officially, fully describing the land from which the particular surplus was derived, and showing clearly the amount for which said land was sold, the amount of costs and charges disbursed therefrom by him and the surplus remaining, and thereby paid over; said surplus shall be, by the Secretary of State, turned over to the Treasurer of the Sinking Fund, with the said accompanying statement, and be held by him for five years from date of sale, subject to the order of the Board of Commissioners of the Sinking Fund for the refunding of the same to any person or persons conclusively proving to the said Board that they are entitled to said surplus, or any part thereof, on account of their former ownership or legal interest. And that any surplus not so refunded within five years shall be passed to the general Sinking Fund of the State. In case there be no bid equal in amount to the taxes named in said warrant or execution the County Auditor shall buy the land for the Commissioners of the Sinking Fund as the actual purchaser thereof for the amount of said taxes, costs, penalties and charges, and the Sheriff shall thereupon execute titles to the said Commissioners of the Sinking Fund as to any other purchaser and in the manner above provided, and shall put them or their authorized agent in possession of the premises, upon the payment to him, by the Commissioners of the Sinking Fund, the costs and fees above provided for the Sheriff. The land so sold and purchased and delivered to the said Commissioners of the Sinking Fund shall be treated by them as assets of the State in their charge and by them sold at such times and in such manner and upon such terms as by them shall be deemed most advantageous to the State.

Civ. '12, § 112; Civ. '02, § 108; 1892, XXII, 82.

Failure to proceed against personal property renders deed to land under tax sale void. *Johnson v. Jones*, 72, S. C. 270, 51 S. E. 805. Fraudulent purchase by taxpayer in name of third party. *Id.*, *State v. Evans*, 33 S. C. 134, 11 S. E. 697. The defaulting taxpayer has the right to redeem by paying the taxes and costs at any time prior to the sale. *Ebaugh v. Mullinax*, 40 S. C. 244, 18 S. E. 802.

(118) § 22. Petition by Owner—Appeal to Sinking Fund Commission—Proceedings.—In case any owner or person having any interest in any

parcel of such land alleged to be in default by the Secretary of State as aforesaid, shall allege that the taxes have been paid, he can, and may, before the issuing of the warrant to the Sheriff, set forth his alleged grievance by petition in writing, accompanied with such evidence in writing as he may desire to submit, to the Secretary of State, whose duty it shall be to pass upon the same; and if the petitioner shall be dissatisfied with the ruling of the Secretary of State, he shall have the right of appeal to the Board of Commissioners of the Sinking Fund, who are authorized to hear and pass final judgment upon such appeal, provided the appealing petitioner, within twenty days of the ruling of the Secretary of State, file with the Secretary of State a written appeal to the said Board, with all papers in the case, and pending the decision of the said Board on such appeal there shall be a stay of the issuing of the warrant to the Sheriff: *Provided*, That if, before the issuing of the execution by the Secretary of State to the Sheriff, any owner or person interested in the land shall personally file with the Secretary of State, or with his agent, notice that he deems the valuation fixed by the Secretary of State as excessive, and that he desires the Township Board of Assessors to value the property, then it shall be the duty of the Secretary of State, or his agent, to call upon the said Township Board of Assessors for the township in which the land is located, to certify to him a valuation of the said land, with improvements thereon, under pain of any member being removed from office and being fined five dollars by any Magistrate (one-half of said fine for the benefit of the Commissioners of the Sinking Fund and one-half for the person demanding the valuation), who shall fail to so certify a valuation within one week, and such valuation by the members of the said Board of Assessors, or a majority of them, shall be final and conclusive, without right of appeal therefrom: *And provided, further*, If the said owner, or persons, in interest, do not appear and personally serve in writing the Secretary of State, or his agent, with such personal notice of appeal to the Township Board of Assessors, they shall be ever afterwards barred from any appeal whatever from the valuation placed upon the land by the Secretary of State, or his agent.

Civ. '12, § 113; Civ. '02, § 109; 1892, XXII, 82.

(119) § 23. Tax Duplicate to Be Prima Facie Evidence—Rebutting Evidence Limited.—The failure of the tax duplicates to show the payment of any levy, or part thereof, made by the General Assembly, shall in all courts of this State, be received as *prima facie* evidence of the nonpayment of such levy, or part thereof, and of the existence of the State's prior and preferred lien upon the land to secure the payment of such levy, or part thereof, with such penalties and costs as may have accrued thereon, and as a sufficient warrant for the execution and sale herein provided, and no rebutting evidence shall be in any proceeding in this State admitted except the production of the tax receipt, signed by the County Treasurer, or a receipt or certificate, signed by the Secretary of State, or his agent, showing that said levy, or part thereof or any penalties and costs that may have accrued thereon, were paid at the proper time and to the person authorized by law to receive it: *Provided, further*, That such receipt, or certificate of

payment, shall be evidence only as to the particular levy to which it refers, and shall not affect any other levy, or charges or action hereunder.

Civ. '12, § 114; Civ. '02, § 110; 1892, XXII, 82.

(120) § 24. Sheriff's Deed Prima Facie Evidence—Limitation of Action—Necessary Evidence.—In all cases of sale, the Sheriff's deed of conveyance, whether executed to a private person, a corporation, or to the Commissioners of the Sinking Fund, shall be held and taken as *prima facie* evidence of good title in the holder, and that all proceedings have been regular and all requirements of the law have been complied with. No action for the recovery of land sold by the Sheriff under the provisions of this Act, or for the recovery of the possession thereof, shall be maintained unless brought within one year from the date of sale, and unless it be sustained by conclusive evidence from the tax duplicate, or from a tax receipt signed by County Treasurer, or by a certificate signed by the Secretary of State, or by his agent, showing that all of the taxes and levies for which the land was sold, with the costs that may have accrued thereon, were paid prior to the sale, at the proper time, and to the properly authorized officials.

Civ. '12, § 115; Civ. '02, § 111; 1892, XXII, 82.

Limitation of action to recover. *Hunter v. Schumpert*, 80 S. C. 25, 61 S. E. 104; *Heyward v. Christensen*, 80 S. C. 146, 149, 61 S. E. 399. See, also, post, § (521).
Taylor et al v. Strauss et al, 95 S. C. 295; 78 S. E. 883.

(121) § 25. Cumulative Remedies—Existing Suits.—The remedy afforded by Sections 18 to 24, inclusive, is additional to existing remedies, and the Commissioners of the Sinking Fund shall always have the choice of remedies, and the right to abandon either remedy at any stage of proceedings and adopt any other existing remedy. The provisions of Sections 18 to 24 herein, inclusive, may be applied to cases already in suit, as well as to other cases.

Civ. '12, § 116; Civ. '02, § 112.

(122) § 26. Sinking Fund Commission's Power to Investigate Irregularities and Shortages in Tax Collections.—Except as to the collection of all such tax claims as are described and set forth in Section 17, the Sinking Fund Commission shall not collect any tax for the Sinking Fund Commission: *Provided*, That the Sinking Fund Commission shall have the right to fully investigate all cases of tax receipts issued by County Treasurers, Sheriffs or Deputy Sheriffs, found by the agent in the hands of the taxpayers, the money therefor being not turned over and accounted for by such Treasurer, Sheriff or Deputy Sheriff, and other like irregularities and shortages found to exist against the said officers in the manner of tax collections; and the right and power to collect the money due in all such cases, by an action or actions which they are hereby authorized to bring in any court of competent jurisdiction under existing laws, such sums being past due and unpaid for twelve months, and having escaped the detection and correction by the Comptroller General in the annual settlement between the Auditor and Treasurer: *Provided*, That such action shall in no manner affect the criminal liability of such defaulting officer: *Provided, further*, That when the Sinking Fund Commission shall collect any moneys on account of said

shortages, they shall retain, for the benefit of the State Sinking Fund, only the State's portion of the taxes thereon, and refund all the balance thereof to the County Treasurer, where it belongs, after deducting ten per cent. of said balance on account of expenses of collecting said balance.

Civ. '12, § 117; Civ. '02, § 113; 1900, XXIII, 353.

(123) § 27. Sinking Fund Commission to Collect Unpaid School Taxes.

—Whenever, under operation of existing law, unpaid taxes, costs and penalties have become, or hereafter shall become, assets of the State in charge of the Commissioners of the Sinking Fund by reason of the same being past due and unpaid for twelve months, whether the same be upon or off the tax duplicate, or upon or off the forfeited land list as forfeited prior to December 24th, 1887, the Secretary of State, as agent of the Commissioners of the Sinking Fund, shall hereafter, once a year, pay over to the respective County Treasurers (to be by them placed to the credit of the common school fund), out of such assets as may have been collected by him during the year, so much thereof as would have been the simple constitutional school tax had the same not become assets of the State in charge of the Commissioners of the Sinking Fund, as aforesaid.

Civ. '12, § 118; Civ. '02, § 114; 1896, XXII, 61.

(124) § Disposition of Lands Forfeited and Sold to State.—The Sheriff of each county shall be required, at the request of the Sinking Fund Commission, to take and hold possession of all lands forfeited and sold to the State for taxes, and rent out the same for said Commission and negotiate sales of the same, and shall rent out and negotiate sales of any lands in his county belonging to the State, and collect all of said rents, and have the right to proceed to collect the same, in the name of the Commission, by any and all of the proceedings allowed by existing law.

Civ. '12, § 119; Civ. '02, § 115; 1898, XXII, 729.

(125) § 29. Sheriff's Renting and Sales—Commissions—Returns to State Secretary—Costs—Supervision—Liability.—For doing said renting he shall have a commission of ten per cent. on all rents collected, and for making sales he shall have five per cent. of the amount realized from said sale; but he shall receive his commissions on each installment when it is paid, if the sale should be partly for cash and partly on time. The Sheriff shall promptly send to the Secretary of State a minute and full description, in writing, of all property purchased at tax sale for the Sinking Fund Commission, and shall promptly send to the Secretary of State a title deed for all real estate so purchased, made and executed in the manner and form approved by the Attorney General; and no costs or fees allowed by law to County Treasurers, Auditors or Sheriffs for issuing execution, making levy, sale or deed, taking and holding exclusive possession, or for noting transfer in such cases, shall be paid by the Commissioners of the Sinking Fund to said County Treasurers, Auditors or Sheriffs until the land or property upon which said costs or fees accrued shall have been sold by the Commissioners of the Sinking Fund and paid for, or until he collects sufficient rent from any parcel of land to pay costs and fees accrued thereon: *Provided*, That in cases where any such sale and conveyance have

occurred since the eighteenth day of February, A. D. 1898, the Commissioners of the Sinking Fund, after the deed of conveyance and the possession of the land have been turned over to them, and they have become satisfied as to the regularity of the proceedings under which the land was sold and conveyed, shall be, and are hereby, authorized to pay at once any costs and fees of any County Treasurer, County Auditor or Sheriff incurred in reference to such land. That in holding, or renting, or negotiating sales of property, or collecting money for the Commissioners of the Sinking Fund, the County Sheriff shall act under their direction and control, and shall make reports and render accounts and make settlement in such manner and at such times as said Commission may require.

The said Sheriff's official bond shall be liable for the funds so collected for the Sinking Fund Commission, less his commissions on the same.

Civ. '12, § 120; Civ. '02, § 116; 1899, XXIII, 259.

(126) § 30. Expenses of Survey—How Paid.—No Expenses for surveying out abandoned lands for the Sinking Fund Commission shall be incurred unless a prospective purchaser shall deposit enough money with the Commission to cover said expenses of the survey, or shall file a written agreement with said Commission to look to the proceeds of the lands when sold, and to no other source, for his pay.

Civ. '12, § 121; Civ. '02, § 117; 1898, XXII, 729.

(127) § 31. Commissioners to Refund Money to Purchasers Who Have Purchased Lands Not Abandoned.—When any land shall be sold by the Commission as abandoned lands, and it turns out that the lands are not abandoned, but the taxes have been paid, and the purchaser loses the land, the Commissioner shall refund the money to said purchaser.

Civ. '12, § 122; Civ. '02, § 118.

(128) § 32. Number of Salaried Field Agents.—The number of salaried field agents employed by the Commissioners of the Sinking Fund shall be one, at a salary not exceeding one hundred dollars per month, payable out of his collections for the Commissioners of the Sinking Fund, who shall discharge the duties imposed by the provisions of this Article, and without other compensation shall also perform such other field work relating to escheated land and other matters as the Commissioners of the Sinking Fund may require: *Provided*, That the Commissioners of the Sinking Fund may employ as many additional field agents as they may deem advisable, the sole compensation of each of whom shall be a commission not exceeding twenty-five per cent. upon his actual net collections and remittances to the Commissioners of the Sinking Fund.

Civ. '12, § 123; Civ. '02, § 119.

(129) § 33. Duty of County Auditor as to Property Off Tax Books.—When the officials of a county charged with the assessment of property, or collection of taxes, shall discover any property off the tax books, the County Auditor is authorized to charge same on tax books (and at once notify the Comptroller General, who shall immediately notify the Secretary of State, as agent of the Sinking Fund Commission), with taxes of the current year

and all back taxes due, and the County Treasurer shall collect and expend the same as if the said collection were taxes of the then current year. No County Auditor shall charge property with back taxes after written notice from the agent of the Sinking Fund Commission that the back taxes on this particular piece of property are then in process of collection by the said Sinking Fund Commission. And the Sinking Fund Commission's agent shall give said notice to said Auditor, immediately on discovery of facts rendering it necessary to investigate as to any such piece of property. And if the said Auditor, Treasurer or Sheriff shall refuse to allow such free access to said executions, books and records, the said agent may proceed by mandamus to require him or them to give access to the same; and if the said Sheriffs and Treasurers shall refuse or neglect to make the return of said executions to the Auditor's office in due time, they may be compelled by mandamus to make said return: *Provided*, That if the said Sheriff have or shall have lost any tax execution placed in his hands by the County Treasurer in any year or years prior or subsequent to the approval of this Article, and cannot, or will not account for or pay for the same within one year from the time the taxes pertaining to said lost execution were past due, the said Sinking Fund Commission shall have the right to recover from the said Sheriffs treble the amount of such taxes and penalties, in an action or actions which they are hereby authorized to bring in any court of competent jurisdiction: *Provided*, That this provision shall not affect in any manner the rights and powers of County Treasurers to enforce the collection of taxes by Sheriffs under existing laws exercised within one year from the time the same became past due.

Civ. '12, § 124; Civ. '02, § 120; 1898, XXII, 725.

(130) § 34. Public Buildings of State and of State Institutions to Be Insured by Sinking Fund Commission.—That all insurance on public buildings and on the contents thereof of the State of South Carolina and of all institutions supported in whole, or in part, by the State of South Carolina, shall be carried by the Sinking Fund Commission: *Provided*, That no insurance shall be carried on the State House.

Civ. '12, § 125; Civ. '02, § 121; 1900, XXIII, 397; 1901, XXIII, 738; 1902, XXIII, 967; 1918, XXX, 881.

(131) § 35. Public Buildings of Counties.—That all insurance of public buildings of the several counties of the State of South Carolina shall be carried by the Sinking Fund Commission: *Provided*, That all policies of insurance issued by the Sinking Fund Commission, on the public buildings of the several counties of this State, which are in force on March 25, 1918, shall be canceled by the Sinking Fund Commission within six months after the date of the approval of this Article, and new policies issued at a premium rate to be fixed by the Sinking Fund Commission, as provided hereinafter.

Civ. '12, § 126; Civ. '02, § 122; 1900, XXIII, 397; 1901, XXIII, 738; 1918, XXX, 881.

(132) § 36. Insurance of School Buildings.—That all insurance of public school buildings and on the contents thereof, whether such buildings are held and operated under the general school laws or law applicable to special

school districts only, shall be carried by the Sinking Fund Commission, upon the expiration or cancellation of existing policies, and upon all new insurance: *Provided*, The trustees of any school district may insure school buildings located within incorporated cities and towns in any mutual insurance company or association doing business under the laws of the State.

1918, XXX, 881; 1919, XXXI, 246; 1920, XXXI, 1147.

(133) § 37. Officers Having Custody of Such Buildings to Insure as Provided Herein.—The proper officer, official or officials, or trustees having by law the care and custody of State and county buildings and of public school buildings, shall insure such buildings under the provisions herein set forth, whether such buildings have been heretofore insured or not.

1918, XXX, 881; 1919, XXXI, 246.

(134) § 38. Premium Rate.—That all insurance carried by the Sinking Fund Commission, as provided for in this Article, shall be carried at the same premium rate which, in the judgment of the Sinking Fund Commission, would be charged by reliable old line insurance companies for carrying this insurance: *Provided*, That should the said old line insurance companies increase or decrease their rates, the Sinking Fund Commission shall not be required to follow such change in rates, if in their judgment the change is not justified.

1918, XXX, 881.

(135) § 39. Payment of Premiums.—That the premiums on all policies of insurance issued by the Sinking Fund Commission shall be paid by the officer, official or trustee having the property insured under their care and custody upon demand of the Sinking Fund Commission, and in the event that there be no funds on hand with which to make said payment when demand is made, then payment shall be made out of the first funds available for such institution, county, or school district, and until paid the premium due the Sinking Fund Commission shall be a preferred claim: *Provided*, That the Sinking Fund Commission may charge interest at the rate of five (5%) per cent. per annum, on all amounts due and unpaid as premium on policies issued.

1918, XXX, 881.

(136) § 40. Reinsurance by Sinking Fund.—The Sinking Fund Commission shall reinsure, upon terms which the Commission may deem most advantageous, in reliable insurance company or companies, such portion of their insurance liability as is commensurate with the principles of safe underwriting, and shall, from time to time, prescribe such rules and regulations as may be necessary in placing and handling this reinsurance.

Civ. '12, § 137; 1909, XXVI, 92; 1913, XXVIII, 4; 1918, XXX, 881; 1919, XXX, 246.

(137) § 41. Disposition of Funds from Premiums.—That all funds paid over to the Sinking Fund Commission as premiums on policies of insurance, and all money received from interest on loans and deposits, and from any other source, connected with the insurance of public property provided for herein, shall be held by the Sinking Fund Commission as an insurance sinking fund for the purpose of paying all fire losses for which they are

liable, and the expenses necessary to the proper conduct of said insurance of public property by the Sinking Fund Commission, and shall be invested by them as are other funds in their hands: *Provided*, That when the insurance sinking fund, herein provided for, reaches the sum of one million (\$1,000,000.00) dollars, no further premiums shall be paid until a part of such fund has been used in the payment of losses and expenses; and in that event the premiums of insurance shall be again paid as provided herein, until the fund again reaches the sum of one million (\$1,000,000.00) dollars.

Civ. '12, § 131; Civ. '02, § 128; 1916, XXIX, 695; 1918, XXX, 881.

(138) § 42. **How Insurance Effected.**—That the Sinking Fund Commission shall notify the officers, officials or trustees having the care and custody of the buildings insured under the provisions of this Article, in writing, in advance of the expiration of policies of insurance on such buildings, and the officer, official or trustees so served with written notice shall immediately make application to the Sinking Fund Commission for the renewal of said insurance, and shall forward with their application the amount of premium due the Sinking Fund Commission on the insurance applied for: *Provided*, That in the event no funds are available with which to pay the premium at the time application is made the officer, official or trustees making application shall so state, and the amount, with interest, shall be paid by them out of the funds available, as provided hereinbefore.

1918, XXX, 881.

(139) § 43. **County Superintendents of Education to Furnish Lists of Insurable School Buildings.**—That the State Superintendent of Education and the County Superintendents of Education of the several counties of the State shall furnish to the Sinking Fund Commission, on request, a complete list showing the location of each and every school building in their county, the number of the school district in which such buildings are located and the names and addresses of the trustees having the buildings in charge.

1918, XXX, 881; 1919, XXXI, 246.

(140) § 44. **Officers to Furnish Information on Request.**—That all officers, officials and trustees having the care and custody of buildings insured under the terms of this Article, shall furnish to the Sinking Fund Commission, on request, full information in regard to the character of construction, value, location, exposure, and any other information requested.

1918, XXX, 881.

(141) § 45. **Failure to Comply With This Act a Misdemeanor—Penalty.**—That any officer, official or trustees upon whom the duties provided in this Article devolves, who fail or refuse to carry out the provisions of this Article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars, or imprisonment not less than ten no more than thirty days.

1918, XXX, 881.

(142) § 46. **Valuation of Buildings.**—That the value of all buildings insured as herein provided, as fixed by the policies of insurance on said

buildings now of force, shall be taken to be the value of such buildings, and the value of all public buildings hereafter constructed shall be the actual cost of such buildings: *Provided*, That where it is desired to increase or decrease the value of any building insured hereunder, the value of the building or buildings shall be fixed by three appraisers, to be appointed and paid as provided in Section 48 hereinafter.

Civ. '12, § 127; Civ. '02, § 123; 1900, XXIII, 397; 1901, XXIII, 738; 1918, XXX, 881.

(143) § 47. Amount of Insurance.—That the amount of insurance to be carried on all buildings and on the contents thereof, as provided herein, shall be fixed by the officers, officials or trustees having such buildings in their care and custody: *Provided*, That the amount of insurance to be carried, as fixed by them, shall in no event exceed the value of the building and contents to be insured.

1918, XXX, 881.

(144) § 48. Adjustment and Payment of Losses.—That in the event of loss or damage by fire or lightning, the amount of such loss or damage to be paid by the Sinking Fund Commission shall be determined by three appraisers, one to be named by the Sinking Fund Commission, one by the officer, official or trustees having the damaged or destroyed building in charge, and the two so appointed shall select the third. These appraisers shall file their written report with the Sinking Fund Commission and a duplicate copy with the insured. The cost of the appraisal shall be borne, one-half by the Sinking Fund Commission and one-half by the insured: *Provided*, That the amount paid by the Sinking Fund Commission, as fixed by the appraisers, shall, in the event the building so damaged or destroyed is a county building or a public school building, be paid over to the County Treasurer of the county in which the building is located, to be by said County Treasurer paid out as required by law, upon the proper warrant or order of the proper official or trustee for the repair, restoration or rebuilding of the property damaged or destroyed; and in the event the property so damaged or destroyed is State property, then the amount shall be paid over to the officer, official or officials having the property in their care and custody, to be expended by them for the repair, restoration or rebuilding of the property damaged or destroyed.

Civ. '12, § 130; Civ. '02, § 126; 1918, XXX, 881.

ARTICLE II.

Land Containing Phosphate Rock and Phosphatic Deposits.

(145) § 1. Board of Phosphate Commissioners—Constitution of and Compensation.—A Board of Phosphate Commissioners is established, which shall be constituted as follows: The Governor, the Attorney General, and Comptroller General, and two persons, citizens of the State; the last two to be appointed by the Governor, Attorney General and the Comptroller General for the term of six years; the first appointment, however, to be made, one for four years, and one for six years. The Governor, Attorney General, and Comptroller General shall not receive any compensation for

their services on this Board except actual traveling and other necessary expenses while engaged in attending to their duties as members of the Board when the same shall be performed at any other place than the State Capitol. The two Commissioners appointed as above shall receive as compensation for their services the same per diem and mileage as members of the General Assembly for the time they are actually engaged in performing the duties of their office.

Civ. '12, § 138; Civ. '02, § 130; R. S. 87; 1890, XX, 691.

The effect of this Article considered in *Coosaw Mining Co. v. State of So. Ca.*, 144 U. S. 550.

(146) § 2. Chairman and Secretary of Board—Quorum.—The Governor shall be Chairman of the Board, and three members shall constitute a quorum for the transaction of any business pertaining to the Board, and the Secretary shall be appointed from among the members of the Board.

Civ. '12, § 139; Civ. '02, § 131; R. S. 88; 1890, XX, 691.

(147) § 3. Board Has Exclusive Control of State's Phosphate Interests—Exceptions.—The Board shall be charged with the exclusive control and protection of the rights and interest of the State in the phosphate rocks and phosphatic deposits in the navigable streams and in the marshes thereof, except that the Comptroller General shall continue to receive the reports of rock mined and dug and the royalty paid into the State Treasury.

Civ. '12, § 140; Civ. '02, § 132; R. S. 89; 1890, XX, 691.

(148) § 4. Powers, Rights, Ets., of Board.—All the powers, duties, rights and privileges vested in, and exercised by, the late Department of Agriculture, as heretofore established by law, so far as the same pertains and relates to the management and protection of the rights and interests of this State in the phosphate rocks and phosphatic deposits in the navigable streams of this State, and in the marshes thereof, are hereby vested in, and are devolved upon, the Board of Phosphate Commissioners.

Civ. '12, § 141; Civ. '02, § 133; R. S. 90; 1890, XX, 691.

(149) § 5. Protection of State's Interest in Phosphate Deposits and Mines Against Adverse Claimants.—The Board are further authorized and empowered to inquire into and protect the interests of the State in and to any phosphatic deposits or mines, whether in the navigable waters of the State or in land marshes, or other territory owned or claimed by other parties, and in the proceeds of any such mines, and to take such action for, or in behalf of, the State, in regard thereto, as they may find necessary or deem proper.

Civ. '12, § 142; Civ. '02, § 134; R. S. 91; 1890, XX, 694.

Suit to prevent illegal interference with control of phosphate mines is cognizable in equity. *Coosaw Mining Co. v. South Carolina*, 144 U. S. 550, 36 L. Ed. 537

(150) § 6. Survey of State's Phosphate Territory.—The Board are hereby empowered and directed, if they see proper, as soon as practicable, to begin a survey of the State's phosphate territory, and for this purpose they may employ such experts and other persons, and may obtain, by purchase or otherwise, such a dredge or other apparatus as shall be found necessary to prosecute this work in a thorough manner.

Civ. '12, § 143; Civ. '02, § 135; R. S. 92; 1890, XX, 692.

(151) § 7. Powers of Board as to Grant of Licenses.—The Board are authorized to grant to all citizens of the State, and bodies corporate, applying for the same, licenses granting a general right to dig, mine and remove phosphate rock and phosphatic deposits from all the navigable streams and waters and marshes of the State, and also from such of the creeks, not navigable, lying therein, as may contain phosphatic rock and deposits, belonging to the State and not previously granted. Such licenses shall be for the term of one year, renewable at the pleasure of the Board.

Civ. '12, § 144; Civ. '02, § 137; R. S. 94; G. S. 67, 69, 70; 1878, XVI, 781, 840.

(152) § 8. May Grant or Refuse Application for License.—In every case in which such application shall be made to the Board for a license, the Board may grant or refuse the license as they may deem best for the interest of the State and the proper management of the interests of the State in such deposits.

Civ. '12, § 145; Civ. '02, § 138; R. S. 95; 1884, XVIII, 779.

The duty imposed by this section involves discretion, and mandamus will not issue requiring the Board to grant such license. *State v. Hagood*, 30 S. C. 519, 9 S. E. 686.

In the exercise of their discretion the Board cannot determine the constitutionality of the Act. *State v. Hagood*, 30 S. C. 519, 9 S. E. 686.

(153) § 9. Bond of Licensee—Condition—How Approved.—As a condition precedent to the right to dig, mine and remove the said rocks and deposits hereby granted, each person or company shall enter into bond, with security, in the penal sum of five thousand dollars, conditioned for the making, at the end of every month, of true and faithful returns to the Comptroller General of the number of tons of phosphate rock and phosphatic deposits so dug or mined, and the punctual payment to the State Treasurer of the royalty hereinafter provided at the end of every quarter or three months, which bond and sureties therein shall be subject to the approval now required by law for the bonds of State officers.

Civ. '12, § 146; Civ. '02, § 139; G. S. 68; R. S. 96; 1878, XVI, 781.

(154) § 10. Returns of Rock Mined and Payment of Royalty—When and to Whom Made.—Each and every person, or body corporate, to whom licenses shall be issued, must, at the end of every month, make to the Comptroller General true and lawful returns of the phosphate rocks and phosphatic deposits they may have dug or mined during said month, and shall punctually pay to the State Treasurer, at the end of every quarter, or three months, the royalty provided by law to be paid thereon, which shall not exceed two dollars per ton upon each and every ton of the crude rock, and not of the rock after it has been steamed or dried, the first quarter to commence to run on the first day of January in each year.

Civ. '12, § 147; Civ. '02, § 140; G. S. 68; R. S. 97; 1878, XVI, 781; 1892, XXI, 393.

(155) § 11. Power of Board of Phosphate Commissioners to Fix Rates for Digging Phosphate.—The Board of Phosphate Commissioners of this State are hereby vested with full and complete power and control over all mining now being done, or hereafter to be done, with the phosphate territory belonging to the State of South Carolina, and over all persons or corporations digging or mining phosphate rock or phosphatic deposit in the navigable streams and waters, or in the marshes thereof, with full power

and authority to fix, regulate, raise or reduce such royalty as shall from time to time be paid to the State per ton by such persons or corporations for all or any such phosphate rock dug, mined, removed and shipped or otherwise sent to the market therefrom: *Provided*, Six months' notice shall be given all persons or corporations at such time digging or mining phosphate rock in said navigable streams and waters or marshes before any increase shall be made in the rate of royalty theretofore existing.

Civ. '12, § 148; Civ. '02, § 141; R. S. 98; 1897, XXII, 504.

(156) § 12. Limit of Royalty—Notice of Increase.—The Board of Phosphate Commissioners of the State are hereby authorized and empowered to fix the royalty to be paid the State by parties mining in the navigable waters and the marshes of this State at such amounts, not to exceed two dollars per ton, and for such periods as they, upon full investigation and examination, may deem advisable: *Provided*, That six months' notice be given of any raising of such royalty above the sum of one dollar.

Civ. '12, § 149; Civ. '02, § 142; 1893, XXI, 383.

(157) § 13. Board Notifies Comptroller General of Licenses Issued—Time and Particulars of Notice.—The Board shall, within twenty days after the grant of any licenses, as aforesaid, notify the Comptroller General of the issuing of such licenses, with the name of the person to whom issued, the time of licenses, and the location for which it was issued.

Civ. '12, § 150; Civ. '02, § 143; R. S. 99; 1889, XX, 298.

(158) § 14. When Additional Security to Bonds May Be Required—Proceedings.—Whenever the Board shall have reason to doubt the solvency of any surety whose name appears upon any bond heretofore executed, or which may hereafter be executed, for the purpose of securing the payment of the phosphate royalty by any person, or corporation, or company, digging, mining and removing phosphate rock, or phosphatic deposits, in any of the territory, the property of the State, under any grant or license, it shall be the duty of the Board forthwith to notify the person, corporation or company giving such bond, and the sureties thereon, and to require that one or more sureties, as the case may be, shall be added to said bond, which surety or sureties shall be approved by the Board.

Civ. '12, § 151; Civ. '02, § 144; R. S. 100; 1883, XVIII, 304.

(159) § 15. Proceeding for Relief of Sureties—New Bond and Its Effect.—It shall be the duty of the Board, upon petition filed by any person who now is, or shall hereafter become, surety on any such bond as aforesaid, and who considers himself in danger of being injured by such suretyship, to notify the person, corporation, or company, giving said bond to give a new bond with other sureties, and upon failure to do so within thirty days, to cause said person, company or corporation to suspend further operations until a new bond be given, but in no case shall the sureties on the old bond be discharged from liability thereon until the new bond has been executed and approved, and said sureties shall not be discharged from any antecedent liability by reason of said suretyship.

Civ. '12, § 152; Civ. '02, § 145; R. S. 101; 1883, XVIII, 304.

(160) § 16. Coosaw River Phosphate Territory—Powers and Duties of Board in Relation Thereto.—The Board are hereby authorized and directed after the first day of March, 1891, to take possession and control of the Coosaw River phosphate territory heretofore occupied by the Coosaw Mining Company, and to issue licenses to mine therein, and remove phosphate rock and phosphatic deposits therefrom, in like manner as is now provided by law for the other navigable streams and waters of the State: *Provided*, That such parties so licensed or authorized shall be deemed the agents of the State, and each ton of phosphate rock or phosphatic deposits the product of such mining operations shall be deemed the property of the State until the said parties shall have paid thereon a royalty, to be fixed by the Board at not exceeding two dollars per ton, on each ton of phosphate rock or phosphatic deposits dug, mined and removed: *Provided*, That six months' notice be given before raising royalty above one dollar.

Civ. '12, § 153; Civ. '02, § 146; R. S. 102; 1890, XX, 393; 1892, XXI, 383.

Licensee mortgaged its mined product, owing State royalty thereon, and large amount for unpaid royalty on product sold. Held, that such mortgage was superior lien to claim of State for royalty on product sold, mortgagee having no knowledge of such claim. *Malcolmson v. Wappoo Mills* (S. C.), 86 Fed. 192, 194.

Under provisions that licensees shall be deemed agents of State, and that each ton of product shall be deemed property of State until royalty thereon is paid, State can refuse, except as against bona fide purchasers without notice, to surrender its control of any portion of such product until all past-due royalty under license, on product disposed of, is paid. *Malcolmson v. Wappoo Mills* (S. C.), 86 Fed. 192, 196.

(161) § 17. Board to Report Annually to General Assembly.—The Board shall report annually to the General Assembly their actings and doings during the year, and to the time of the meeting of the same, with an itemized account of their expenses for said year.

Civ. '12, § 154; Civ. '02, § 147; R. S. 103; 1890, XX, 693; 1892, XXI, 383.

(162) § 18. Mining Without License—Penalty.—Every person or corporation who shall dig, mine, or remove any phosphate rock or phosphatic deposit from the beds of the navigable streams and waters and marshes of the State without license therefor previously granted by the State to such person or corporation shall be liable to a penalty of ten dollars (\$10) for each and every ton of phosphate rock or phosphatic deposits so dug, mined or removed, to be recovered by action at the suit of the State in any court of competent jurisdiction; one-half of said penalty to be for the use of the State, and the other half to the use of the informer.

Civ. '12, § 155; Civ. '02, § 148; G. S. 65; R. S. 104; 1877, XV, 305.

(163) § 19. Buying or Receiving from Person Not Licensed.—It shall not be lawful for any person or corporation to purchase or receive any phosphate rock or phosphatic deposit dug, mined or removed from the navigable streams or waters or marshes of the State from any person or corporation not duly authorized by Act of the General Assembly of this State to dig, mine or remove such phosphate rock or phosphatic deposit.

Civ. '12, § 156; Civ. '02, § 149; G. S. 66; R. S. 105; 1877, XV, 305.

(164) § 20. Penalty.—Any person or corporation violating the preceding Section shall forfeit to the State the sum of ten dollars (\$10) for each and every ton of phosphate rock or phosphatic deposit so purchased or received, to be recovered by action in any court of competent jurisdiction

one-half of said forfeiture to be to the use of the State, the other half to the use of the informer.

Civ. '12, § 157; Civ. '02, § 150; G. S. 67; R. S. 106; 1877, XV, 305.

(165) § 21. Board May Take Proceedings to Prevent Interference, Etc.—Should any person whosoever interfere with, obstruct, or molest, or attempt to interfere with, obstruct, or molest the said Board of Phosphate Commissioners, or any one by them authorized or licensed hereunder, in the peaceable possession and occupation for mining purposes of any of the marshes and navigable streams and waters of the State, then, and in that case, the said Board of Phosphate Commissioners are hereby authorized, and in the name and on behalf of the State of South Carolina, to take such measures or proceedings as they may be advised are proper to enjoin and terminate any such molestation, interference, or obstruction, and place the State, through its agents, the said Board of Phosphate Commissioners, or any one under them authorized, in absolute and practical possession and occupation of the same.

Civ. '12, § 158; Civ. '02, § 151; R. S. 107; 1890, XX, 693.

(166) § 22. Forfeiture of Boats, Dredges, Etc., Used by Unlicensed Persons—Proceedings to Enforce Same.—Should any person or persons, corporation or corporations, attempt to mine or remove phosphate rock and phosphatic deposits from any of the said marshes and navigable waters and streams, including the aforesaid Coosaw River phosphate territory, after the said first day of March, 1891, by and with any boat, vessel, marine dredge or other appliances for the same, without the leave or license of the said Board of Phosphate Commissioners thereto first had and obtained, all such boats, vessels, marine dredges and other appliances are hereby declared forfeited to and the property of the State of South Carolina, and it shall be the duty of the Attorney General, for and in behalf of the State, to institute proceedings in any Court of competent jurisdiction for the claim and delivery thereof, in the ordinary form of action for claim and delivery, in which actions the title of the State shall be established by the proof of the commission of any such act of forfeiture by the person or persons, corporation or corporations, owning the same, or their agents, in possession of such boats, vessels, marine dredges or other appliances: *Provided*, That in any such action the State shall not be called upon or required to give any bond or obligation as is required by parties plaintiff in action for claim and delivery.

Civ. '12, § 159; Civ. '02, § 152; R. S. 108; 1890, XX, 694.

(167) § 23. Office of Phosphate Inspector Abolished.—The office of Phosphate Inspector is hereby abolished, and the duties heretofore imposed by law upon the said Phosphate Inspector be, and the same are hereby, devolved upon the Board of Phosphate Commissioners, who shall perform the duties heretofore performed by the Phosphate Inspector without additional compensation.

Civ. '12, § 160; Civ. '02, § 136; 1903, XXIV, 8.

ARTICLE III.**Historical Commission.**

(168) § 1. **Historical Commission.**—A Commission is created to be known as the Historical Commission of South Carolina, to be composed of the respective heads of the chairs of history in the University of South Carolina, The Citadel, the Military College of South Carolina, Clemson Agricultural and Mechanical College of South Carolina, and Winthrop Normal and Industrial College of South Carolina, and their successors in their respective chairs, and two other members as provided in Section 3 of this Article.

Civ. '12, § 161; 1894, XX, 833; 1915, XXIX, 114.

(169) § 2. **Duty.**—It shall be the duty of said Commission to procure such documents or transcripts of documents and such other material relating to the history of South Carolina as they may deem necessary or important, to superintend the arrangement and preservation of the same, and to make suitable regulations for their inspection and examination in order to protect them from injury.

Civ. '12, § 162; 1894, XX, 833.

(170) § 3. **Appointment of Members and Term of Office.**—Two members of the said Commission shall be elected as follows: One member by the United Confederate Veterans of South Carolina and one by the South Carolina Historical Society. The two members last named to be elected for terms of ten years each, beginning January 1st, 1915, and at the expiration of their terms their successors shall be elected by said organizations for similar terms and so on at the expiration of every ten years. In case of a vacancy by death or otherwise of either of such elective members, the vacancy shall be filled for the unexpired time by that organization which has elected the members so vacating. This Commission so constituted shall hold, at the office of the Commission, at least one regular meeting a year, at which they shall elect a chairman, a vice chairman, and a secretary, as provided in Section 6 of this Article, and shall make an annual report of their acts and doings to the General Assembly.

Civ. '12, § 163; 1905, XXIV, 907; 1915, XXIX, 114.

(171) § 4. **Objects and Purposes.**—The objects and purposes of the said Historical Commission are: The care and custody of all the official archives of the State not now in current use; the collection of materials bearing upon the history of the State, and of the counties and territory included therein, from the earliest times; the collection of all documents or transcripts of documents and of material relating to the history of South Carolina, and of all its territory and inhabitants; and particularly of procuring data concerning South Carolina soldiers in the War of the Revolution and the War Between the States; the due and orderly arrangement, indexing and preservation of the same, with suitable regulations for their inspection and examination, in order to protect them from injury; the providing for the diffusion of knowledge in reference to the history and resources of the State, and the encouragement of historical work and research therein, and

the preparation for publication of such official records and historical materials as the State may at any time desire to publish, and arrange for the publication thereof, and the performance of such other acts and requirements as may be enjoined by law.

Civ. '12, § 164; 1905, XXIV, 907, § 2.

(172) § 5. Apartments and Archives.—The said Historical Commission shall be located at the State Capitol, in the City of Columbia, in separate apartments in such Capitol, to be designated and set aside for its use by the Secretary of State, of which apartment the said Commission shall have exclusive charge and control, and in which apartments all the archives, documents and materials in charge and custody of the said Commission shall be deposited, together with all such historical material of any and every kind as the said Commission may collect and gather from any source, and which said Commission are authorized and empowered to receive from any one whomsoever, for the purpose of safe-keeping and for inspection and examination, under such regulations as may be provided, with due regard for the care and custody of the same. The said Commission is empowered to adopt a seal and make rules for its own government, and also for the use and regulations of the apartments assigned to it, and for the inspection and examination of the archives and papers in its charge; and to provide for the selection and appointment of such employees as may be authorized by the General Assembly; to have the direction and control of the marking of historical sites, or houses and localities, and the exploration of prehistorical remains and Indian mounds, and other remains existing in the State, and to do and perform such other acts and things as may be proper to carry out the true intent and purposes of this Article.

Civ. '12, § 165; 1905, XXIV, 907, § 3.

(173) § 6. Qualification, Election and Duties of Secretary.—The said Commission is hereby authorized and empowered to select a Secretary, who shall not be a member of the Commission, and who shall serve at the pleasure of said Commission. He shall keep the official books and minutes of the Commission, and shall devote his time, under the supervision, direction and control of the Commission, to the care and custody of all the documents, material and property in charge of the Commission, and the performance of such other duties as the Commission may devolve on him, and shall receive for his services such salary as the General Assembly may, from time to time, provide, payable monthly, to be paid to him by the State Treasurer upon the warrant of the Comptroller General.

Civ. '12, § 166; 1905, XXIV, 907; 1915, XXIX, 114.

(174) § 7. Custody of Records.—The said Commission shall take into its charge and have delivered to it, all archives, records, papers, books and historical material in the present charge of the Secretary of State, or any other State officer, and whenever in any office in this State there are official books, records, documents or original papers of any kind, forming part of the archives of the State, and not needed for current use in said offices, and which, in the opinion of the State Historical Commission, would be better provided for as to their permanent preservation by a deposit with the said

Commission, and the removal whereof from their present places of custody to the official apartments and custody of said State Historical Commission may be authorized by this or any future Act of the General Assembly, and which such official books, records, documents or original papers have been removed from their former custody to that of the Commission; then and in that case copies therefrom, duly certified, under the seal of the Commission and the hand of the Secretary, shall have like force and effect in all respects as if made by the officer originally in charge of them, and for which copies the same fees shall be chargeable.

Civ. '12, § 167; 1905, XXIV, 907, § 5.

(175) § 8. Deposits by Private Parties.—Whenever any person or persons whomsoever, having in his or their possession or control any books, papers, manuscripts or historical material at any time of any kind shall desire to deposit the same in the charge of said Historical Commission for safe-keeping and preservation, the said Historical Commission are hereby authorized and empowered to receive the same and give a proper receipt for the same and to take and keep in their custody and control all the same in like manner as the archives of the State, to be returned when the holders or owners thereof may so demand, and to be distinctly marked or separated, so as to be readily capable of identification from the papers and material the property of the State: *Provided*, That all such papers and historical materials so received for custody and safe-keeping shall be at all times open to inspection and examination, for the purposes of historical research, in like manner and under the same rules and regulations as provided for similar materials belonging to the State: *Provided, further*, That neither the State nor the Commission shall be in any wise responsible or liable for the loss of any such books, papers, manuscripts or material if such loss should occur.

Civ. '12, § 168; 1905, XXIV, 907, § 6.

(176) § 9. Equipment of Apartments.—The said Historical Commission are hereby authorized and empowered to furnish and equip the said separate apartments in the State Capitol to be assigned to the Commission for the purpose, with such furniture, shelving, and fireproof arrangements as may be proper and reasonable for the purposes of the custody, preservation and inspection of all of the said archives and historical material, and to keep the same in order, and all such sum or sums as may at any time be appropriated by the General Assembly for the purposes aforesaid or to carry out the intent of this Article shall be paid out by the State Treasurer, in such sums and in such manner as may be authorized by the said Historical Commission.

Civ. '12, § 169; 1905, XXIV, 907, § 7.

(177) § 10. Clerk Not to Do Other Work.—The said Clerk shall not do any additional work for pay and furnish information free to the citizens of South Carolina.

Civ. '12, § 170; 1905, XXIV, 907, § 8.

ARTICLE IV.**Commission on State House and Grounds.**

(178) § 1. **Commission on State House and Grounds Established.**—The Secretary of State, Comptroller General, and the State Librarian are hereby created a Commission on State House and State House Grounds, for the purpose of their proper keeping, landscaping, cultivation and beautifying, with authority to expend such amounts as may be annually appropriated therefor. The Secretary of State shall be Chairman of the Commission hereby created, and said Commission shall elect a Secretary from its number. The said Commission shall employ all help and labor in policing, protecting and caring for said State House and State House Grounds, and shall have full authority over the same.

Civ. '12, §§ 171, 172, 173, 174, 175, 176; 1907, XXV, 534; 1918, XXX, 1907.

(179) § 2. **Annual Report.**—Said Commission shall report to the General Assembly annually an itemized statement of all money expended, together with all its acts and doings in the improvement of said Grounds.

Civ. '12, § 177; 1907, XXV, 534, § 9.

ARTICLE V.**Confederate Infirmary—Other Property of State—Miscellaneous Provisions.**

(180) § 1. **Confederate Home Established—Commission—How Composed—Appointment—Term—Removal—Rules.**—A Commission consisting of nine members, five of whom shall be ex-Confederate soldiers or sailors, shall be appointed by the Governor, and the other four members of the Commission to be members of the State organization of the United Daughters of the Confederacy, and who shall be appointed by the Governor upon the recommendation of the State organization of the United Daughters of the Confederacy, who are hereby empowered and required to establish and manage an infirmary for the infirm and destitute Confederate sailors and soldiers of the State, on what is known as the Bellevue place on Wallace land, now owned by the State. The term of office of said Commissioners shall be nine years: *Provided*, That the members of the Commission so appointed by the Governor shall determine by lot the term of their office, so that one of them shall serve respectively for a period of one, two, three, four, five, six, seven, eight and nine years. That said Commission shall prescribe rules, regulating admission to said infirmary: *Provided*, That two veterans shall be admitted from each county, on the recommendation of the County Pension Board: *Provided, further*, That in case any County Board fails to make such recommendation, the said Commission may fill the vacancy from the same or any other county.

Civ. '12, § 178; 1908, XXV, 1074; 1915, XXIX, 156; 1921, XXXII, 19.

(181) § 2. **Members to Serve Without Compensation.**—The members of said Commission shall receive no compensation for their services, but shall

be entitled to actual expenses for attending the meetings thereof, to be paid upon the warrant of the Comptroller General out of any funds in the hands of the State Treasurer not otherwise appropriated.

Civ. '12, § 179; 1911, XXVII, 156, § 3.

(182) § 3. Right to Build on Sullivan's Island.—Such of the citizens of this State as may think it beneficial to their health to reside on Sullivan's Island during the summer season have liberty to build on the said island a dwelling and outhouses for their accommodation; and the person or persons so building shall have the exclusive right to the same, and one-half acre of land adjoining thereto, as long as he, she, or they, may require, for the purposes aforesaid: *Provided*, The person or persons, building as aforesaid, pay to the Treasurer one penny annually, if required, for the use of the said land.

Civ. '12, § 180; Civ. '02, § 154; G. S. 71; R. S. 110; J. R. 1791.

(183) § 4. Rights of Dwellers on Sullivan's Island.—The present owners of lots on Sullivan's Island, whereon dwelling houses have been erected, and such citizens of this State as may hereafter build dwelling houses upon the said island, under the license granted by the preceding Section, shall be taken and deemed to have, and shall enjoy, the same rights, titles, and interests, as tenants, from year to year, in and to the lots now owned by them, respectively; upon condition, nevertheless, that they shall deliver up the same when demanded by the Governor of this State for the time being—he, she, or they having the liberty of removing the buildings which are now, or may hereafter be, erected on said lots. And the titles thereto shall be assignable, transferable, transmissible, and distributable, as estates for years now are, or hereafter may be, by the laws of this State; and the said owners shall have, take, and enjoy, and be entitled to use and employ all actions, suits and remedies, for securing their quiet and peaceable possession and enjoyment of their said lots, and restitution and redress for any trespass, ouster, or injury which they may suffer, or may be committed upon them, as tenants for years now have, or are entitled to.

Civ. '12, § 181; Civ. '02, § 155; G. S. 71; R. S. 111; XII, 609.

Before enactment of this section the occupants of the island were mere tenants at will of the State, and a parol contract for sale of a house thereon was void under Statute of Frauds. *Whetmore, v. Rhett*. 12 Rich 565.

(184) § 5. Actual Building of Dwelling House Essential to Vest Title to Lot Within Time Limited.—No exclusive right to a lot on the said island shall be obtained by any citizen otherwise than by his actually building a dwelling house thereon; and if such dwelling house shall be removed or destroyed, the owner thereof shall have the exclusive right to rebuild on the same lot for one year thereafter; and if no dwelling house be built by him within that period, such lot shall again be considered as vacant.

Civ. '12, § 182; Civ. '02, § 156; G. S. 71; R. S. 112; VI, 131.

(185) § 6. Limitations as to Building on Sullivan's Island.—Hereafter no person shall erect, or cause to be erected, more than one dwelling house on each half acre lot in the town of Moultrieville, on Sullivan's Island; and if any person shall build, or attempt to build, such a dwelling house,

such person may be compelled to desist from such building, and to remove the same, by the Court of Common Pleas; and it shall be lawful for the Intendant or any one of the Wardens of the said town to execute such order, under the direction of the Sheriff of the county, or his lawful deputy.

Civ. '12, § 183; Civ. '02, § 157; G. S. 72; R. S. 113; VII, 353.

(186) § 7. Certain Lands Vested in City of Charleston.—All vacant land not legally vested in individuals, in the harbor of Charleston, covered by water, is vested in the City of Charleston, for public purposes, but not to be so used or disposed of as to obstruct or injure the navigation of said harbor.

Civ. '12, § 184; Civ. '02, § 158; G. S. 73; R. S. 114; VII, 151.

(187) § 8. Certain Lands Vested in Town of Beaufort.—All the land lying directly and immediately in front of the streets, in the town of Beaufort, which run northwardly and southwardly, and which extend to Bay Street, down to the channel of the river lying in front of the said town, whether the same be covered with the waters of the said river or not, shall, forever hereafter, be considered as the property of, and belonging to, the said town, and shall never be granted by any Governor of this State, or be otherwise vested in any individual or individuals, or any body corporate, unless it be by an Act of the Legislature passed for that purpose. And every grant which may, at any time hereafter, be obtained for any part of the said land, shall be *ipso facto* void.

Civ. '12, § 185; Civ. '02, § 159; G. S. 74; R. S. 115; V, 335.

Such persons as may have obtained a right to any lots opposite the said streets, in the said town of Beaufort, previous to the 21st day of December, 1798, shall be restricted forever from erecting any buildings thereon; and shall be, and are hereby, confined to making any improvements thereon, other than wharves, so as to leave the heads of said streets open and unobstructed.

V, 382.

(188) § 9. Care and Improvement of State House and Grounds.—The Secretary of State is *ex officio* Keeper of the State House and Grounds, and shall be charged with the care of the property, including buildings, fencing, and the furniture and fixtures therein. He may make such repairs and improvements thereon as may be necessary for their preservation. He shall be entitled as such Keeper to a salary at the rate of five hundred dollars. Convicts shall be employed in all the labor on and about the State House and Grounds which can be performed by them.

Civ. '12, § 186; Civ. '02, § 160; G. S. 76; R. S. 116; V, 335.

(189) § 10. Appropriations for Legislative Library.—The sum of five hundred dollars shall be annually appropriated for the purchase of a library for the use of the members of the Senate and House of Representatives of this State.

Civ. '12, § 187; Civ. '02, § 161; G. S. 77; R. S. 117; V, 724.

(190) § 11. **Insurance of College Buildings.**—The Comptroller General shall be, and he is hereby, authorized and required, annually, to insure against fire the college buildings at Columbia.

Civ. '12, § 188; Civ. '02, § 162; G. S. 78; R. S. 118; VI, 139.

(191) § 12. **Protection of Lands from Intrusion and Nuisance.**—The Attorney General may, when, in his judgment, the interest of the State requires it, file and prosecute information or other process against persons who intrude upon the lands, rights or property of the State, or commit or erect any nuisance thereon.

Civ. '12, § 189; Civ. '02, § 163; G. S. 79; R. S. 119; XIV, 88.

CHAPTER VII.

The Census.

(192) § 1. **Census, When Required to Be Taken According to This Chapter.**—When a census of the inhabitants of the State is required to be taken, in pursuance of the Constitution, it shall be taken and completed according to the provisions of this Chapter.

Civ. '12, § 190; Civ. '02, § 164; R. S. 121.

See Constitutional Provision for Census, Constitution 1895, Art. III, § 3.

(193) § 2. **Governor Appoints Census Takers, Who Appoint Their Assistants.**—The Governor is authorized and required to appoint one person in each county of the State, who shall be charged with taking the census, and who shall be authorized to appoint such assistants as may be necessary.

Civ. '12, § 191; Civ. '02, § 165; G. S. 20; R. S. 122; Con., Art. III, XV, 934, § 3.

(194) § 3. **Oath of Census Takers and Assistants.**—Each and every person so appointed to take the census shall, before entering on the duties of his office, take, before some Magistrate, the following oath, to wit: "I, A. B., do solemnly swear (or affirm, as the case may be) that I will honestly, faithfully, and impartially, take a correct census of all the inhabitants residing within the portion of the county to which I have been appointed as Census Taker, and will, in all respects, truly perform all the duties with which I am charged: So help me, God." And a certificate from the Magistrate who shall administer the said oath that the same has been duly taken before him shall accompany and be delivered with each and every return of the census.

Civ. '12, § 192; Civ. '02, § 166; G. S. 81; R. S. 123; Con., Art. III, XV, 934, § 3.

(195) § 4. **Duties of Census Takers.**—It shall be the duty of each and every person appointed to take the census, to call personally on the head, or some member, of each family in the county, or portion of the county for which he or they shall have been appointed, and obtain from such head of a family, or member thereof, as aforesaid, the number of persons contained in such family, and such information as may be required and directed by the Secretary of State.

Civ. '12, § 193; Civ. '02, § 167; G. S. 82; R. S. 124; Con., Art. III, XV, 934, § 3.

(196) § 5. **Members of Families Must Give Information on Oath—Penalty.**—Each head, or member, of a family, shall, when called on by the

persons appointed to take the census, at their residence or place of business, make on oath or affirmation, a correct return of all persons of whom the family is composed, and also report such other information to said Census Taker as may be required by law; and the persons so appointed to take the census are hereby authorized to administer such oaths; and upon the failure of any person to make such returns or reports, when required, such person shall be subject to a penalty of twenty-five dollars, to be recovered in any court of competent jurisdiction.

Civ. '12, § 194; Civ. '02, § 168; G. S. 83; R. S. 125; Con., Art. III, XV, 934, § 3.

(197) § 6. Returns Must Be Deposited With County Auditor Under Seal.—Upon the completion of such returns and reports, each Census Taker shall deposit the same, in a sealed package, with the Auditor of his county, accompanied by a certificate, to be endorsed by some Magistrate, purporting that the following oath had been duly taken by such Census Taker previous to the delivery of such package to said Auditor, to wit: "I, A. B., do solemnly swear (or affirm, as the case may be) that this packet contains a just, true, correct and impartial return of all the inhabitants of the census district to which I have been appointed, and a faithful report of such information as was required by the Secretary of State, so far as it was practicable to obtain the same: So help me, God."

Civ. '12, § 195; Civ. '02, § 169; G. S. 84; R. S. 126; XV, 934.

(198) § 7. County Divided into Census Districts—Blanks and Instructions—Returns to Secretary of State.—It shall be the duty of the Census Takers for the county, under the direction of the Secretary of State, to divide their several counties into convenient districts for taking the census, to distribute blanks, books, and instructions to the Census Takers, to receive their returns, which shall be completed and forwarded on or before 15th day of September to the Secretary of State, and to render such further assistance to said Secretary in the premises as that officer may direct.

Civ. '12, § 196; Civ. '02, § 170; G. S. 85; R. S. 127; XV, 934.

(199) § 8. Preparation of Books, Report and Return of Secretary of State.—It shall be the duty of the Secretary of State to have prepared and forwarded to the Census Takers of each county suitable books, blanks and instructions to facilitate the registration provided for herein, and the collection of such statistical information as the Secretary of State may deem of sufficient importance to the people of this State; and when the Census Takers shall have made the returns hereinbefore provided for, the said Secretary of State shall forthwith report the results of such registration to the Governor of the State for the time being, and shall make a collated return of the statistics to the General Assembly within one week after the beginning of the next regular session.

Civ. '12, § 197; Civ. '02, § 171; G. S. 86; R. S. 128; XV, 934.

(200) § 9. If Census Takers Fail to Comply With Census Law, Governor to Have Census Taken.—The Governor of the State for the time being shall, immediately after receiving from the Secretary of State the said report, examine the same, and in case it shall appear to him that any person or persons appointed to take the census as aforesaid shall in anywise have

failed to comply with the duties imposed on him or them, either in taking the census or in making returns, he shall forthwith cause the same to be taken and returned wherever such defaults shall have been made.

Civ. '12, § 198; Civ. '02, § 172; G. S. 87; R. S. 129; XV, 934.

(201) § 10. Pay of Census Takers—Secretary of State May Employ Assistance to Make Census Returns.—The Census Takers employed in taking the census shall be entitled to receive as compensation in full for all services rendered the sum of five (5) cents for every name taken, registered and returned in their reports to the Secretary of State—said compensation to be paid upon warrants to be drawn by the Comptroller General whenever he shall have received satisfactory proof that the services of the claimant have been faithfully rendered; and the Secretary of State is hereby authorized to employ such clerical service as will be necessary to assist him in collating and making his returns to the Governor and General Assembly, such service to be paid, on the Comptroller General's warrant, on the application of the Secretary of State: *Provided*, That the said clerical services shall not exceed the sum of three hundred dollars.

Civ. '12, § 199; Civ. '02, § 173; G. S. 88; R. S. 130; XV, 934.

TITLE II.

Of Elections.

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CHAPTER VIII.

The Qualification and Registration of Electors.

(202) § 1. Qualifications for Registration After January 1, 1898—Persons Disqualified.—Every citizen of this State and the United States twenty-one years of age and upwards, not laboring under disabilities named in the Constitution of 1895 of this State, who shall have been a resident in the State for two years, in the county one year, in the polling precinct in which the elector offers to vote four months before any election, and shall have paid six months before any election any poll tax then due and payable, and who can both read and write any Section of the said Constitution submitted to said elector by the registration officer or officers, or can show that he or she owns, and has paid all taxes collectible during the previous year on property in this State assessed at three hundred dollars or more, and who shall apply for registration, shall be registered: *Provided*, That ministers in

charge of an organized church and teachers of public schools shall be entitled to vote after six months' residence in the State if otherwise qualified: *Provided, further*, That persons who are idiots, insane, paupers supported at the public expense, and persons confined in any public prison shall be disqualified from being registered or voting: *And provided, further*, That persons convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegenation and larceny, or crimes against the election laws, shall be disqualified from being registered or voting, unless such disqualification shall have been removed by the pardon of the Governor.

Civ. '12, § 200; Civ. '02, § 174; 1896, XXII, 34, § 1; Con., Art. 2, § 4; 1921, XXXII, 268.

Civ. '12, § 201; Civ. '02, § 175; 1896, XXII, 34; Con., Art. 2, § 2; 1921, XXXII, 268.

For violation of registration laws, see Criminal Code.

The constitutionality of the former registration law was attempted to be raised before the Courts in *Butler v. Ellerbe*, 44 S. C. 256, 22 S. E. 425, but was not considered by the Court.

Necessary qualifications must be alleged in action against managers of election for refusing vote. *Wiley v. Sinkler*, 179 U. S. 58, 65, 45, L. Ed. 84.

Logan v. Stanley et al, 95 S. C. 22, 78 S. E. 524.

(203) § 2. **Electors to Be Registered.**—No person shall be allowed to vote at any election hereafter to be held unless he or she shall have been registered as herein required.

Civ. '12, § 201; Civ. '02, § 175; 1896, XXII, 34; Con., Art. 2, § 2.

Registration must be alleged in action against managers of election for refusing vote. *Wiley v. Sinkler*, 179 U. S. 58, 66, 45, L. Ed. 84.

(204) § 3. **Board of Registration—Appointment—Duties, Term of Office, Etc.**—Between the first day of January and the fifteenth day of March, eighteen hundred and ninety-eight, and between said dates in every second year thereafter, the Governor shall appoint, by and with the advice and consent of the Senate, if in session, and if not in session subject to its approval at its next session, subject to removal by the Governor for incapacity, misconduct or neglect of duty, three competent and discreet persons in each county, who shall be citizens and qualified electors thereof, and who shall be known as the Board of Registration of County, whose duty it shall be to register and to conduct the registration of the electors who shall apply for registration in such county as herein required. Their office shall be at the county seat, and they shall keep record of all their official acts and proceedings. Their term of office shall be for two years from the date of their appointment, and they shall continue in office until their successors shall have been appointed and shall qualify: *Provided*, That in case of a vacancy from any cause in the office of Board of Registration, the Governor shall fill such vacancy, by and with the consent of the Senate as aforesaid: *Provided*, That in the County of Pickens the said Board of Registration shall be elected at the general election of 1912, and every two years thereafter.

Civ. '12, § 202; Civ. '02, § 176; 1911, XXVII, 228; 1896, XXII, 34, § 4, amd. by 1898, XXII, 703.

(205) § 4. **Compensation of.**—The compensation of each member of the Board of Registration to be appointed under Section 3 herein shall be one hundred dollars for each election year and fifty dollars for each off year;

except in the Counties of Anderson, Charleston, Greenville, Sumter, Orangeburg, and Richland, where they shall each receive seventy-five dollars per annum in off years and in general election years they shall receive two hundred dollars each per annum, including the County of Spartanburg. The said compensation or salaries shall be paid quarterly by the State Treasurer upon the warrant of the Comptroller General. The said Boards of Registration shall keep their offices open on the days required by law from nine o'clock in the forenoon until five o'clock in the afternoon.

Civ. '12, § 203; Civ. '02, § 177; 1896, XXII, 34; 1898, XXII, 704; 1917, XXX, 49.

(206) § 5. **Books and Blanks to Be Prepared.**—The Secretary of State shall cause to be prepared a sufficient number of registration books and blanks, so that there shall be two of said books for each voting place in each voting precinct in each county, which books shall be ruled in columns, with proper headings, so as to indicate the name, age and place of residence of each registered elector in such polling precinct, with a separate column at the right side of the page for such entries or remarks as may be necessary. He shall also cause to be prepared two books for each county, in which shall be entered the names of all persons registered up to the first day of January, eighteen hundred and ninety-eight, which books, when prepared by the Board of Registration, to be appointed under Section 3 of an Act to provide for the registration of all electors in this State qualified to vote in State, county, municipal, Congressional and Presidential elections, approved 5th March, 1896, and sworn to by the members of said Boards, shall be filed on or before February 1st, eighteen hundred and ninety-eight, one in the office of the Secretary of State and one in the office of the Clerk of the Court of Common Pleas for each county. He shall also cause to be prepared such books and blanks as may be necessary for the registration of electors after the first of January, eighteen hundred and ninety-eight, and he shall at any time provide additional books or blanks to supply the places of such as may be defaced, destroyed, mutilated or filled up.

Civ. '12, § 204; Civ. '02, § 178; 1896, XXII, 36, § 6.

(207) § 6. **Opening and Closing of Books Regulated.**—The Supervisors of Registration for the several counties of this State shall in every general election year, or in any year in which any special election is to be held subsequent to the first day of September, hold in each and every town, city, or industrial community containing three hundred inhabitants or more, in their respective counties, at such time as may be designated by the Board of Registration, after two weeks' notice published or posted in such town or city, one meeting, at which shall be registered such qualified electors of the county as may present themselves. The books of registration shall also be opened on the first Monday of each month, at the Courthouse, for the registration of electors entitled to registration under said Constitution, and be kept open for three successive days in each and every month until thirty days before a general election, when they shall be closed until the general election shall have taken place: *Provided*, That such persons as shall become of age during the said thirty days shall be entitled to registration before the closing of books, if other-

wise qualified. After each general election the registration books shall be opened for the registration of electors entitled to registration under the Constitution, on the first Monday in each month, at the Courthouse, until thirty days preceding any general election, when the same shall be closed until said general election shall have taken place. The registration books shall be in like manner closed thirty days before any special election. In those counties of this State having more than fifty thousand inhabitants, as shown by the last preceding United States census, in every general election year, when the registration books are opened in the month of August, they shall be kept open continuously every day except Sunday, at the Courthouse, up to and including the 15th day of August of said year for the registration of qualified electors, and this particular provision shall in no wise affect the registration of electors in the counties having less than fifty thousand inhabitants, and any additional cost incurred by reason of the particular provision in regard to keeping of books open in August in those counties of over fifty thousand inhabitants shall be paid by such respective counties. In Sumter county the Supervisor of Registration may attend at least one day at some public place in each voting precinct in said county, of which due notice shall be given: *Provided*, In Horry county the supervisor of Registration shall attend at least one day at some public place in each township in said county, after giving two weeks' notice of such meeting.

Civ. '12, § 205; Civ. '02, § 179; 1907, XXV, 648; 1901, XXIII, 612; 1896, XXII, 37, § 7. 1921, XXXII, 218.

(208) § 7. **Appeal from Denial of Registration.**—The Boards of Registration to be appointed under Section 3 of this Chapter shall up to and including the first January, 1898, judge of the qualifications of all applicants for registration. Any person denied registration shall have the right of appeal from the decision of the Board of Registration denying him registration to the Court of Common Pleas of the county or any Judge thereof, and thence to the Supreme Court; and on such appeal the hearing shall be *de novo*. Any person denied registration and desiring to appeal must within ten days after the decision of the Board of Registration is made file with the said Board a written notice of such notice of his intention to appeal therefrom. After the expiration of ten days from the filing of such notice of intention to appeal the Board of Registration shall file with the Clerk of the Court of Common Pleas for the county the notice of intention to appeal and any papers in their possession relating to the case, and a report of the case if they deem proper. The Clerk of the Court shall file the same and enter the case on a special docket to be known as Calendar No. 4. If the applicant desires the appeal to be heard by a Judge at chambers he shall give every member of the Board of Registration four days' written notice of the time and place of the hearing. From the decision of the Court of Common Pleas, or any Judge thereof, the appellant or any duly qualified elector of the county may further appeal to the Supreme Court by filing a written notice of his intention to appeal therefrom in the office of the Clerk of the Court of Common Pleas within ten days after such decision is filed, and within said time serving a copy of such notice on every member of the Board of Registration. Thereupon the Clerk of the Court of Common Pleas shall

certify all the papers in the case to the Clerk of the Supreme Court within ten days after the filing of such notice of intention to appeal. The Clerk of the Supreme Court shall place the case on a special docket, and it shall come up for hearing upon the call thereof, under such rules as the Supreme Court may make. If such appeal be filed with the Clerk of the Supreme Court at a time that a session thereof will not be held between the date of filing and an election, at which the appellant will be entitled to vote if registered, the Chief Justice, or, if he is unable to act or disqualified, the senior Associate Justice, shall call an extra term of the court to hear and determine the case.

Civ. '12, § 206; Civ. '02, § 180; 1896, XXII, 38, § 8.

Rawl et al v. McCown et al, State Board of Canvassers, 97 S. C. 1; 81 S. E. 958.

(209) § 8. Registered Electors Before January, 1898, Remain So—Establishment of Right to Vote.—All persons registered on or before January first, eighteen hundred and ninety-eight, shall remain during life qualified electors, unless afterwards disqualified by the provisions of the said Constitution. The certificate of the Clerk of the Court, or of the Secretary of State, that the name of any person appears on the books or records hereinbefore required to be filed in their respective offices by the Boards of Registration shall be sufficient evidence to establish the right of such person to any subsequent registration and the franchise under the limitations imposed in the said Constitution.

Civ. '12, § 207; Civ. '02, § 181; 1896, XXII, 38, § 9.

(210) § 9. Boards to Judge the Legal Qualifications of Applicants After January, 1898—Appeals.—After the first of January, eighteen hundred and ninety-eight, the Board of Registration to be appointed under Section 3 of this Chapter shall judge of the legal qualifications of all applicants for registration. From their decision appeals may be taken to the Court of Common Pleas, or any Judge thereof, and thence to the Supreme Court, and the mode of appeal shall be the same as prescribed in Section 7, herein.

Civ. '12, § 208; Civ. '02, § 182; 1896, XXII, 38, § 10, amd. by 1898, XXII, 704.

Rawl et al v. McCown et al, State Board of Canvassers, 97 S. C. 1; 81 S. E. 958.

(211) § 10. Enrollment of Registered Voters—When Made—Colleton County.—An enrollment of persons, not previously registered, and entitled to registration, shall be made annually by the Board of Registration until the year nineteen hundred and eight, when an enrollment of all electors shall be made, and thereafter there shall be the same annual enrollment of electors and the same general enrollment of electors every tenth year, as above provided: *Provided*, That for the purpose of enrollment and revision of the lists of electors in Colleton County, the Board of Registration of said county shall hold sessions, after two weeks' advertisement, for at least one day, at the following places, to wit: Smoaks, Ashton, Bells, Hendersonville, Cottageville and Adams Run.

Civ. '12, § 209; Civ. '02, § 183; 1908, XXV, 1019; XXII, 38, 705.

(212) § 11. Persons Entitled to Vote at Next Election After Application, Entitled to Be Registered.—In case any person shall not have attained the age of twenty-one years before the closing of the books of

registration preceding any election, and shall attain such age before such election, and shall appear before the Board of Registration, and shall make application under oath to the facts above stated entitling said person to registration, if said person be otherwise duly qualified, the Board of Registration shall register such applicant. Any person not laboring under the disabilities named in the Constitution and whose qualifications as an elector will be completed after the closing of the registration books, but before the next election, shall have the right to apply for and secure a registration certificate at any time within sixty days immediately preceding the closing of such books. From the decision of the Board of Registration a like appeal may be taken as in other cases and in like manner.

Civ. '12, § 210; Civ. '02, § 184; XXII, 38, 705.

(213) § 12. Registered Voters to Be Furnished With Certificates.—Each elector registered as aforesaid shall thereupon be furnished by the Board of Registration if registered before or on the first of January, 1898, or by the Boards of Registration if registered after the first day of January, 1898, with a certificate of registration, which shall contain a statement of his name, age and place of residence as entered in the registration books, and such certificate shall be signed by at least two of the members of the Board of Registration. The certificate shall be of the following form:

STATE OF SOUTH CAROLINA.

Registration Certificate No.

This is to certify that..... is a registered elector of the election district of County of resides in township or parish or ward, is years of age, and is entitled to vote at voting place, in polling precinct, if otherwise qualified.

Registered on the day of, 19.....

.....
.....
.....

Members of the Board of Registration of County.

Civ. '12, § 211; Civ. '02, § 185; XXII, 38, 705.

Wiley v. Sinkler, 179 U. S. 58, 67, 45 L. Ed. 81.

Certificate of Clerk of Court to effect that holder was duly registered prior to January 1, 1898, as prescribed by the Constitution, not a registration certificate under this provision. State v. State Board of Canvassers, 78 S. C. 461, 472, 59 S. E. 115, 13 Am. & Eng. Ann. Cas. 1133. 14 L. R. A., N. S., 850 n

(214) § 13. Transfer—Voters Moving from One County to Another.—In case of the removal of an elector from one county to another he shall notify the Board of Registration of the county to which he has removed, presenting his registration certificate for the county from which he has removed. The said Board of Registration shall take the name of such elector and the number of his certificate, and ascertain in writing from the Board of Registration of the county from which such elector has removed whether he is a duly registered elector of latter county. If found to be duly registered the Board of the county to which such elector has removed shall register such elector, if otherwise qualified, and notify the Board of the county from which he has removed that he has been so registered, whereupon his name shall be stricken from the books of the latter county.

RENEWAL OF CERTIFICATE, HOW AND WHEN MADE.—Every registered elector shall be entitled to a renewal of his certificate without fee or charge, when the same becomes defaced or mutilated, upon the surrender of such defaced or mutilated certificate to the Board of Registration, if he is still a qualified elector under the provisions of said Constitution or if he has been registered under said provisions before the 1st of January, 1898. In case of the loss of or destruction of a certificate, any elector registered on or before the first of January, 1898, shall be entitled to another certificate of registration upon application and proof of destruction or loss on presenting to the Board of Registration a certificate of the Clerk of the Court of Common Pleas of his county, or of the Secretary of State, that his name appears as a registered voter on the books or records filed in their respective offices, if still otherwise qualified. And any elector registered after the first of January, 1898, shall be entitled to another certificate of registration, upon application and proof of such destruction or loss, if his name appears upon the annual or general enrollment made by the Board of Registration, and if otherwise still qualified. Any such elector shall have a like right of appeal from the decision of the Board of Registration as in case of original registration.

Civ. '12, § 212; Civ. '02, § 186; 1896, XXII, 40, § 14; 1896, XXII, 41, § 15.

The Clerk's certificate does not give the holder a right to vote, but only establishes his right to registration. *State v. Canvassers*, 78 S. C. 461, 59 S. E. 145, 14 L. R. A., N. S., 850 n., 13 Am. & Eng. Ann. Cas. 1133. Persons registered prior to 1898 may vote, though names not on books. *State v. Canvassers*, 79 S. C. 246, 249, 60 S. E. 699. Irregularities in issuing certificates not necessarily fatal to election. *Ib.*

(215) § 14. Board to Revise List of Electors—Right of Appeal.—The Board of Registration shall revise the list of registered electors at least ten days preceding each election, and shall erase therefrom the names of all registered electors who may have become disqualified, or who, upon satisfactory evidence, may appear to have died, or removed from their respective counties, or who may have been illegally or fraudulently registered: *Provided*, That any one who may deem himself injured by such an act may have the same right of appeal to the Court of Common Pleas or any Judge thereof, as hereinbefore provided for persons who have been denied registration.

Civ. '12, § 213; Civ. '02, § 187; 1896, XXII, 41, § 16.

Rawl et al v. McCown et al, State Board of Canvassers, 97 S. C. 1; 81 S. E. 958.

(216) § 15. Clerk of Court of General Sessions to Report Persons Convicted of Disqualifying Crimes.—The Clerk of the Court of General Sessions and Common Pleas for each county shall on or before the fifteenth day of October, 1902, and biennially thereafter on or before the same day of the same month, make out and report to the Boards of Registration for their respective counties a complete list of all persons convicted prior to the first day of October, 1896, and during every two years thereafter of the following offenses, to wit: Burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish,

miscegenation, and larceny, or crimes against the election laws. Such report must be accompanied by the certificate of the Clerk that the report is correct as appears from the records of his office.

Civ. '12, § 214; Civ. '02, § 188; 1896, XXII, 42, § 17.

(217) § 16. Magistrates to Report Persons Convicted of Disqualifying Crimes.—Every Magistrate in the State shall on or before the fifteenth day of October, 1902, and biennially thereafter on or before the same day of the same month, make out under his hand and seal, and report to the Board of Registration of his county, a complete list of all the persons convicted before him of any of the offenses mentioned in the preceding Section prior to the first day of October, 1902, and during every two years thereafter, or before any of his predecessors, whose trial docket is in his possession during the two preceding years, or the period following his last previous report, or the last previous report by his predecessor. Any Magistrate or Clerk of the Court who shall fail to make or neglect to make such report as required by this and the preceding Section shall forfeit and pay to the county in which he holds his office the sum of fifty dollars for each and every such failure or neglect to make such report.

Civ. '12, § 215; Civ. '02, § 189; 1896, XXII, 42, § 18.

(218) § 17. Reports of Conviction Prima Facie Evidence—Denial of Registration and Vote.—The reports provided for in the two preceding Sections shall be received by the Board of Registration as *prima facie* evidence of the facts stated therein, and the said Board shall immediately erase the names of all such persons from the registration books or records in their county, and such person shall not be thereafter allowed to register or to vote unless such person shall present to the Board a pardon from the Governor or shall prove that they were never convicted of the offenses stated in such certificate, in which cases their names shall thereupon be restored to the registration books or records as completely and effectually as if it had never been stricken therefrom. The said Boards are required whenever the names of any electors are thus stricken from the books of registration to furnish a list of such names to the Clerk of Court and the Secretary of State, and they shall erase from the record of registered electors on file in their respective offices the names of such electors.

Civ. '12, § 216; Civ. '02, § 190; 1896, XXII, 43, § 19.

(219) § 18. Places for Voting—Removal from One Voting Place to Another.—Every elector shall vote at the polling place in the polling precinct at which and in which his registration certificate entitled him to vote. When a new voting precinct is established by law it shall be the duty of the Board of Registration to transfer from the books of registration the names of such electors registered to vote in other voting precincts as should hereunder register and vote in the new voting precinct, and to issue to such electors as may apply new registration certificates for such new polling precinct, and such electors shall thereafter vote in the new polling precinct to which they have been transferred. In case of the removal of an elector from one precinct to another in the same county, such elector shall notify the Board of Registration of such county, and surrender his certificate.

And the said Board shall note the fact upon the proper book and give to the elector a certificate for registration for the precinct into which he has removed. When one voting place has been changed to another in the same township or polling precinct, or where the name of the voting place has been changed since the last general election, the registration of electors for the former voting place shall be valid and effectual for the new voting place. Any registered elector who may reside nearer to a voting place in his polling precinct than the one at which he is entitled to vote, and desires to vote at such nearer voting place, shall, upon the surrender of his certificate of registration, be entitled to a new certificate entitling him to vote at such nearer voting place.

Civ. '12, § 217; Civ. '02, § 191; 1896, XXII, 43, § 20.

(220) § 19. Books to Be Deposited With Clerk of Court.—The Board of Registration shall deposit the books and other records of registration for safe-keeping in the office of the Clerk of the Court of Common Pleas for their county, who shall keep the same with the other records in said office.

REGISTRATION BOOKS AND RECORDS PUBLIC—HOW.—The registration books and records shall be public records open to the inspection of any citizen at all times, and shall not be removed from the office of the Clerk of the Court by any person except the Board of Registration who are authorized to take and keep the same as long as may be necessary to enable them to perform the duties herein imposed on them: *Provided*, That the books and records of registration shall not be kept anywhere else than in the office of the Clerk of the Court of Common Pleas or in the office of the Board of Registration except when used by the Board in the several polling precincts as required by this Chapter.

Civ. '12, § 218; Civ. '02, § 192; 1896, XXII, 44, § 21.

(221) § 20. Registration Books Furnished Each Precinct—Right to Vote—Books Given to Managers.—Immediately preceding each general election or any special election, the Board of Registration shall furnish to the Commissioners of Election for their county two registration books for each polling precinct in their county, containing in each the names of all electors entitled to vote at such precinct; and no elector shall vote in any polling precinct unless his name appears on the registration books for that precinct: *Provided*, That in case the name of any registered elector does not appear, or incorrectly appears, on the registration books of his polling precinct, he shall, nevertheless, be entitled to vote upon the production and presentation to the Managers of Election of such precinct (in addition to his registration certificate) of a certificate of the Clerk of Court of Common Pleas that his name is enrolled in the registration book or record of his county on file in said Clerk's office, or a certificate of the Secretary of State that his name is enrolled in the registration book or record of his county on file in the office of the Secretary of State, or prior to the filing of such books or records in or before the first day of February, 1898, in the office of the Clerk and Secretary of State a certificate of a member of the Board of Registration of his county that his name is enrolled on the county registra-

tion book or records; and it shall be the duty of the Clerk or the Secretary of State, or a member of the Board of Registration, to furnish such certificate without cost or charge upon demand of any such elector whose name appears upon the registration books or records of his county on file in the office of the Clerk of Court or in the office of Secretary of State. The Commissioners of Election shall turn over said books to the Managers of Election of each polling precinct, who shall be responsible for the care and custody of said books and the return thereof to the Commissioners within three days after such election. The Commissioners of Election shall return such books to the Board of Registration within twenty days after such election.

Civ. '12, § 219; Civ. '02, § 193; 1896, XXII, 44, § 22.

Clerk's certificate as to registration of voter. State v. State Board of Canvassers. 79 S. C. 246, 60 S. E. 699.

(222) § 21. Who Entitled to Vote in Municipal Elections.—Every citizen of this State and of the United States of the age of twenty-one years and upwards, having all the qualifications mentioned in Section 1 of this Chapter, and who has resided within the corporate limits of any incorporated city or town in this State for four months previous to any municipal election, and has paid all taxes due and collectible for the preceding fiscal year, and who has been registered as hereinafter required, shall be entitled to vote at all municipal elections of his city or town.

Civ. '12, § 220; Civ. '02, § 194; XXII, 44, § 23.

Logan v. Stanley et al. 95 S. C. 22; 78 S. E. 524.

(223) § 22. Registration for Municipal Elections.—Ninety days before the holding of a regular election in any incorporated city or town in this State the Mayor or Intendant thereof shall appoint one discreet individual, who is a qualified elector of such municipality, as Supervisor of Registration for such city or town, who shall hold office for the term of two years and until his successor has been appointed and qualified, and who shall receive as compensation for his services one dollar per day for each day actually engaged in the discharge of his duties, to be paid by the town or city, whose duty it shall be to register all qualified electors within the limit of the incorporated city or town. The names of all qualified electors of such municipality shall be entered in a book of registration, which at least one week before the election, and immediately after the holding of the election, shall be filed in the office of the Clerk or Recorder of such city or town, and shall be a public record open to the inspection of any citizen at all times: *Provided*, That twenty days prior to any special election to be held as aforesaid the books of registration shall be opened for the registration of the names of qualified electors therein, and shall remain open for a period of ten days: *Provided*, That in cities of over fifty thousand inhabitants there shall be appointed three Supervisors, who shall represent different political parties or factions of parties. Immediately preceding any municipal election to be held in any incorporated city or town in this State, the Supervisor or Supervisors of Registration (as the case may be) shall prepare for the use of the Managers of Election of each polling precinct in

such city or town a registration book or books for each polling precinct in such city or town, containing the names of all electors entitled to vote in such polling precinct at said election.

Civ. '12, § 221; Civ. '02, § 195; XXII, 44, § 24; 1908, XXV, 1026.

Logan v. Stanley et al, 95 S. C. 22; 78 S. E. 524; *State ex rel. Culp et al v. City Council of Union*.

In re holding election for Alderman in Ward 1, in City of Union, 95 S. C. 131; 78 S. E. 738

(224) § 23. Books, Etc., to Be Furnished.—It shall be the duty of the Mayor or Intendant of incorporated cities or towns to cause to be prepared and furnished suitable books of registration and all stationery and blanks necessary for the registration of electors.

Civ. '12, § 222; Civ. '02, § 196.

(225) § 24. Qualifications for Registration—How Determined—Appeals.—The Supervisor or Supervisors of Registration (as the case may be) shall judge of the qualifications of all applicants for registration. The production of a certificate of registration from the Board or Supervisor of Registration of the county entitling the applicant to vote in a polling precinct within the incorporated city or town in which the applicant desires to vote shall be a condition prerequisite to the applicant's obtaining a certificate of registration for municipal elections; and the production of such certificate and proof of his residence within the limits of the municipality for four months preceding such election and the payment of all taxes assessed against him due and collectible for the previous fiscal year shall entitle the applicant to registration. From the decision of the municipal Supervisor any applicant may appeal to the Court of Common Pleas, or any Judge thereof, and from thence to the Supreme Court, and the mode of appeal shall be the same as provided in Section 7 of this Chapter.

Civ. '12, § 223; Civ. '02, § 197.

(226) § 25. Place of Voting in Incorporated Cities and Towns With Several Precincts.—In incorporated cities or towns in which there are more than one polling precinct, every elector shall vote at the polling precinct in which his registration certificate entitles him to vote.

Civ. '12, § 224; Civ. '02, § 198.

(227) § 26. Elector to Have Certificate—Form.—Each elector registered by the municipal Supervisor or Supervisors of Registration (as the case may be) shall be furnished by such Supervisor or Supervisors (as the case may be) with a certificate, which shall be of the following form:

Civ. '12, § 225; Civ. '02, § 199.

STATE OF SOUTH CAROLINA, CITY OR TOWN OF.....

REGISTRATION CERTIFICATE FOR MUNICIPAL ELECTION.

NUMBER, WARD

This is to certify that is a qualified elector of the city or town of , resides in Ward , is years of age, and is

entitled to vote in the municipal election on the day of,
1....

Registered on the day of, 1....

.....

“Supervisor of Registration.”

.....

or

.....

“Supervisor of Registration.”

(228) § 27. **Managers of Election to Be Furnished With Registration Books.**—Before any municipal election to be held in any incorporated city or town in this State after the general election of 1896, the municipal Supervisor or Supervisors of Registration (as the case may be) shall furnish the Managers of Elections with the book or books of registration for the city or town or precinct thereof, prepared by him or them for the use of the Managers of Election as prescribed in Section 22, which they shall return to the Supervisor or Supervisors (as the case may be) within three days after the election; and no elector shall be allowed to vote in any municipal election whose name is not registered as herein provided, or who does not produce a municipal registration certificate at the polls: *Provided*, That in case the name of any registered elector does not appear, or incorrectly appears, on the registration books of his polling precinct, he shall nevertheless be entitled to vote, upon the production and presentation to the Managers of Election of such precinct (in addition to his municipal registration certificate) a certificate of the Clerk or Recorder of such city or town that his name is enrolled in the registration books of his city or town, on file in the office of said Clerk or Recorder, and it shall be the duty of said Clerk or Recorder to furnish such certificate without cost or charge upon demand of any such elector whose name appears on the registration book of his city or town on file in the office of said Clerk or Recorder.

Civ. '12, § 226; Civ. '02, § 200.

(229) § 28. **Oath Required of Applicant.**—Every applicant for registration, including municipal registration, shall first take the following oath, to be administered to him by the Board or the Supervisor, or Supervisors of Registration (as the case may be): “I do solemnly swear (or affirm) that I am a citizen of this State and of the United States; that I am twenty-one years of age or more; that I have resided in this State for two years, and in this county for one year, and in the polling precinct in which I apply to be registered and in which I will offer to vote if registered for four months; and that I have not been convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegenation, larceny, or crimes against the election laws.”

Civ. '12, § 227; Civ. '02, § 201; 1896, XXII, 40, § 30.

(230) § 29. **Each Township a Polling Precinct.**—Each township as now or hereafter laid out and defined in the several counties of this State, and in those counties where there are no such townships, the parish as formerly known and defined, is declared a polling precinct. In all cities and towns containing five thousand inhabitants or more, where the same is divided into wards, each ward shall be a polling precinct; and in the City of Charleston the polling precincts shall be the same as the voting precincts now established in the several wards of said city by law, and in the County of Richland that portion of Columbia Township outside of the corporate limits of the City of Columbia (as the said limits are now or may hereafter be by law established) shall constitute a separate polling precinct. The voting places within these polling precincts shall be the same as now or hereafter established by law: *Provided*, When there are more than one voting place in the polling precincts the electors for that precinct can vote at either polling place, to be designated on his certificate of registration by Board of Registration or Supervisor of Registration.

Civ. '12, § 228; Civ. '02, § 202.

CHAPTER IX.

Location and Names of Voting Precincts.

(231) § 1. **Names and Location of Voting Precincts.**—At all general elections held in this State, the same shall be conducted at the voting precincts which are hereby fixed by law, in the various counties, cities and towns of this State, the number, location and names of which are, and shall be, as hereinafter designated, to wit:

Civ. '12, § 229; Civ. '02, § 203.

ABBEVILLE.—In the County of Abbeville, there shall be voting precincts as follows: Abbeville Court House, Antreville, Due West, Donaldsville, Lowndesville, Magnolia, Central School House, in Long Cane Township, Clotworthy's Cross Roads, Bryant's Cross Roads, Keowee, Cheatam's Mill, Little River School House, in Due West Township, Saluda, near Broad Mouth School House, and Hampton, in Due West Township, Abbeville Cotton Mill, Williams Gin House, Gilliams Gin House.

oo 1900, XXIII, 368; 1904, XXIV, 507; 1910, XXVI, 770; 1912, XXVII, 591; 1913, XXVIII, 77; 1916, XXIX, 712; 1917, XXX, 197.

AIKEN.—In the County of Aiken there shall be the following voting precincts: Aiken Court House, Oakwood, Bath Mills, Kaolin, Banks' Mill, Creed's Store, Eureka, Fountain Academy, Graniteville, North Augusta, Kneece's Mill, Langley, Talatha Postoffice, Bloomingdale, Montmorenci, Shaw's, Fork, Oak Grove School House, Page & Hankinson's Store, Perry, Salleys, Seivern, Silverton, Sunnyside, Wagener, Windsor, Vacluse, Ellenton, White Pond, Kitching's Mill, Lybrand and Warrenville, Monetta Precinct, Clear Water, Matthew Ready Mill.

1900, XXIII, 368; 1908, XXX, 1059; 1914, XXVIII, 543; 1915, XXIX, 232; 1920, XXXI, 85

ALLENDALE.—In the County of Allendale there shall be the following voting precincts: Allendale, Baldock, Bull Pond Club House, in Bull Pond Township, Sycamore, Ulmers, Millett, Fairfax, Cherry Hill School House, in Wilson Township, and Jenny, in Sycamore Township.

1919, XXXI, 185.

ANDERSON.—In the County of Anderson there shall be voting places as follows: Anderson Court House, Belton, Craytonville, Pendleton, Centerville, Sandy Springs, Five Forks, Hopewell Springs, Williamston, Honea Path, Milfords, Cedar Wreath, Moffettsville, Williford's Store, Smith's Mill, Starr, Tugaloo Academy, Iva, Piedmont Mills, Holland's Store, Pelzer, Flat Rock, Neals Creek Church, Cedar Grove, Townville, Mount Tabor, Orr Mills, Gluck Mills, Pelzer Mill No. 4, Piercetown, Toxaway Mill, Anderson Cotton Mills, Brogon Mill, Concrete, Belton Mills, Williamston Mills, Old Friendship School House, Whitefield Church, Grove School House, White Plains, Toney Creek, Three and Twenty, Walter McElmoy, Campbell's Store and Wright's Store, Mountain View, North Anderson, Mountain Creek Church, Melton School House and Shurley's Store, High Point School House.

1900, XXIII, 368; 1910, XXVI, 770; 1912, XXVII, 593; 1914, XXVIII, 543; 1915 XXIX, 232; 1916, XXIX, 712.

BAMBERG.—In the County of Bamberg there shall be voting precincts as follows: Bamberg, Denmark, Ola, Midway, Ehrhardt, Kearn's Mill, Farrell's Store, Lee's, Govan, Colston, and Camp Branch.

1900, XXIII, 368; 1904, XXIV, 507; 1914, XXVIII, 543; 1920, XXXI, 878, 920.

BARNWELL.—In the County of Barnwell there shall be the following voting places: Barnwell, Blackville, Snelling, Robbins, Kline, Dunbarton, Williston, Elko, Hercules Creek School House, in Fairfax, Myer's Mill, Pleasant Hill School House.

1900, XXII, 368; 1905, XXIV, 946; 1919, XXXI, 185; 1920, XXX, 878, 920.

BEAUFORT.—In the County of Beaufort there shall be the following voting places: Beaufort No. 1, at or near Beaufort Court House, Beaufort No. 2, at or near the Town Hall, Port Royal, Bluffton, Barrel Landing, Lady's Island, Cherry Hill, Brick Church, Paris Island and Benjie Point, Yemassee.

1900, XXIII, 369; 1910, XXVI, 766; 1912, XVII, 594; 1914, XXVIII, 543.

BERKELEY.—In the County of Berkeley there shall be voting places as follows: In the parishes of St. Thomas and St. Dennis, Cainhoy and Bate's Still; in the parish of St. James, Santee, Honey Hill; in the parish of St. Stephens, St. Stephens, Gumville, Pineville and Betheria; in the parish of St. John's, Berkeley, Eutawville, Calamus Pond, Pinopolis, Cross Graded School and in the parish of St. James, Goose Creek, Holly Hill, Hilton's Cross Roads, Cooper's Store and Carns' Cross Roads, Macedonia, New Hope, Monek's Corner.

1900, XXVIII, 369; 1909, XXVI, 68; 1914, XXVIII, 543; 1916, XXIX, 712.

CALHOUN.—In the County of Calhoun there shall be voting precincts as follows: Cameron, Fall Branch, Fort Motte, Lone Star, St. Matthews, Red Store, Murph's Mill, Center Hill, and Bethel Precinct.

1910, XXVI, 767; 1914, XXVIII, 543.

CHARLESTON.—In the County of Charleston, outside the corporate limits of the City of Charleston, there shall be voting places as follows: Public School House grounds on James Island, Moultrieville, McClellanville, at or near Owendaw Bridge, in the parish of St. James Santee; Mount Pleasant, in Christ Church Parish; Brick Church, in St. Andrew's Parish; Cedar Springs, on John's Island; Enterprise Postoffice, on Wadmalaw Island; Camp Ground, on Edisto Island; and on Meeting Street Road outside of the corporate limits of the City of Charleston, and at or near Five Mile Curve, on Meeting Street Road: *Provided*, That nothing herein contained shall be construed to vary or affect the location of the voting precincts within the limits of the City of Charleston as now established by law. The registration and voting precincts in the County of Charleston within the limits of the City of Charleston shall hereafter conform to the wards in which the City of Charleston is now by law divided, and registration and voting precincts are hereby established therein, as follows: The first precinct of Ward One shall embrace all that portion of said Ward south of Broad Street, east of Church Street to Water Street, south of Water Street to Meeting Street, east of Meeting Street to South Bay Street. The poll shall be held at or near the corner of Church and Water streets. The second precinct of Ward One shall embrace all that portion of said Ward south of Broad Street, east of King Street, west of Church Street or Water Street to Meeting Street, west of Meeting Street to South Bay Street. The poll shall be held at or near the corner of Meeting and Tradd streets. The first precinct of Ward Two shall embrace all that portion of said Ward south of Broad Street, west of King Street to South Street, including south side of said street to Ashley River, east of Legare Street to Tradd Street, North of Tradd to Logan Street, east of Logan to Broad Street. The poll shall be held at or near the corner of King and Tradd streets. The second precinct of Ward Two shall embrace all that portion of said Ward south of Broad Street, west of Logan Street to Tradd Street, south of Tradd to Legare Street, west of Legare Street to Ashley River. The poll shall be held at or near the corner of New and Broad streets. The first precinct of Ward Three shall embrace all that portion of said Ward north of Broad Street, south of Hasel Street, east of Church Street and Maiden Lane. The poll shall be held at or near the corner of State and Cumberland streets. The second precinct of Ward Three shall embrace all that portion of said Ward north of Broad Street, south of Hasel Street, east of Church Street and Maiden Lane and east of King Street. The poll shall be held at Market Hall. The first precinct of Ward Four shall embrace all that portion of said Ward north of Broad Street, south of Wentworth Street, west of King Street and east of Mazyck and Coming streets. The poll shall be held at or near the corner of Archdale and Beaufain streets. The second precinct of Ward Four shall embrace all that portion of said Ward north of Broad Street, south of Wentworth Street, west of Mazyck and Coming streets.

The poll shall be held at or near the corner of Smith and Beauvain streets. The first precinct of Ward Five shall embrace all that portion of said Ward north of Hasel Street, south of Calhoun Street and east of Anson Street. The poll shall be held at or near the corner of Laurens and Middle streets. The second precinct of Ward Five shall embrace all that portion of said Ward north of Hasel Street, south of Calhoun Street, west of Anson and east of King Street. The poll shall be held at or near the corner of Meeting and Society streets. The first precinct of Ward Six shall embrace all that portion of said Ward north of Wentworth Street, south of Calhoun Street, west of King Street and east of Pitt Street. The poll shall be held at or near the corner of George and College streets. The second precinct of Ward Six shall embrace all that portion of said Ward north of Wentworth Street, south of Calhoun Street and west of Pitt Street. The poll shall be held at or near the corner of Bull and Rutledge streets. The first precinct of Ward Seven shall embrace all that portion of said Ward north of Calhoun Street, south of Mary Street and east of Elizabeth Street. The poll shall be held at or near the corner of Alexander and Charlotte streets. The second precinct of Ward Seven shall embrace all that portion of said Ward north of Calhoun Street, south of Mary Street, west of Elizabeth Street and east of King Street. The poll shall be held at or near the corner of Hutson and Meeting streets. The first precinct of Ward Eight shall embrace all that portion of said Ward north of Calhoun Street, south of Radcliffe Street, west of King Street and east of Pitt and Thomas streets. The poll shall be held at or near the corner of Vanderhorst and Coming streets. The second precinct of Ward Eight shall embrace all that portion of said Ward north of Calhoun Street, south of Radcliffe and Bee streets and west of Pitt and Thomas streets. The poll shall be held at or near the corner of Rutledge and Vanderhorst streets. The first precinct of Ward Nine shall embrace all that portion of said Ward north of Mary Street, south of Columbus Street and east of Nassau and Hanover streets. The poll shall be held at or near the corner of Amhurst and America streets. The second precinct of Ward Nine shall embrace all that portion of said Ward north of Columbus Street, east of Hanover Street to the city boundary. The poll shall be held at or near the corner of America and Cooper streets. The first precinct of Ward Ten shall embrace all that portion of said Ward north of Mary Street, south of Columbus Street, west of Nassau Street and east of King Street. The poll shall be held at or near the corner of Wolfe and Meeting streets. The second precinct of Ward Ten shall embrace all that portion of said Ward north of Columbus Street, east of King Street and west of Hanover Street to the city boundary. The poll shall be held at or near the corner of Line and Meeting streets. The first precinct of Ward Eleven shall embrace all that portion of said Ward north of Radcliffe Street, south of Spring Street, west of King Street and east of Rutledge Avenue. The poll shall be held at or near the corner of Morris and Coming streets. The second precinct of Ward Eleven shall embrace all that portion of said Ward north of Spring Street, west of King Street and east of Rutledge Avenue to the city boundary. The poll shall be held at or near the corner of Line and Coming streets. The first precinct of Ward Twelve shall embrace all that portion of said Ward north of Bee Street, west of

Rutledge Avenue, east of President Street and its line of prolongation to the city boundary. The poll shall be held at or near the corner of Ashley and Spring streets. The second precinct of Ward Twelve shall embrace all that portion of said Ward north of Bee Street, west of President Street, and its line of prolongation to the city boundary. The poll shall be held at or near the corner of Spring and Norman streets, Ravenel Precinct, in Charleston County.

1896, XXII, 50; 1890, XX, 713; 1912, XXVII, 595; 1914, XXVIII, 543.

CHEROKEE.—In the County of Cherokee there shall be voting places as follows: At Grassy Pond, Maud, Martin's Store, at Battle Ground, White Plains, Ravenna, Corinth Church, Draytonsville, Timber Ridge, Littlejohn's, Sarratt, Wilkinsville, King's Creek, Cherokee Falls, Blacksburg, Buffalo, Macedonia, Antioch, Butler, at Butler's School House, Wood, Thickety, Limestone, at Limestone Mills, Gaucher, at C. E. Smith's Store, Maud, at Ashworth School House, Island School House Precinct, and one at Metcalf's Store, to be known as Metcalf, and there shall be four voting places in the town of Gaffney, as follows: at Woodman Hall, in Ward One, to be known as Gaffney No. 1; one at the National Bank Old Building, to be known as Gaffney No. 2; and one at W. L. Spake's Store, in Ward Five, to be known as Gaffney No. 3; and one at Opera House, to be known as Gaffney No. 4.

1900, XXIII, 369; 1910, XXVI, 767; 1914, XXVIII, 543; 1916, XXIX, 712; 1920, XXXI, 920.

CHESTER.—In the County of Chester there shall be voting places as follows: Chester Court House, Lowryville, at J. Wesley Carter's, Lando, Fishing Creek Church, Rodman, on S. A. L. Railroad, Rossville, Halsellville, Wilksburg, Lansford, Cornwell's, Richburg, Edgemore, Baton Rouge, Ferguson's Store, Fort Lawn, White's Store, Leeds, Great Falls, and Hazelwood.

1900, XXIII, 369; 1910, XXVI, 767; 1916, XXIX, 712; 1917, XXX, 197.

CHESTERFIELD.—In Chesterfield County there shall be voting places as follows: Chesterfield Court House, Cheraw, Marburg, Brooks' Mill, Wexford, Mount Crogan Cross Roads, Ruby, Snow Hill, Jefferson, Catarrh, Dudley, Pageland, McBee, Middendorf, Cat Pond School House, Bethel, Douglass Mill, Grant's Mill, Patric, Odom's Mill, Windzo, Plains, and Asagelus.

1900, XXIII, 369; 1910, XXVI, 771; 1912, XXVII, 593.

CLARENDON.—In Clarendon County there shall be voting places as follows: Hodges Corner, Packsville, Odom, Alcolu, Barron's Mill, New Zion, Turbeville, McFadden's Store, Forreston, Wilson Duffie's Store, Jordon, Manning, Davis Cross Roads, St. Paul's, Summerton, Panola, Davis' Station.

1900, XXIII, 369; 1906, XXV, 128; 1917, XXX, 197.

COLLETON.—In Colleton County there shall be voting places as follows: Odom, Jacksonboro, Greenpond, Cottageville, Maple Cane, Horse Pen, Hendersonville, Snyder's Cross Roads, Rice Patch, Belle's Cross Roads,

Smoak's Cross Roads, Doctor's Creek, Ashton, Lodge, Petit's Store, People's Club, Williams, Berea's Church, Walterboro, Hudson's Mill, Ruffin, Ritters, Sidney and Tiger Creek, White Hall, Colleton, Round, Wolfe Creek, Benton's Mill, Pine Grove, and Wiggins.

1900, XXIII, 369; 1910, XXVI, 768; 1912, XXVII, 593; 1914, XXVIII, 543; 1915, XXIX, 232; 1916, XXIX, 712; 1918, XXX, 838; 1919, XXXI, 185.

DARLINGTON.—In the County of Darlington there shall be voting places as follows: Darlington Court House No. 1, Darlington Cotton Mill No. 2, Mechanicsville, Society Hill, Leavensworth, Hartsville, Lydia, Lamar, Early Cross Roads, Bethlehem Church, in Antioch Township, McColl's Branch, in Philadelphia Township, Palmetto, Lumber and Clyde, at Clyde, Highhill School House.

1896, XXI, 51; 1905, XXIV, 946; 1918, XXX, 838.

DILLON.—In the County of Dillon there shall be voting places as follows: Bermuda, Fore's Cross Roads, Floydale, Centerville, Dillon, Hamer, Gaddy's Mill, Page's Mill, Latta, Little Rock, Fork, Judson, Mt. Calvary, Kemper, Gin House and Maple Cotton Mill, Pleasant Hill, Fowler's School House, Harlee.

1910, XXVI, 767; 1911, XXVII, 117; 1914, XXVIII, 543; 1915, XXIX, 232; 1916, XXIX, 712; 1918, XXX, 838.

DORCHESTER.—In the County of Dorchester there shall be voting places as follows: Cattle Creek School House, in Koger Township, Reevesville, St. George, Grover, Indian Fields, Harleyville, Ross, Pregnall's, Beech Hill, Delamars, Knightsville, Ridgeville, and in the town of Summerville there shall be two (2) voting precincts, No. 1, at the Town Hall, near the depot, and No. 2 shall be held at the Old Town Hall.

1900, XXIII, 370; 1910, XXVI, 768.

EDGEFIELD.—In the County of Edgefield there shall be voting places as follows: Timmerman, Johnston, Trenton, Edgefield C. H., No. 1, for Pickens Township, Edgefield C. H., No. 2, for Wise Township, Meeting Street, Pleasant Lane, Red Hill, Cheatham's Store, Mathis, Meriwether Hall, Ropers and Bacon School House, near J. O. Seigler's residence.

1900, XXIII, 370; 1903, XXIV, 8; 1911, XXVII, 117; 1912, XXVIII, 595; 1916, XXIX, 712; 1918, XXX, 838.

FAIRFIELD.—In the County of Fairfield there shall be voting places as follows: Albion, at Newhope School House, Centerville School House, Blythewood, Feasterville, Mitford, at Keistler's Store, Horeb, at Hau's Store, Monticello, Ridgeway, Winnsboro, Woodward's, Longtown, at Jenkins' Store, Bear Creek, Cooper School House, Duke School House, Greenbrier, Jackson's Creek School House, Jenkinsville, Fairfield Cotton Mill.

1900, XXIII, 370; 1910, XXVI, 768; 1920, XXXI, 878.

FLORENCE.—In the County of Florence there shall be voting places as follows: In the City of Florence there shall be two, No. 1 and No. 2, Ebenezer, Timmons ville, Cartersville, Jones Cross Roads, Langston School House, Mars Bluff, Evergreen, Pamplico, Cowards, Olanto, Touray, Hannah,

Savage, Salem, Oak Grove, Back Swamp, at McCall's Store, Claussen and Friendfield, at Brooks Cross Roads, McAllister's Mill, Lake City, Scranton, Prospect Church.

1900, XXIII, 370; 1910, XXVI, 768; 1912, XXVII, 594; 1914, XXVIII, 543; 1918, XXX, 838.

GEORGETOWN.—In Georgetown County there shall be voting places as follows: Georgetown No. 1, at or near Georgetown Court House; Georgetown No. 2, at or near store of the Southern Mercantile Company; Sampit, Carver's Bay, Choppee, at or near Munnerlyn's Store; Black River, Potato Ferry, Greers, at or near Young's Cross Roads; Murrell's Inlet, Waverly Mills, Santee, Pennyroyal Bridge, Cedar Creek, Bethel Crossing, Rosemary, Snow Mill and Birdfield, Munnerlyn's Bay Store and Brinkley Bros'. Store.

1900, XXIII, 370; 1907, XXV, 506; 1915, XXIX, 232.

GREENVILLE.—In the County of Greenville there shall be voting places as follows: Six in the City of Greenville, to be placed by the Commissioners of Election, one to be in each ward of the city, to bear the same number as the ward in which it is located; Reedy River Mills, West Gantt School House, Reedy Fork, K. S. Chandler's, Fork Shoals, J. E. Knight's, Ashmore, Peden's Old Store, Jonesville Academy, Batesville, Mission School House, Taylor's, Double Springs Church, T. J. Mitchell's, S. W. Barton's (Glassy Mt. Township), Merrittsville School House, Jennings' Mill, Montague, Piedmont Factor, Gowansville, Marietta, West Dunklin New School House, Locust, Tigerville, Reed's School House; one box for Sampson and Poe Mills to be located at Sampson; one box for Brandon, Bessie, Reese's Store, Fountain Inn, Greer, Simpsonville, Lima School House, Monaghan Mills, A. W. McDavid's Store, Berea School House, James Wilson's Store (Highland), East View, Hellam's Crossing and Mountain Hill, Traveler's Rest, Mills Mill, Judson Mill, Duneau Mills, Sans Souci, Greer Manufacturing Co., Woodside Mills, at Y. M. C. A., Armstrong School House, Brandon Mill, Douthit School House, Gilreaths, Reden's Store precinct changed to Fairview, at Fairview Stock Show Grounds, Bradley, at J. T. Ashmore's Store, Stewart Academy, Hillside, at Thos. T. Tolleson's Store, Mauldin, Oak Valley School House, Ebenezer Welcome School House, Lebanon, Dry Oak, Old Hundred, Ware's, at Ware's Store.

1900, XXIII, 370; 1910, XXVI, 768; 1913, XXVIII, 77; 1914, XXVIII, 543; 1915, XXIX, 232; 1916, XXIX, 712; 1917, XXX, 197; 1918, XXX, 838; 1919, XXXI, 185; 1920, XXXI, 878.

GREENWOOD.—In Greenwood County there shall be voting places as follows: Greenwood, Coronaca, Cokesbury, Hodges, Riley, Verdery, Callison, Ninety-Six, Bradleys, Phenix, Kinards School House, Kirksey's, Paynes Cross Roads, Epworth, Algary, Dyson and Ware Shoals.

1900, XXXIII, 371; 1904, XXIV, 509; 1915, XXIX, 232; 1916, XXIX, 712; 1917, XXX, 197; 1918, XXX, 838.

HAMPTON.—In the County of Hampton there shall be the following voting places: Brunson, Hampton Court House, Varnville, Early Branch, Brighton, Estill, Luray, Bonnett, Stafford, Scotia, Gifford, Seminole, Horse Gall, River Mill, Hopewell, Crockettville, Cummings, and Black Creek.

1900, XXXIII, 371; 1910, 771; 1918, XXX, 838; 1920, XXX, 878.

HORRY.—In Horry County there shall be voting places as follows: Adrian, Bayboro, Blanche, Cedar Grove, Conway, Cool Springs, Daisy, Dog Bluff, Dodwood, Ebenezer, Farmer, Floyd, Gallivant's Ferry, Grahamville, Green Sea, Greenwood, Guerley, Hammond, Homewood, Little River, Loris, Marlow, Port Harrelson, Sanford, Shell, Spring Branch, Socastee, Taylorsville, Vardville, Wampee, Withers, Jordanville, Graham's Cross Roads, Aynor, Horry, Knotty Branch, and Jernigan's Cross Road Precinct.

1900, XXIII, 371; 1910, XXVI, 769; 1912, XXVII, 592; 1914, XXVIII, 543; 1915, XXIX, 232; 1916, XXIX, 712; 1918, XXX, 838; 1920, XXXI, 878, 920.

JASPER.—Grahamville, Gillisonville, Grays, Hardeville, Ridgeland, and Okatie.

1915, XXIX, 232; 1917, XXX, 197.

KERSHAW.—In Kershaw County there shall be voting places as follows: Camden Opera House, Rateliff's Mill, Cassatt, Kershaw, Rabon's Cross Roads, Blaney, Lugoff, Bethune, Westville, Buffalo School House, Stoneboro, Liberty Hill, Mt. Zion Church, Stockton Place, Kirkley's Store, Raley's Mill, Shaylor's Hill, Stokes' School House, Hermitage Cotton Mill, Pine Creek Cotton Mill, Cleveland's School House, Cantey, Three C's, Beaver Dam School House, Shamrock.

1900, XXIII, 371; 1907, XXX, 506; 1908, XXV, 106; 1910, XXVI, 769; 1912, XXVII, 595; 1915, XXIX, 232; 1916, XXIX, 712; 1917, XXX, 197.

LANCASTER.—In the County of Lancaster there shall be voting places as follows: Lancaster Court House, Lancaster Cotton Mills, Antioch, Pleasant Valley, Pine Grove School House, Lindsay, Thornwell, Tradesville, Jacksonham, Union, at Union School House, Taxahaw's, Welsh's, Carmel, Heath Springs, Flat Creek, at Flat Creek Church; Blair, Primus, Dwight, Kershaw, Van Wyck, Elgin, at Elgin Station; Crenshaw, at Crenshaw School House, in Cedar Creek Township; Haile Gold Mine, White Bluff and Unity, at Unity School House, New Bethel School House, Osceola, Tabernacle, Midway.

1900, XXIII, 371; 1910, XXVI, 769; 1914, XXVIII, 543; 1915, XXIX, 232; 1916, XXIX, 712; 1920, XXXI, 920.

Kershaw is voting precinct of Lancaster County and not of Kershaw County. Croxton v. Truesdel, 75 S. C. 416, 424, 56 S. E. 45.

LAURENS.—In the County of Laurens there shall be voting places as follows: Laurens Court House, Laurens Cotton Mill, Renno, Langston Church, Ora, Pleasant Mound, Young's Store, Stuart's Store, Gray Court, Dial's Church, Shiloh, Woodville, Tumbling Shoals, Brewerton, at T. T. Woods, Daniel's Store, Tip Top, Mount Pleasant, Cross Hill, Mountville, Hopewell, Waterloo, Ekom, Clinton Cotton Mills, Clinton, Princeton, Watt's Mills, Cook's Store, Langford's Station, Goldville, Lydia Mills, Gray's School House, Poplar Springs, Thompson, Owings, Hickory Tavern.

1900, XXIII, 371; 1909, XXVI, 69; 1912, XXVII, 595; 1913, XXVIII, 77; 1915, XXIX, 232; 1916, XXIX, 212.

LEE.—In the County of Lee there shall be voting places as follows: Bishopville Township, one at Bishopville, and one at Manville; of Lynchburg Township, one at Lynchburg; of St. Charles Township, one at St.

Charles; Mechanicsville Township, DuBose's Cross Roads; of Spring Hill Township, one at Smithville; Ionia Township, one at Ionia School House, and one at McCaskill's School House; of Turkey Creek Township, one at Turkey Creek and one at Lucknow; of Stokes Bride Township, one at Stokes Bridge; of Cypress Township, one at Cypress; of Mt. Clio Township, one at Wisacky.

1909, XXVI, 69.

LEXINGTON.—In the County of Lexington there shall be voting places as follows: Lexington Court House, Leesville, Gilbert, Gaston, Pool's Mill, Irmo, Ballentine, Chapin, Ebird's Store, Peak's Station, W. P. Shealy's Store, Hilton, Samaria, Batesburg, Swansea, Red Store, Huffman's Burnt Mill, Brookland, Spring Hill, Falk's School House, Red Bank, Brook, Lower Fork, at St. Andrew's School House; Edmund, Pelion, Crout's Store, Steadman, Sandy Run, at Oak Grove, St. Matthew's, T. H. Shull's Store, Summit, Magnolia, Macedonia, Cayce, Hollow Creek, Lower Fork, Mims, Cromer, Piney Woods, Ridge Road.

1900, XXIII, 372; 1908, XXV, 1061; 1913, XXVIII, 77; 1914, XXVIII, 543; 1916, XXIX, 712; 1917, XXX, 197; 1918, XXX, 838.

MARION.—In the County of Marion there shall be voting places as follows: Ariel, at Black Swamp School House; Bermuda, at Bermuda Post-office, in Carmichael Township; Fore's Cross Roads, at or near the residence of Tracy E. Fore, in Kirby Township; Campbell's Bridge, Cedar Grove, at Cedar Grove, in Wakee Township; Centerville, Dillon, Friendship, Hamer (formerly Carmichael), at Hamer's, in Carmichael Township; Kemper, Latta, Little Rock, Marion, Mt. Nebo, Mullins, Nichols, Old Ark, Temperance Hill, Fork, near Fork Depot; and one at Bennett's Store, to be called Judson, Harleysville Township; and one at Sellers, to be called Sellers, in Kirby Township; and one, to be known as Zion, at or near Zion Depot; and at Maple Mills, near Dillon; and at Gin House, on S. S. Turbeville's Plantation, in Mood's Township; Center, Olivet, Old Ark Precinct.

1900, XXIII, 372; 1907, XXV, 506; 1916, XXIX, 712; 1918, XXX, 838.

MARLBORO.—In the County of Marlboro there shall be voting places as follows: Bennettsville, Red Hill, Brownsville, Hebron, Clio, McColl, Newtonville, Brightsville, at Goodwin's Mill, Tatum, Joe Quicks Cross Roads, Kollocks.

1900, XXIII, 372; 1904, XXIV, 510.

McCORMICK.—In the County of McCormick there shall be voting precincts as follows: B. C. Tolbert's Store, T. B. Bell's Store, Lyon, McCormick, Clotworthy, Cross Roads, Young's School House, Willington, Bordeaux, Mt. Carmel, Modoe, Parksville, Plum Branch and Rehoboth, White Town School House.

1918, XXX, 708; 1920, XXXI, 878, 920.

NEWBERRY.—In the County of Newberry there shall be the following voting places: Newberry Court House, Newberry Cotton Mills, Oakland Cotton Mills, Mollohon Cotton Mills, Glymphville, Helena, Maybinton, Whitmire, Beth Eden, Jalapa, Longshore, Williams, Chappells, Utopia,

Prosperity, Hendrix Mill, Slighs, Jolly Street, Central School House, Pomaria, Walton, Mount Bethel, Saint Philip, Little Mountain, Union Academy, Kinards and Garmany Academy: *And provided*, All voting precincts in that portion of Lexington County which has recently been annexed to Newberry County be, and the same are hereby, declared and designated to be voting precincts in Newberry County.

1900, XXIII, 372; 1910, XXVI, 769; 1912, XXVII, 592; 1915, XXIX, 232; 1920, XXXI, 8.

OCONEE.—That in the County of Oconee the voting places shall be thirty-one, located as follows, to wit: No. 1, at Fair Play; No. 2, at South Union; No. 3, at Earles Mill; No. 4, at Providence; No. 5, at Friendship; No. 6, at Return School House; No. 7, at Tokeena; No. 8, at Oakway; No. 9, at Tabor; No. 10, at Madison; No. 11, at Westminster; No. 12, at Richland; No. 13, at Seneca; No. 14, at Clemson College; No. 15, at Newry; No. 16, at Keewee School House; No. 17, at High Falls; No. 18, at Salem; No. 19, at Jocassee; No. 20, at West Union; No. 21, at Walhalla; No. 22, at Pick Post; No. 23, at Tamassee; No. 24, at Little River; No. 25, at Wolf Pitt; No. 26, at Double Springs; No. 27, at Long Creek; No. 28, at Damascus; No. 29, at Holly Springs; No. 30, at Tugale Academy; No. 31, at Oconee Creek School House.

1900, XXIII, 372; 1910, XXVI, 771; 1917, XXX, 197; 1918, XXX, 699; 1920, XXI, 920.

ORANGEBURG.—In the County of Orangeburg there shall be voting places as follows: Ayers, Bowman, Branchville, Cedar Grove, Cope, Cordova, Providence, Ebenezer, Elloree, Eutawville, Holly Hill, Jamison, Livingston, North, Norway, Orangeburg, Phillips, Raymond, Rowesville, Sawyerdale, Springfield, Vance and Stokes, at or near the place of the late Dr. J. W. Stokes, East Orange.

1900, XXIII, 372; 1910, XXVI, 770; 1914 XXVIII, 543; 1917, XXX, 197.

PICKENS.—In the County of Pickens there shall be voting places as follows: Easley, Central, Liberty, Pickens Court House, Dacusville, Cateechee, Pumpkintown, Eastatoe, Cross Plains (at Freeman's Store), Peter's Creek (at Peter's Creek School House), Mile Creek (at Mile Creek Church), Prater's (at Prater's Creek Church), Six Mile (at Six Mile Church), Calhoun, Holly Springs (at Holly Springs Church), Gaphill, Loopers Gin, Crosswell School House, Pleasant Grove (in Pumpkintown Township), Norris, Easley Cotton Mill, Glenwood Cotton Mill, Alice Mills, Rocky Bottom (at Rocky Bottom School House), and Flat Rock, and Pickens Cotton Mills, near Pickens Court House. There shall be two additional voting precincts in Pickens County, known as Issa Queena Mill, at Central, and Easley Mill, No. 2, at Liberty; Garretts Store, Cross Roads.

1900, XXIII, 373; 1909, XXVI, 69; 1912, XXVII, 592; 1914, XXVIII, 543; 1915, XXIX, 232; 1916, XXIX, 712; 1920, XXXI, 920.

RICHLAND.—In the County of Richland there shall be voting places as follows: In the Upper Township, Sligh's, Taylor's Store, Killians, Wayside, at or near Wayside School House; in Center Township, Jacobs, at or near Jacob's Station; Davis, at or near William Thomas' residence, Horrell Hill, at Morrell's Store, Garner, Midway; in Lower Township, Eastover,

Gadsden, Hopkins; in Columbia Township, Waverley, at or near the fork of the Rice Creek Spring and Camden Road, Eau Claire, Shandon and Olympia, on public road known as Bluff Road, at or near store of S. I. Riley, and in the City of Columbia, Ward 1, Ward 2, Ward 3, Ward 4, and Ward 5, Springfield, Ballentine and Fork's School House. That there shall be an additional precinct in Richland County, to be known as "Shandon Annex," and located at or near T. P. Milford's Store. Additional voting precincts are established to be known as follows: Nates' School House, in Dutch Fork Township, Edgewold School House, on the Two Notch Road. In that district recently annexed from Fairfield County, two voting precincts to be known as Blythewood and Cooper's School House. There shall be an additional voting precinct in Richland County, known as Duke School House. The name of the voting precinct heretofore known as Spring Field is changed to Spring Hill. There is hereby established an additional precinct at or near Dentsville, to be known as Dentsville; also an additional precinct at or near the Town Hall in the town of "Arden," to be known as "Arden;" also one at or near Holly Grove, to be known as Holly Grove. One additional in Ward 8, in the City of Columbia, to be located at or near Powell's Store, Brown's Chapel.

1900, XXIII, 373; 1909, XXVI, 69; 1912, XXVII, 592; 1913, XXVIII, 77; 1914, XXVIII, 543; 1915, XXIX, 232; 1916, XXIX, 712; 1918, XXX, 838.

SALUDA.—In the County of Saluda there shall be voting places as follows: Saluda, Fruit Hill, at Fruit Hill Postoffice; May's Cross Roads; Big Creek, at Big Creek Postoffice; Ellis' Store, Perry's Cross Roads, Denny's Cross Roads, Mount Willing, Holstein's Cross Roads, Ridge Spring, Wards, Richland Church, Kinard's Store, Fairview School House, Holly's, at J. N. C. Fulmer's Store; Dupont, at Geo. W. Bowers' residence, and Rushton Store, Monetta.

1900, XXII, 373; 1906, XXV, 131; 1917, XXX, 197.

SPARTANBURG.—In the County of Spartanburg there shall be voting places as follows: Antioch, Ardella, Arrowwood, Arlington, Arkwright, Roebuck, Beaumont, Bishop, Boiling Springs, Brannon, Campton, Campobello, Cannon's, Camp Ground, Cashville, Cavins, Cherokee, Clifton No. 1, Clifton No. 2, Clifton No. 3, Crescent, Cowpens, Cross Anchor, Duncan, Dr. Young's Store, Enoree, Fair Forest, Fairview, Fairmount, Fingerville, Grantling, Glendale, Glenn Springs, Green Pond, Morgan's Store, Hobby's, Hebron, Holly Springs, at Bruce's Store, Inman, Landrum, Moore, Molton's Creek, McKelvey's, New Prospect, Paolet, Paolet Mills (within five hundred yards of Company's Store), Paris, Pelham, Pauline, Poplar Springs, Reidville, Rich Hill, Saxon Mills, Spartan Mills, Switzer, Swan, Spartanburg No. 1, Spartanburg No. 2, Spartanburg No. 3, Spartanburg No. 4, Spartanburg No. 5, Spartanburg No. 6, Trough, Tucapau, Valley Falls, Victory Mills, Walnut Grove, Wellford, Whitney, Woodruff, Wood's Chapel, Berry's at Berry's Postoffice, Mount Olive, Brooklyn, Inman Mills, Arcadia Mills, Drayton Mills, Dutchan, at Brown's Store, Cedar Springs, at School House, Mary Louise Mills and Cooly Springs, in Cherokee Township, at S. M. Lee's Store, one at Chesnee, one at W. T. McDowell's Store, to be known as McDowell's, one at Zion Hill, and one at or near the Crescent

Knitting Mills, to be known as South Spartanburg. There shall be additional voting precincts in Spartanburg County, known as Gray Cotton Mill Precinct, and Woodruff Cotton Mills. The precincts heretofore known as Wood's Chapel to be changed to and located at Wilson's Store. The voting precinct at McKelvey's is changed to Mayo, in said county, to be known as Mayo.

1900, XXIII, 373; 1910, XXVI, 769; 1911, XXVII, 117; 1912, XXVII, 594; 1913, XXVIII, 47, 77; 1914, XXVIII, 543; 1916, XXIX, 712; 1920, XXXI, 878.

SUMTER.—In the County of Sumter there shall be voting places as follows: Sumter Court House No. 1 (situated in Ward 1 of the City of Sumter), Sumter Court House No. 2 (situated in Ward 2 of the City of Sumter), Sumter Court House No. 3 (situated in Ward 3 of the City of Sumter), Sumter Court House No. 4 (situated in Ward 4 of the City of Sumter), Stateburg, Providence, Rafting Creek, Oswego, Mayesville, Shiloh, Concord, Privateer Station, Wedgefield and Bloomhill, in Manchester Township, DuBose.

1900, XXIII, 373; 1906, XXV, 132; 1916, XXIX, 712.

UNION.—In Union County there shall be voting places as follows: Union Court House, Cross Keys, Black Rock, Carlisle, Santue, Armsburg, Kelton, Jonesville, Gibbes, Coleraine, West Springs, and Lockhart Mills, to be located within five hundred yards of the factory, one at Buffalo Mills, Bogansville Township, one at Monarch Mills, Union Township, and one to be known as the "Knitting Mill," to be located at Excelsior Knitting Mill, in the town of Union. The polling place at Cross Keys shall be in the building now occupied by the Cross Keys Mercantile Company, or upon the premises upon which is now situated the said building, Meadors, and Welburns: *Provided*, That in Union County there shall be two voting precincts in Cross Keys Township, one at Sedalia, to be known as Sedalia, and one at Cross Keys, to be known as Cross Keys.

1900, XXIII, 374; 1904, XXIV, 512; 1912, XXVII, 593; 1913, XXVIII, 47; 1914, XXVIII, 543; 1916, XXIX, 712.

WILLIAMSBURG.—In the County of Williamsburg there shall be voting places as follows: Trio, Earles, Sulton, Gourdins, Greeleyville, Salters, Kingstree, Cedar Swamp, Cades, Morrisville, Vox, Hebron Church, Indian Town, Muddy Creek, Poplar Hill, Taft and Bloomingdale, Hemingway, Johnsonville, Workman, Pergannos, Mouzon.

1893, XXI, 427; 1908, XXV, 1062; 1912, XXVII, 594; 1914, XXVIII, 543; 1915, XXIX, 232; 1918, XXX, 838.

YORK.—In the County of York there shall be voting precincts as follows: York, Hickory Grove, Piedmont, at New Zion School House, Bethany, Forest Hill Academy, Fort Mill, Rock Hill, Coates' Tavern, Ogden, at Ogden's School House, in Bethesda Township, McConnellsville, Blairsville, Bullock's Creek, at Good's Store, Bethel, Clover, Newport, Sharon, Tirzah, Smyrna, Ebenezer, Aragon Cotton Mills, Hopewell, Filbert, Leslie.

1909, XXVI, 70; 1914, XXVIII, 543; 1918, XXX, 838; 1920, XXXI, 878.

(232) § 2. When Registration Certificates May Be Changed.—The Supervisor of Registration for the several counties named in Section 1 herein are hereby authorized and required to exchange the registration

of such electors as may apply for that purpose from other voting places to the voting places established by Section 1 wherever it shall appear to them that the elector so applying resides within a reasonable distance from the same.

Civ. '12, § 230; Civ. '02, § 204.

CHAPTER X.

The Manner of Conducting Elections and Returning Votes.

ARTICLE 1. The General Election—Commissioners and Managers of Election, 111.

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ARTICLE I.

The General Election—Commissioners and Managers of Election.

(233) § 1. **State Elections—When and Where Held.**—General elections for Federal, State and county officers in this State shall be held on the first Tuesday following the first Monday in November, one thousand eight hundred and ninety-six, and in every second year thereafter, and at such voting places as have been or may be established by law; and all general or special elections held pursuant to the Constitution of the State shall be regulated and conducted according to the rules, principles and provisions herein prescribed.

Civ. '12, § 231; Civ. '02, § 205; G. S. 107; R. S. 162; 1896, XXII, 29, § 1.

For violation of election law, see Criminal Code.

School Commissioner is a State officer, and to be elected at general election. *Pettigrew v. Bell*, 34 S. C. 104, 12 S. E. 1023. So is the Clerk of the Court of Common Pleas. *William v. Ostendorff*, MS. Dec., 1877; *State v. Sims*, 18 S. C. 463.

Special elections. *Wilson v. Cox*, 73 S. C. 401, 53 S. E. 613. Court will not enjoin a special election when parties have adequate remedy by contest before Board of Canvassers and no property rights are involved. *Little v. Barksdale*, 81 S. C. 392, 63 S. E. 308.

(234) § 2. **Commissioners and Managers of Elections—How Appointed—Oath.**—For the purpose of carrying on such election, it shall be the duty of the Governor, and he is hereby authorized and empowered, at least thirty days prior to any such election, to appoint for each county three Commissioners of Election for Governor, Lieutenant Governor, State officer, Circuit Solicitors, members of the General Assembly and county officers, and three other Commissioners of Election for Presidential Electors, Senators and members of Congress, or either of said officers, who shall continue in office until their successors are appointed and qualified. The Commissioners of Election for State and county officers shall appoint three Managers of Election for such officers; and the Commissioners of Election for Senators and members of Congress and Presidential Electors, or either of said officers, shall appoint three other Managers of Election for said officers for each polling place at each election precinct of the county for which they shall respectively be appointed, and none of said officers shall

be removed from office except for incompetence or misconduct. The said Commissioners and Managers shall take and subscribe, before any officer authorized to administer oaths, the oath of office prescribed by Section 26 of Article III of the Constitution, and the oath with respect to dueling, and the same shall be immediately filed in the office of the Clerk of the Court of Common Pleas of the county in which said Commissioners and Managers shall be appointed, or, if there be no such Clerk, in the office of the Secretary of State.

Civ. '12, § 232; Civ. '02, § 206; G. S. 108; R. S. 163; XXII, 29, § 2.

Commissioners for State and county elections proper officers to arrange for special elections under dispensary law. *State v. Jennings*, 79 S. C. 246, 60 S. E. 699

(235) § 3. Managers May Appoint a Clerk—Organization.—The Managers may appoint a clerk to assist them in their duties, who shall take the oath of office prescribed by Section 26 of Article III of the Constitution, and the oath with regard to dueling, before the Chairmen of the Board of Managers. The Commissioners and Managers at their first meeting, respectively, shall proceed to organize as a Board by appointing one of their number Chairman of the Board; and such Chairman, in each instance, is empowered to administer oaths.

Civ. '12, § 233; Civ. '02, § 207; XXII, 30, § 3.

(236) § 4. Polls—When Opened.—The polls shall be opened, at such voting places as shall be designated, at 7 o'clock in the forenoon, and close at 4 o'clock in the afternoon of the day of election, except in the City of Charleston, where the closing hours shall be 6 o'clock, and shall be kept open during those hours without intermission or adjournment; and the Managers shall administer to each person offering to vote an oath that he is qualified to vote at this election, according to the Constitution of this State, and that he has not voted during this election.

Civ. '12, § 234; Civ. '02, § 208; G. S. 111; R. S. 166; XXII, 30, § 4.

Managers in receiving votes act ministerially. *State v. Bruce*, 3 Brev. 271. See elections for new counties. *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677, 865.

The provision as to administering the oath is directory merely. *State v. State Board of Canvassers*, 86 S. C. 451, 460, 68 S. E. 676.

(237) § 5. State Constables to Preserve Order.—The Deputy State Constables and other peace officers of each county are required to be present during the whole time that the polls are open, and until the election is completed; they shall prevent all interference with the Managers, act under their direction, and see that there is no interruption of good order. Said constable is empowered and directed to make such assignment of his deputies and other peace officers to such polling places as may, in his judgment, best subserve the purposes of quiet and order. And in case all of the Managers shall fail to attend at the time and place appointed for holding such poll, or shall refuse or fail to act, or in case no Manager has been appointed for such poll, it shall be lawful for the voters present at the precinct voting place on that day to appoint from among the qualified voters of such precinct the Managers to act as Managers in the place and stead of the absent Managers, and any one of the Managers so appointed shall

administer the oath to the other Managers: *Provided*, That in case the legally appointed Managers attend in a reasonable time, they shall take charge of and conduct the election.

Civ. '12, § 235; Civ. '02, § 209; G. S. 113; R. S. 167; XXII, 30, § 5.

(238) § 6. Description of Ballot.—That in all special questions the ballot shall state the question, or questions, and shall thereafter have the words "Yes" and "No" inserted so that the voter may indicate his vote by striking out one or the other of such words on said ballot, the word not so stricken out to be counted.

Civ. '12, § 236; Civ. '02, § 210; G. S. 115; R. S. 169; XXII, 31; 1914, Ex. XXIX, 10.

Directions as to form of ballot are mandatory. *Ex parte Riggs*, 52 S. C. 298, 29 S. E. 645. Secrecy of the ballot is essential. *State v. State Board of Canvassers*, 78 S. C. 461, 59 S. E. 145, 14 L. R. A. N. S., 850, 13 Am. & Eng. Ann. Cas. 1133.
Rawl et al v. McCown et al, State Board of Canvassers, 97 S. C. 1; 83 S. E. 958.

(239) § 7. Officers to Be Voted For.—There shall be three separate and distinct ballots, as follows: One ballot for United States Senator, Representatives in Congress and Presidential electors; and one ballot for Governor, Lieutenant Governor, State officers, Circuit Solicitors, members of the House of Representatives, State Senator, county officers and one ballot for all Constitutional amendments and special questions, each of three said boxes to be appropriately labeled; which ballots shall be of plain white paper and of such width and length as to contain the names of the officer or officers and question or questions to be voted for or upon, clear and even cut, without ornament, designation, mutilation, symbol or mark of any kind whatsoever, except the name or names of the person or persons voted for and the office to which such person or persons are intended to be chosen, and all special questions, which name or names, officer or officers, question or questions shall be written or printed or partly written or partly printed thereon in black ink; and such ballot shall be so folded as to conceal the name or names, question or questions thereon, and so folded shall be deposited in a box to be constructed, kept and disposed of as herein provided by law, and no ballot of any other description found in either of said boxes shall be counted: *Provided*, That at the general election of 1914 the votes for all State and county officers shall be cast in one box whether printed on one ballot or separate ballots; and all votes on Constitutional amendments and other questions shall be cast in one box whether printed on the same ballot or separate ballots.

Civ. '12, § 237; Civ. '02, § 211; G. S. 116; R. S. 170; XXII, 31, § 7; 1914, Ex. XXIX, 10.

(240) § 8. Boxes to Be Provided—Description and Labeling—Arrangement of Polls.—The Commissioners of Election shall provide for each voting place a sufficient number of boxes to meet the requirements of the foregoing Section. In any case in which a voting precinct may form part of more than one Congressional District, if no other provision be made by law, the Commissioners of Election for the county in which such precinct is situated shall provide therefor separate boxes for every Congressional District within which the said precinct may be, and each voter at such precinct shall deposit his ballot for members of Congress in the box provided for the Congressional District within the limits of which he may reside. An opening shall be made in the lid of each box not larger than sufficient

for a single ballot to be inserted therein at one time, through which each ballot received proper to be placed in such box shall be inserted by the person voting, and by no other. Each box shall be provided with a sufficient lock, and shall be publicly opened and inspected, to show that it is empty and secure, and locked just before the opening of the poll. The keys shall be returned to the Managers, and the box shall not be opened during the election. Each box shall be labeled in plain and distinct Roman letters, with the office or officers voted for, and the Managers, on the demand of the voter, shall be required to read to him the names on the boxes. At each precinct a space or enclosure, such as the Managers of Election shall deem fit and sufficient, shall be railed off or otherwise provided with an opening at one end or side for the entrance of the voter, and an opening at the other for his exit, as a voting place in which to hold the election for the State, Circuit, County and Federal offices. And the ballot box shall be so located as to be in view of persons outside of the polling place during the time of voting. A similar, but separate and distinct space or enclosure shall be railed off or otherwise provided, as a voting place for the election of Congressmen and Presidential Electors, at such distance from the polling place for State officers as the Commissioners of Election for each county shall determine and appoint for each election precinct. But one voter shall be allowed to enter any voting place at a time, and no one except the Managers shall be allowed to speak to the voter while in the voting place casting his vote.

Civ. '12, § 238; Civ. '02, § 212; G. S. 117; R. S. 171; XXII, 31, § 8.

Provisions as to railing off places for voters to stand, permitting only one voter to stand therein at one time, permitting no one to speak to the elector while voting except managers, placing election box so that the public may see it, are directory and should be observed, but violation in absence of fraud or, unless it appears result was affected, not violation. *State v. State Board of Canvassers*, 86 S. C. 451, 460, 68 S. E. 676.

(241) § 9. Managers to Require Evidence of Payment of Taxes.—The Managers of Election shall require of any elector offering to vote at any election, before allowing him to vote, in addition to the production of a registration certificate, proof of the payment of all taxes, including poll tax, assessed against him and collectible during the previous year. The production of a certificate or of the receipt of the officer authorized to collect such taxes shall be conclusive proof of the payment thereof.

Civ. '12, § 239; Civ. '02, § 213; 1896, XXII, 32, § 9.

Presentation of registration certificate and proof of payment of taxes is mandatory. *Wright v. State Board of Canvassers*, 76 S. C. 574, 591, 57 S. E. 536.

(242) § 10. Duties of Clerk.—Each clerk of the poll shall keep a poll list, which shall contain one column headed "Names of Voters," and the name of each elector voting shall be entered by the clerk in such column.

Civ. '12, § 240; Civ. '02, § 214; G. S. 118; R. S. 172; 1896, XXII, 33, § 10.

(243) § 11. Counting of Ballots—Returns to Commissioners of Elections.—At the close of the election the Managers and Clerk shall immedi-

ately proceed publicly to open the ballot box and count the ballots therein, and continue such count, without adjournment or interruption, until the same is completed, and make such statement of the result thereof, and sign the same as the nature of the election shall require. No ballot shall be counted upon which there shall appear the name of an office or the name

of a person in connection with an office other than that for which the box in which such ballot is found shall be designated and labeled. If, in counting, two or more like ballots shall be found folded together compactly, only one shall be counted; the other must be destroyed; but if they bear different names, all must be destroyed and none counted. If more ballots shall be found on opening the box than there are names on the poll list, all the ballots shall be returned to the box and thoroughly mixed together, and one of the Managers, or the Clerk, shall, without seeing the ballots, draw therefrom and immediately destroy as many ballots as there are in excess of the number of names on the poll list. Within three days thereafter the Chairman of the Board of Managers, or one of them, to be designated in writing by the Board, shall deliver to the Commissioners of Election the poll list, the boxes containing the ballots and a written statement of the result of the election in his precinct.

Civ. '12, § 241; Civ. '02, § 215; G. S. 119; R. S. 173; XXII, 33, § 11.

ARTICLE II.

Formation and Proceedings of the Board of County Canvassers.

(244) § 1. **Commissioners to Meet at County Seat and Organize as Board of County Canvassers.**—The Commissioners of Election for Governor, Lieutenant Governor, State officers, Circuit Solicitor, members of the General Assembly, and county officers, or either of said officers, shall meet in some convenient place at the county seat on the Tuesday next following the election, before 1 o'clock in the afternoon of that day, and shall proceed to organize as, and shall be, the County Board of Canvassers. They may appoint some competent person as Secretary. The Chairman shall then proceed to administer the constitutional oath to each member of the Board, as Canvassers; and shall administer the constitutional oath to the Secretary, and the Secretary shall administer to the Chairman the same oath that he shall have administered to the other members of the Board. The Commissioners of Election for members of Congress and Presidential Electors, or either of said officers, shall likewise meet at the same time at its county seat, and shall in like manner proceed to organize as and shall be the County Board of Canvassers for the election of the Federal officers aforesaid.

Civ. '12, § 242; Civ. '02, § 216; G. S. 220; R. S. 174; 1882, XVII, 1119.

Elections for new counties are governed by this article. *State ex rel. Martin v. Moore*, 54 S. C. 556, 32 S. E. 700. An election will not be set aside because of illegal votes cast which do not affect the result or even render it doubtful. *State ex rel. Birchmore v. Board of Canvassers*, 78 S. C. 461, 59 S. E. 145, 14 L. R. A., N. S., 850; *State ex rel. Welch v. Board of Canvassers*, 79 S. C. 248, 60 S. E. 699; *State ex rel. Parker v. Jennings*, 79 S. C. 414, 60 S. E. 967. *Segars v. Parrott*, 51 S. C. 1, 31 S. E. 677.

(245) § 2. **Canvass of Votes—Protests—Statements and Returns.**—The said Board of County Canvassers, respectively, shall then proceed to canvass the votes of the county. When townships, or parts of townships of any county may not be in the same Congressional District, the proper Board of County Canvassers of such county, in canvassing the votes for Representatives in Congress, shall report separately the result of the votes of such township, or parts of townships, for the Congressional District to which they respectively belong. The said Boards, respectively, shall have the

power, and it is hereby made their duty as judicial officers to decide all cases under protest or contest that may arise, subject to appeal to the Board of State Canvassers. They shall make such statements of the votes of the county as the nature of the election shall require, within ten days from their first meeting as a Board of County Canvassers, and shall transmit to the Board of State Canvassers any protest and all papers relating to the election.

Civ. '12, § 243; Civ. '02, § 217; G. S. 121; R. S. 175; 1882, XVII, 1119, 1170, 1172, § 3.

Segars v. Parrott, 54 S. C. 1, 31 S. E. 677.
 Duty of county canvassers. *State v. Chairman County Canvassers*, 4 S. C. 485.
 Majority, a quorum sufficient. *State v. DeLeisselne*, McC. 52.
 But single member cannot act as Board. *State v. Nerland*, 7 S. C. 241.
 Board may receive secondary evidence of ballots and returns lost or destroyed. *Id.*
 They act judicially, and decision conclusive until reversed. *State v. Bruce*, 3 Brev. 264; *State v. DeLeisselne*, *supra*; *State v. Cockrell*, 2 Rich. 6; *State v. Walker*, 5 S. C. 265.
 An appeal lies from the County Board of Canvassers to State Board. *State ex rel. Martin v. Moore*, 54 S. C. 556, 32 S. E. 700.

(246) § 3. Duplicate Statements to Be Made and Filed with Clerk of County.—Duplicate statements shall be made and filed in the office of the Clerk of the county; and, if there be no such Clerk, duly qualified according to law, then in the office of the Secretary of State.

Civ. '12, § 244; Civ. '02, § 218; G. S. 122; R. S. 176; 1882, XVII, 1119, 1170, 1172, § 3.

(247) § 4. Separate Statements of Votes Given for Each Candidate.—They shall make separate statements of the whole number of votes given in such county for Representatives in Congress; and separate statements of all other votes given for other officers. Such statements shall contain the names of the persons for whom such votes were given, and the number of votes given for each, which shall be written out in words at full length.

Civ. '12, § 245; Civ. '02, § 219; G. S. 123; R. S. 177; 1882, XVII, 1119, 1170, 1172, § 3.

(248) § 5. Three Other Separate Statements to Be Prepared.—There shall be prepared by the Commissioners three separate lists of each statement, besides the lists to be filed in the office of the County Clerk, or Secretary of State, and each list shall be certified to as correct by the signatures of the Commissioners, subscribed to such certificate.

Civ. '12, § 246; Civ. '02, § 220; G. S. 124; R. S. 178; 1882, XVII, 1119, 1170, 1172, § 3.

(249) § 6. Returns to Be Forwarded to Governor and Secretary of State.—After the final adjournment of the Board of County Canvassers, and within the time prescribed in this Chapter, the Chairman of said Board shall forward, addressed to the Governor and Secretary of State, one copy by mail and one copy by express, the returns, poll list and all papers appertaining to the election.

Civ. '12, § 247; Civ. '02, § 221; G. S. 125; R. S. 179; 1882, XVII, 1119, 1170, 1172, § 3; 1905, XXIV, 960.

(250) § 7. Pay of Election Officers—Other Expenses of Elections.—Each Commissioner and Manager of Election shall receive for his compensation one dollar per day for his services while actually employed, and five cents per mile for necessary travel; each Clerk of the Commissioners, and of the Managers, respectively, shall receive one dollar per day while actually employed; but no Commissioner, Manager or Clerk shall receive pay for more than three days.

The Messengers designated by any of the Boards of Commissioners, under existing laws, to carry the ballots and reports of the Commissioners of Election from the several counties to the City of Columbia, or elsewhere, according to law, shall each receive five dollars and mileage at the rate of five cents for every mile traveled on the most direct route.

Notices of election published in any public gazette or county newspaper by authority of the proper Board of Election Commissioners, as required by law, shall be paid for at the rates prescribed by law for legal notices.

To defray the expenses designated herein, the Comptroller General shall draw his warrant on the State Treasurer in favor of such Commissioners of Election, Manager of Election, Clerk of Commissioners or Managers, Messenger and proprietor or printer of said gazette, for the amount of compensation to which he may be entitled; the same to be paid by the Treasurer out of any balance that may be in the Treasury.

The County Commissioners of the several counties shall audit and pay all accounts for necessary expenses incurred by the Commissioners and Managers of Election for stationery, the making of election boxes, rents and similar expenses in elections held in this State.

Civ. '12, § 248; Civ. '02, § 222; G. S. 126, 152; R. S. 180; 1882, XVII, 1100; XVIII, 260.

ARTICLE III.

Formation and Proceedings of the Board of State Canvassers.

(251) § 1. **Meeting of State Canvassers.**—The Secretary of State shall appoint a meeting of the Board of State Canvassers, to be held at his office, or some convenient place, within ten days next after such general election, for the purpose of canvassing the votes for all offices voted for at such election.

Civ. '12, § 249; Civ. '02, § 223; G. S. 127; R. S. 181; 1882, XVII, 1120, § 40.

(252) § 2. **Who Constitute the Board—Quorum.**—The Secretary of State, Comptroller General, Attorney General, State Treasurer, Adjutant General and the Chairman of the Committee on Privileges and Elections of the House of Representatives, shall constitute the Board of State Canvassers—four of whom shall be a quorum.

Civ. '12, § 250; Civ. '02, § 224; G. S. 128; R. S. 182; 1882, XVII, 1120, § 41.

(253) § 3. **When No Quorum, President of Senate Attends and Acts.**—If a majority of these officers shall be unable or shall fail to attend, the President of the Senate, on being notified by the Secretary of State, shall attend, without delay, and with the officers attending shall form a Board.

Civ. '12, § 251; Civ. '02, § 225; G. S. 129; R. S. 183; 1882, XVII, 1120, § 42.

(254) § 4. **Board to Make Statement of Votes Cast for Each Candidate and Certify Same.**—The Board when thus formed shall, upon the certified copies of the statements made by the Boards of County Canvassers, proceed to make a statement of the whole number of votes given at such election for

the various officers, and for each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

Civ. '12, § 252; Civ. '02, § 226; G. S. 130; R. S. 184; 1884, XVII, 1120, § 43.

(255) § 5. Certificate of Determination Delivered to Secretary of State.

—They shall make and subscribe, on the proper statement, a certificate of their determination, and shall deliver the same to the Secretary of State.

Civ. '12, § 253; Civ. '02, § 227; G. S. 113; R. S. 185; 1882, XVII, 1120, § 44.

Referred to State v. Nerland, 7 S. C. 241. Such certificate void when based upon copies of statements of County Board of Canvassers, certified by one of the Board. State v. Nerland, 7 S. C. 241.

(256) § 6. Board Declares What Persons Elected, and Decides Contested Cases on Appeal.—Upon such statements they shall then proceed to determine and declare what persons have been, by the greatest number of votes, duly elected to such offices, or either of them. They shall have power, and it is made their duty as judicial officers, to decide all cases under protest or contest that may come before them on appeal from the decisions of the County Board of Canvassers.

Civ. '12, § 254; Civ. '02, § 228; G. S. 132; R. S. 186; 1882, XVII, 1120, 1172, § 3.

Board not an inferior Court; a special tribunal to decide elections. *Whipper v. Talbird*, 32 S. C. 1, 10 S. E. 578. No appeal from *Ex parte Mackey*, 15 S. C. 322; *Ex parte Whipper*, 32 S. C. 5, 10 S. E. 579; *Pettigrew v. Bell*, 34 S. C. 104; *State ex rel. Welch v. Board of Canvassers*, 79 S. C. 246, 248, 60 S. E. 699. Duties of State v. Hayne, 8 S. C. 367; *Ex parte Mackey*, 15 S. C. 335; *Ex parte Elliott*, 33 S. C. 602, 12 S. E. 423. Title to office does not depend upon their decision when not contested. *Ex parte Smith*, 18 S. C. 516. When they decline to act or are equally divided on appeal, decision of County Board stands. *State v. Walker*, 5 S. C. 263; *Ex parte Elliott supra*. But in election of Senator their determination is subject to final decision of Senate. *Ex parte Scarborough*, 34 S. C. 13, 12 S. E. 666. Minute irregularity does not invalidate election. *State v. Harman, Chev.* 267; *Wright v. Board of Canvassers*, 76 S. C. 574, 57 S. E. 536; *State ex rel. Birchmore v. Board of Canvassers*, 75 S. C. 461, 59 S. E. 145, 13 Am. & Eng. Ann. Cas. 1133, 14 L. R. A., N. S., 850 n. Power of Courts in elections. *State v. Alderman*, 1 S. C. 30. *Alexander v. McKenzie*, 2 S. C. 81; *Ex parte Carson*, 5 S. C. 117. Will not grant mandamus to alter decision. *State v. Bruce*, 3 Brev. 264; *Grier v. Shackelford*, 3 Brev. 491; *State v. Sims*, 18 S. C. 461; *Ex parte Scarborough*, 34 S. C. 13, 12 S. E. 666. But will enforce ministerial duty of mandamus where no appeal lies. *Ex parte Mackey*, 15 S. C. 335. Mandamus to compel member of Board to act. *State v. Jones*, 83 S. C. 432, 65 S. E. 444. The action of the State Board of Canvassers can only be reviewed by the Courts under certiorari. *Ex parte Riggs*, 52 S. C. 298, 29 S. E. 645; *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 673, 683. The action of the County Board of Canvassers may be reviewed on appeal to the State Board, and the Court will not issue a writ of certiorari to review their action. *State ex rel. Martin v. Moore*, 54 S. C. 556, 32 S. E. 700.

(257) § 7. May Adjourn from Day to Day for Fifteen Days.—The Board shall have power to adjourn from day to day for a term not exceeding fifteen days.

Civ. '12, § 255; Civ. '02, § 229; G. S. 133; R. S. 187; 1882, XVII, 1172, § 4.

See *State v. State Board of Canvassers*, 86 S. C. 451, 454; 68 S. E. 676.

(258) § 8. How Election of Governor May Be Contested.—In case of a contest of the election of Governor, if the General Assembly, by Concurrent Resolution, shall entertain the same, the Senate and House of Representatives shall, each separately, proceed to hear and determine the facts in the case, so far as they deem necessary, and decide thereon who is entitled to be declared elected. If the two branches of the General Assembly come to the same decision, they shall, by Concurrent Resolution, declare who is duly elected and entitled to enter upon and exercise the office of Governor; and such person thereupon shall, upon taking the oaths prescribed in the Constitution and the oath with respect to dueling, be inducted into office. If the two branches of the General Assembly do not come to the same decision,

then an election shall be called by the Governor, to take place in not less than sixty nor more than ninety days, at which the qualified electors shall proceed to vote for a suitable person to fill the office of Governor.

Civ. '12, § 256; Const., Art. 4, § 4; Civ. '02, § 230; G. S. 134; R. S. 188; 1882, XVII, 1121, § 47.

(259) § 9. Secretary of State to Record Result of Canvass.—The Secretary of State shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination which shall be delivered to him by the Board of State Canvassers, and every dissent or protest that shall have been delivered to him by a canvasser.

Civ. '12, § 257; Civ. '02, § 231; G. S. 135; R. S. 189; 1882, XVII, 1121, § 48.

(260) § 10. To Furnish Copy of Each Determination to Person Declared Elected and to Governor.—He shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected, and a like copy to the Governor.

Civ. '12, § 258; Civ. '02, § 232; G. S. 136; R. S. 190; 1882, XVII, 1121, § 49.

This certificate not the only evidence of election to House of Representatives. If refused, a right to seat may be shown otherwise. State v. Haine, 8 S. C. 367.

(261) §. To Print Statements in Public Newspapers.—He shall cause a copy of such certified statements and determinations to be printed in one or more public newspapers of this State.

Civ. '12, § 259; Civ. '02, § 233; G. S. 137; R. S. 191; 1882, XVII, 1121, § 50.

(262) § 12. To Send Certificates of Election to Members of Congress to House of Representatives.—He shall prepare a general certificate, under the seal of the State, and attested by him as Secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of such person as Representative of this State in Congress, and shall transmit the same to the said House of Representatives at their first meeting.

Civ. '12, § 260; Civ. '02, § 234; G. S. 138; R. S. 192; 1882, XVII, 1121, § 51.

(263) § 13. To Keep Record of County Officers Elected.—The Secretary of State shall enter in a book to be kept in his office the names of the respective county officers elected in this State, specifying the counties for which they were severally elected, and their place of residence, the office for which they were respectively elected, and their term of office.

Civ. '12, § 261; Civ. '02, § 235; G. S. 139; R. S. 193; 1882, XVII, 1121, § 52.

CHAPTER XI.

The Election of Senators and Representatives in Congress and Electors of President and Vice President.

ARTICLE 1. Election of Senators and Representatives in Congress, 120.

ARTICLE 2. Election of Electors of President and Vice President, and Formation and Proceedings of the Electoral College, 121.

ARTICLE I.**Election of Representatives in Congress.**

(264) § 1. **Provisions for Election of United States Senators.**—That from and after March 4, 1914, a United States Senator shall be elected at the general election next preceding the expiration of the term of any United States Senator from this State, and at such election the ballot for the United States Senator shall be on the ballot for Congressmen, both being printed on the same ballot with proper designation, and both being voted for in the same box, which shall be labeled "For United States Senator and Congressmen." The ballots shall be counted, the returns canvassed and the result declared by the same officers and in the same manner as is done in the case of Congressmen: *Provided*, That in case of a vacancy from death, resignation or otherwise, the Governor shall have power to fill the place by appointment, but not for longer than six (6) months from the occurrence of such vacancy, and he shall order a special election to be held within ninety days at which a Senator shall be elected to fill out the unexpired term, the election to be conducted and the result declared in the same manner and by the same officers as now provided by law for the election of Congressmen.

1914, XXIX, 592.

(265) § 2. **Representatives—How and When Chosen.**—Representatives in the House of Representatives of the Congress of the United States shall be chosen at each general election in the several Congressional Districts by the qualified voters thereof.

Civ. '12, § 262; Civ. '02, § 236; G. S. 112; R. S. 194; 1882, XVII, 1117, § 25.

(266) § 3. **Congressional Districts.**—The State is divided into seven Congressional Districts, as follows:

The First Congressional District shall be composed of the Counties of Charleston, Berkeley, Colleton, Dorchester, and Clarendon.

The Second Congressional District shall be composed of the Counties of Aiken, Bamberg, Barnwell, Beaufort, Edgefield, Saluda, Hampton, Jasper, and Allendale.

The Third Congressional District shall be composed of the Counties of Pickens, Oconee, Anderson, Abbeville, Greenwood, Newberry, and McCormick.

The Fourth Congressional District shall be composed of the Counties of Laurens, Spartanburg, Greenville, and Union.

The Fifth Congressional District shall be composed of the Counties of Cherokee, Chester, York, Fairfield, Kershaw, Chesterfield, and Lancaster.

The Sixth Congressional District shall be composed of the Counties of Marlboro, Marion, Horry, Darlington, Florence, Williamsburg, Georgetown, and Dillon.

The Seventh Congressional District shall be composed of the Counties of Richland, Sumter, Orangeburg, Lexington, Lee, and Calhoun.

Civ. '12, § 263; Civ. '02, § 237; G. S. 141; R. S. 195; 1882, XVII, 1169; 1893, XXI, 413; 1902, XXIII, 977; 1197; 1908, XXV, 1283; 1910, XXVI, 867; 1912, XXVII, 827; 1916, XXIX, 717; 1919, XXXI, 5.

(267) § 4. Each District to Elect One Member of Congress.—Until the next apportionment be made by the Congress of the United States, each of the said Congressional Districts shall be entitled to elect one member to represent this State in the Congress of the United States. After such new apportionment by Congress, the General Assembly shall divide the State into as many Congressional Districts as the State is entitled to members in the House of Representatives.

Civ. '12, § 264; Civ. '02, § 238; G. S. 142; R. S. 196; amd. by 1882, XVII, 1122, § 5.

(268) § 5. Writs of Election in Case State is Given More Representatives.—In case the Congress of the United States shall by any new apportionment give to this State more than seven members of the House of Representatives, and the General Assembly shall not be in session, the Governor shall, by proclamation, issue writs of election for Congressmen at Large, one or more, as the case may be.

Civ. '12, § 264; Civ. '02, § 238; G. S. 142; R. S. 196; amd. by 1882, XVII, 1122, § 5.

ARTICLE II.

Election of Electors of President and Vice President, and Formation and Proceedings of the Electoral College.

(269) § 1. Electors of President and Vice President—How Chosen.—When an election for President and Vice President of the United States occurs there shall be elected, by general ticket, as many Electors of President and Vice President as this State shall be entitled to appoint; and each elector in this State shall have a right to vote for the whole number of such Electors; and the several persons, to the number required to be chosen, have the highest number of votes shall be declared and deemed duly appointed Electors.

Civ. '12, § 266; Civ. '02, § 239; G. S. 143; R. S. 197; 1882, XVII, 1122, § 56.

Electors derive authority from Constitution and laws of the United States; their title cannot be determined by quo warranto in name of State. *State v. Bowen*, 8 S. C. 400.

(270) § 2. Certified Copies of Statement of Votes to Be Made, Etc.—The Commissioners of Election of each county shall make four certified copies of the statement of votes given for Electors in their county: one of which copies shall be filed in the office of the Clerk of the county, if there be such Clerk duly qualified by law; another of such copies they shall forthwith transmit to the Governor; another to the Secretary of State; and deliver the other as hereinafter directed.

Civ. '12, § 267; Civ. '02, § 240; G. S. 144; R. S. 198; XVII, 1123, § 57.

(271) § 3. How Returns Shall Be Forwarded.—After the final adjournment of the Commissioners of Election of each county, and within the time prescribed in this Chapter, the Chairman of said Board shall forward, addressed to the Governor and Secretary of State, one copy by mail and one copy by express, the returns, poll lists and all papers appertaining to the election.

Civ. '12, § 268; Civ. '02, § 241; G. S. 145; R. S. 199; XVII, 1123, § 58; 1910, XXVI, 680.

(272) § 4. **Meeting of Board of State Canvassers.**—The Board of State Canvassers shall meet at the office of the Secretary of State within ten days next after such election, to canvass the votes given for the Electors of President and Vice President; and in case all the certified statements shall not have been received on that day, the Board may adjourn from day to day until the same shall have been received, not exceeding five days; and if at the expiration of four days certified copies of the statements of the County Canvassers shall not have been received from any county, the Board shall proceed to canvass upon such of the said statements as shall have been received.

Civ. '12, § 269; Civ. '02, § 242; G. S. 146; R. S. 200; XVII, 1123, § 59.

(273) § 5. **Statement and Determination of Board.**—The Board shall proceed, in making a statement of all the votes, and determining and certifying the persons elected, in the manner prescribed by law in relation to the election of other officers.

Civ. '12, § 270; Civ. '02, § 243; G. S. 147; R. S. 201; XVII, 1123, § 60.

(274) § 6. **Certificates by Secretary of State—Messenger.**—The Secretary of State shall, without delay, cause a copy, under the seal of his office, of the certified determination of the Board to be delivered to each of the persons therein declared to be elected; and for that purpose he may employ such and so many messengers as he shall deem necessary. The messengers so employed shall receive for their compensation twelve cents per mile for traveling, to be audited by the Comptroller General upon the certificate of the Secretary of State.

Civ. '12, § 271; Civ. '02, § 244; G. S. 148; R. S. 202; XVII, 1123, § 61.

(275) § 7. **Determination and Certificate of Board to Be Published.**—The determination and certificate of the Board in relation to the choice of the Electors shall be published in the same manner as provided in relation to the certificates of the election of other officers.

Civ. '12, § 272; Civ. '02, § 245; G. S. 149; R. S. 203; XVII, 1123, § 62.

(276) § 8. **Meeting of the Electors—Preliminary Organization.**—The Electors of President and Vice President shall convene at the capital, in some convenient place, on the second Monday in January next after their election; and those of them who shall be assembled at 11 o'clock in the forenoon of that day shall, immediately after that hour, proceed to preliminary organization and make such preliminary arrangements as may be necessary for permanent organization and the casting of the electoral vote of the State.

Civ. '12, § 273; Civ. '02, § 246; G. S. 153; R. S. 204; 1882, XVII, 1124, § 66; 1885, XIX, 25, § 1; 1889, XX, 365.

(277) § 9. **Duties of Secretary of State.**—The Secretary of State shall prepare three lists of the names of the Electors, procure to the same the signature of the Governor, affix thereto the seal of the State, and deliver them, thus signed and sealed, to the President of the College of Electors on the second Monday in January.

Civ. '12, § 274; Civ. '02, § 247; G. S. 154; R. S. 205; 1882, XVII, 1124, § 67; 1889, XX, 365.

(278) § 10. Permanent Organization, Vote by Ballot, Etc.—On the said second Monday in January, at 12 o'clock M., the Electors shall meet at some convenient place at the capital and effect a permanent organization by the election of a President and Secretary from their own body, proceed to fill by ballot and by plurality of votes all vacancies in the Electoral College occasioned by the death, refusal to serve, or neglect to attend at that hour, of any Elector, or occasioned by an equal number of votes having been given for two or more candidates for Presidential Electors, and then and there vote by ballot for President and Vice President, one of whom at least shall not be an inhabitant of the same State with themselves. They shall name in their ballots the persons voted for as President, and, in distinct ballots, the persons voted for as Vice President.

Civ. '12, § 275; Civ. '02, § 248; G. S. 155; R. S. 206; XVII, 1124, § 68; XX, 365.

(279) § 11. Certified Lists of Candidates Voted for and the Vote for Each. They shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify; and, after annexing thereto one of the lists received from the Secretary of State, they shall seal up the same, certifying thereon that lists of the votes of this State for President and Vice President are contained therein.

Civ. '12, § 276; Civ. '02, § 249; G. S. 156; R. S. 207; 1882, XVII, 1124, § 69.

(280) § 12. To Appoint Messenger to Deliver Lists—When and to Whom.—The Electors shall then, by writing, under their hands, or under the hands of a majority of them, appoint a person to take charge of the lists so sealed up, who shall deliver the same to the President of the Senate of the Congress of the United States, at the seat of government, before the second Wednesday in February then next ensuing.

In case there shall be no President of the Senate at the seat of government on the arrival of the person entrusted with the lists of the votes of the Electors, then such person is required to deliver the lists of the votes in his custody into the office of the Secretary of State of the United States.

Civ. '12, § 277; Civ. '02, § 250; G. S. 157; R. S. 208; 1882, XVII, 1125; XX, 365.

(281) § 13. Duplicate Lists—To Whom Forwarded and Delivered.—The Electors are also required to forward forthwith, by the postoffice, to the President of the Senate of the United States, at the seat of government, and to deliver forthwith to the Judge of the United States for the District of South Carolina, and to the Secretary of State, to be filed in his office, similar lists signed, annexed, sealed up, and certified in the manner aforesaid.

Civ. '12, § 278; Civ. '02, § 251; G. S. 158; R. S. 209; 1882, XVII, 1125, § 70; 1885, XIX, 27.

(282) § 14. Compensation of Electors.—Every Elector for this State for the election of a President and Vice President of the United States who shall attend at any election of those officers, and give his vote at the time and place appointed by law, shall be entitled to receive for his attendance at such election and for traveling to and from his place of residence by the

most usual route, the sum of five dollars per day and actual traveling expenses, to be paid by the State Treasurer upon the warrant of the Comptroller General.

Civ. '12, § 279; Civ. '02, § 252; G. S. 159; R. S. 210; 1882, XVII, 1125, § 73; 1915, XXIX, 178.

CHAPTER XII.

Election of County Officers.

(283) § 1. **General Election for County Officers—When Held.**—There shall be a general election for the following county officers, to wit: County Supervisors and County Superintendents of Education held in each county at every general election for members of the House of Representatives, except in those counties in which the term of office of the County Superintendent of Education and County Supervisor is four years; and for the election of Sheriff, Coroner and Clerk of the Court of Common Pleas, at every alternate general election, reckoning from the year one thousand eight hundred and eighty-eight, except as to the Counties of Berkeley and Cherokee, and except for Sheriff and Coroner in Hampton County.

The Probate Judge in every county, and the Clerk of Court in Berkeley and Cherokee Counties, and the Sheriff and Coroner in Berkeley, Cherokee and Hampton Counties, shall be elected at every alternate general election, reckoning from the year one thousand eight hundred and ninety.

Civ. '12, § 280; Civ. '02, § 253; G. S. 160; R. S. 211; 1882, XVII, 1125, § 74; Gen. St. §§ 642, 701; 1885, XIX, 144; amd. 1889, XX, 281.

Clerk is a State officer within the meaning of Constitution, Art. XIV, Sec. 10; and his term is limited to next general election. *Williams v. Ostendorf*, MS. Dec. 1877; *State v. Sims*, 18 S. C. 463. So is School Commissioner (now County Superintendent of Education), and his term is so limited. *Pettigrew v. Bell*, 34 S. C. 104, 12 S. E. 1023.

(284) § 2. **Vacancy in County Offices—How Filled.**—In the event of a vacancy at any time in any of the offices of any county of the State, whether from death, resignation, disqualification, refusal or neglect to qualify of the person elected or appointed thereto, expiration of the term of office, removal from the county or from any other cause, the Governor shall have full power to appoint some suitable person, who shall be an elector of the county, and, upon duly qualifying according to law, shall be entitled to enter upon and hold the office to which he has been appointed if it be an elective office, until the next general election, when an election shall be held to fill the unexpired term, and the officer so appointed or elected shall hold said office for the term of said election or appointment, and until his successor shall qualify; and if it be an office which was filled originally by appointment, until the adjournment of the General Assembly at the regular session next after such appointment; and shall be subject to all the duties and liabilities incident to said office during the term of his service therein.

Civ. '12, § 281; Civ. '02, § 254; G. S. 161; R. S. 212; 1882, XVIII, 375; amd. 1899, XXIII, 84.

Legislature may provide to fill vacancy in Clerk's office by election. *Reister v. Hemphill*, 2 S. C. 325. The Governor cannot so fill a vacancy in the office of Judge of Probate, where the unexpired term exceeds one year. *Whitmire v. Langston*, 11 S. C. 181.

CHAPTER XIII.**Primary Elections.**

ARTICLE I. Regulations for the Conduct of Primary Elections, 125.

ARTICLE II. Regulations as to Booths at Primary Elections, 134.

ARTICLE III. Regulations for the Holding of Primary Elections and the Organizations of Clubs in Cities of Forty Thousand Inhabitants and Over, 137.

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ARTICLE I.**General Provisions as to the Conduct of Primary Elections.**

(285) § 1. Regulation of Primary Elections.—Oath of Managers—Oaths to Be Filed.—Every political primary election held by any political party, organization, or association, for the purpose of choosing candidates for office, or the election of delegates to conventions, shall be presided over and conducted in the manner prescribed by the Constitution and Rules of the political party, organization or association holding such primary election by Managers selected in the manner prescribed by such Constitution and Rules. Such Managers shall, before entering upon the discharge of their duties, each take and subscribe an oath that he will fairly, impartially and honestly conduct the same according to the provisions of this Article and the Constitution and Rules of such party, organization or association. Should one or more of the Managers appointed to hold such election fail to appear on the day of election, the remaining Manager or Managers shall appoint others in their stead and administer to them the oath herein prescribed. The Managers shall take the oath herein prescribed before a Notary Public or other officer authorized to administer oaths; but if no such officer can be conveniently had, the Managers may administer the oath to each other. Such oath shall, after being subscribed by the Managers, be filed in the office of the Clerk of Court for the county in which such election shall be held, within five days after such election.

Civ. '12, § 282; Civ. '02, § 255; R. S. 213; XX, 10, § 1; 1905, XXIV, 831.

Certiorari to review action of Executive Committee in municipal elections. *Holt v. Executive Committee*, 79 S. C. 263, 60 S. E. 659.

Certiorari to review action of County Executive Committee. *Moore v. Griffin*, 81 S. C. 393, 62 S. E. 545.

For violation of primary laws, see Criminal Code.

Filing statement of expenses. *Moore v. Griffin*, 81 S. C. 393, 62 S. E. 545.

State ex rel. *Hemingway v. State Democratic Executive Committee*, et al. 93 S. C. 321; 76 S. E. 817.

Added by Laws 3915, p. 163: *Hyde et al v. Logan et al*; *Boykin et al v. Same*, 113 S. C. 64; 101 S. E. 41.

(286) § 2. Meaning of Words and Phrases.—The Words and Phrases used in this Chapter, unless the same be plainly inconsistent with the context thereof, shall be construed as follows:

(1) "County Committee" means the County Executive Committee.

(2) "County Chairman" means the Chairman of the County Executive Committee.

(3) "State Committee" means the State Executive Committee.

(4) "State Chairman" means the Chairman of the State Executive Committee.

(5) "Primary" means the primary election of the party.

(6) "General election" means the general election, whether for United States or State or county offices.

(7) "Club district" means the territory set apart for each club, whether it be a ward or township or a subdivision thereof.

(8) "Inhabitants" means the number of inhabitants according to the Federal census last taken.

1915, XXIX, 163.

Hyde et al v. Logan et al, 113 S. C. 64, 101 S. E. 41.

(287) § 3. Party Clubs—Organization—Officers—Committees—Special Meetings—Regular Meetings.—For the purpose of the primary elections held by any political party, organization or association for the purpose of choosing candidates for office or the election of delegates to conventions, one or more clubs shall be organized in each township or ward, except as herein-after provided, each of which clubs shall have a distinct title. "The — Club of — party," and shall elect a President and one or more Vice Presidents, a Secretary and Treasurer, and may have the following working committees, of not less than three members each, viz.: A Committee on Registration, an Executive Committee, and such other committees, as to each club may seem expedient.

In the absence of the Secretary, or in case of his inability to act, unless it is otherwise provided in these rules, he shall designate another member of the club to perform his duties, or the members of the club shall elect a Secretary to take his place.

The President, or five members, shall have power to call all special meetings of the club (except for reorganization, provided for in the succeeding Section), and at all special meetings one-tenth of the members shall be necessary to constitute a quorum for the transaction of business, of which meeting at least 48 hours' public notice shall be given.

The clubs shall meet on the fourth Saturday in April of each election year for reorganization: *Provided*, That the County Committee may name any other day within the same week for such club meeting by giving at least two weeks' notice by advertisement in one or more county papers. In case any existing club shall fail to reorganize on the day fixed, the County Committee may fix a day for such club to meet for reorganization by giving two weeks' notice, as provided in this Section.

1915, XXIX, 164.

(288) § 4. Qualification for Voting—Exception as to Teachers, Ministers and Federal Employees.—The qualifications for membership of such party, organization or association in this State, and for voting at the primary, shall be as follows, viz.: The applicant for membership, or voter, shall be 21 years of age, or shall become so before the succeeding general election. He shall be a citizen of the United States and of this State. No person shall belong to any club or vote in any primary unless he has resided in the State two years and in the county six months prior to the succeeding general election and in the club district 60 days prior to the first primary

following his offer to enroll: *Provided*, That public school teachers and ministers of the gospel in charge of a regular organized church and Federal employees from this State shall be exempt from the provisions of this Section as to residence, if otherwise qualified.

1915, XXIX, 165.

(289) § 5. In cities of over 10,000 inhabitants, one or more clubs shall be organized in each of the wards. Each ward shall be a club district unless subdivided by County Committee. And the County Committee of each county in which such city is located may permit voters residing in the county outside of such city to belong to a club located in such city, and to vote therein in the club nearest to their respective residences calculated by the most practicable and convenient route. In cities or towns of less than 10,000 inhabitants the County Committee may authorize the consolidation of two or more wards to form a club district, and where townships are embraced in part in such cities or towns, the County Committee may permit the voters residing in such townships to belong to a club located in such town or city and to vote in such town or city in the club nearest to their respective residences, calculated by the nearest practicable route: *Provided*, No person shall be enrolled or vote out of the county in which he resides. In cities or towns which are not divided into wards the County Committee may designate the extent of the club district. Each territory designated for a club shall be its club district.

In all other cases the voter must enroll in the club nearest his place of residence, calculated by the nearest practicable route, regardless of township lines, and can only vote at the voting place of such club, and the territory included by this test shall be considered the club district of such club: *Provided*, That the County Executive Committee may define the club district by metes and bounds, in which case the voters must vote at the club for said district.

No person shall be enrolled to any club or take part in any club meeting or vote in any primary or be elected a delegate to the County Convention, except in the club district in which he resides.

There shall be in no case more than one voting place for each club. No club shall have less than 25 members: *Provided, however*, That any County Committee may permit the organization of a club of less than 25 members at inaccessible points where there are less than 25 voters.

No person shall vote except at the voting place authorized by the County Committee for the club to which he belongs: *Provided*, That if he remove from a club district within 60 days prior to the first primary he may vote (in the year which he removed) in the club district in which he previously resided: *Provided, further*, That he must have enrolled before the closing of the club list.

Federal, State and county officers temporarily residing at or near the capital or county seat may retain their membership and voting rights in their former home clubs if they so desire.

In case of mobilization of the National Guard of this State, the State Committee shall provide for the enrollment and voting of all members of the National Guard qualified to vote under this Article.

1915, XXIX, 165; 1918, XXX, 759.

(290) § 6. **Enrollment Books—Notice of Opening—Mode of Enrollment—Committee—Closing Books—Purging Rolls—Filing, Etc.**—Books of enrollment for voting in primary elections shall be opened by the Secretary of each club, or by the Enrollment Committee as hereinafter provided, on or before the first Tuesday in June, in each election year. Notice thereof shall be given by the County Chairman showing the names of the clubs, the boundaries of the club district, when the clubs are in cities or towns or adjacent thereto, or have been defined by the County Committee as herein provided, the names of the Secretaries, the names of the Enrollment Committee, such other information as the County Chairman may desire to give, and where the books are to be opened. Thereafter no new clubs shall be organized in that election year. Each applicant for enrollment shall, in person, write upon the club roll his full name and immediately thereafter his age, occupation and postoffice address, and if in a city or town shall write the name of the street and number of the house in which he resides, if such designations exist in said city or town. If the name be illegible, the Secretary shall write the name beneath the signature of the applicant. In the event of the inability of the applicant to write he may make his mark upon the roll, which shall be witnessed by the Secretary, or other person then having the custody thereof, and the Secretary shall fill in the other requirements. The State Committee shall furnish suitable books for enrollment, and the duplicate rolls to be made and filed with the Clerk of Court, which shall be uniform throughout the State: *Provided*, That the County Committee shall, on or before the last Monday in May of each election year, appoint for each club an enrollment committee of three, which may consist of the Secretary and County Committeeman from the said club, and a third member to be designated by the County Committee, by whom said enrollment shall be conducted. The enrollment book shall be kept in the custody of the Secretary or at such place as shall be designated by the Enrollment Committee. The club roll shall be open to inspection by any member of the party.

On the fourth Tuesday in July of each election year, which shall be the last day of enrollment, the club books shall close; and within three days thereafter each Secretary shall transmit the original roll to the County Chairman, who shall forthwith cause to be made and shall certify a copy thereof and file the same with the Clerk of the Court for public inspection at all times. At least ten days before the first primary, the County Committee shall meet after three days' published notice in a newspaper of general circulation in the county of time and place of meeting and examine the rolls. Any person may complain of errors therein and the County Committee, after hearing complaints, shall, in a fair and impartial manner, correct and purge the rolls, striking off the names of all persons not residing in the club district for which each roll was made up, or otherwise improperly enrolled, and adding any names improperly omitted: *Provided*, No name shall be stricken from any club roll without three days' notice by mail to the address appearing on the club roll to the person whose name is proposed to be dropped from the roll to show cause why said name should not be dropped.

When said rolls have been revised and corrected by the said County Committee, they shall be certified to and shall thereupon become the official club rolls, and no names shall be added thereafter, except by the order of a Judge of competent jurisdiction.

Upon the completion of said revision, the County Chairman shall immediately file in the office of the Clerk of Court a list duly certified by him of all names added or dropped from said roll, with age, place of residence, and occupation, which list shall be preserved by the Clerk along with the duplicate roll on file in his office and any person may there inspect said roll and list of corrections at all times.

The original roll shall be delivered to the Managers of the primary election by the County Committee before the day for the opening of the polls; and no person shall be allowed to vote at said election whose name does not appear on said original roll as herein required. The Managers of Election shall return said rolls to the County Chairman immediately after the counting of the votes and the declaration of the result, or as soon thereafter as practicable: *Provided*, If the original roll be lost or miscarried a copy of the duplicate, as corrected by the County Committee and filed in the Clerk's office, such copy to be certified to by him, shall be used in place of the original.

1915, XXIX, 166.

(291) § 7. County Convention — How Composed — Organization — Appeals.—Every general election year county conventions shall be called by the County Committee to meet on the first Monday in May at the county seat. The convention shall be composed of delegates elected from the clubs in the county, one delegate for every 25 members, and one delegate for a majority fraction thereof, based upon the number of votes polled in the first primary of the preceding election year. The lists of delegates certified to by the President and Secretary of each club shall constitute the temporary roll of the convention. The number of delegates for new clubs shall be based upon their enrollment at the time of the club meeting.

Each County Convention shall be called to order by the County Chairman and the convention shall proceed to elect a temporary President, a temporary Secretary and a Committee on Credentials for the purpose of organizing. When organized, it shall elect a permanent President, a Secretary and a Treasurer. It shall also elect the County Chairman and as many delegates to the State Convention as double the number of members the county in which the convention is held has in the General Assembly. The Secretary of the convention shall keep a record of the proceedings in the minute book.

In the event that the County Committee has refused to permit the formation of a new club in any ward or township, such refusal may be appealed from to the County Convention, which may permit the formation of the new club desired, but no such club shall be allowed any representation in the convention in that calendar year.

1915, XXIX, 168.

(292) § 8. State Committee—Vacancy—Officers—Meetings—Term of Office.—The State Committee shall be composed of one member from each

county, to be elected by the County Conventions and the State Chairman to be elected by the State Convention: *Provided*, That in case the office of Chairman of the State Committee shall become vacant by death, resignation or otherwise, the State Committee shall have power to fill the vacancy by electing a Chairman to serve until the organization of the next regular State Convention. The State Committee shall choose its other officers, not necessarily members thereof: *Provided*, That the Chairman shall vote only in case of a tie. The State Committee shall meet at the call of the Chairman or any five members, and at such time and place as he or they may appoint. Vacancies on said State Committee by death, resignation or otherwise, shall be filled by the respective County Committees. The members of the State Committee shall continue in office for two years from the time of election or until their successors have been elected. The Committee shall nominate Presidential Electors, and if any vacancy occur in the State ticket of electors, or of the National Executive Committee, by death, resignation or other cause, the Committee shall have the power to fill the vacancy; all by majority of the whole Committee.

1915, XXIX, 169.

(293) § 9. State Convention—How Composed—Meetings—Organization—Vacancy.—The State Convention shall be called by the State Committee to meet at Columbia every general election year on the third Wednesday in May. The convention shall be composed of delegates elected by the County Conventions, each county to be entitled to as many delegates as double the number of its members in the General Assembly. When the State Convention assembles it shall be called to order by the Chairman of the State Committee. A temporary President shall be nominated and elected by the convention, and after its organization the convention shall proceed immediately to the election of permanent officers and to the transaction of business. When the business has concluded it shall adjourn *sine die*.

The officers of the State Convention shall be a President, Vice President from each Congressional District, two Secretaries and a Treasurer.

Each county delegation to a State Convention shall have power to fill any vacancy therein.

Any county failing or refusing to organize under the provisions of these rules shall not have representation in the State Convention.

1915, XXIX, 169.

(294) § 10. County Committee—How Composed—Officers—Vacancy—Meeting—Duties.—The clubs in each county shall be held together and operate under the control of a County Committee, which shall consist of one member from each club, to be elected by the respective clubs. The Committee, when elected, shall appoint its own officers (except the Chairman, who shall be elected by the County Convention), who shall not necessarily be members of said Committee, but a vacancy in the membership of the Committee shall be filled by the club, through the loss of whose member by death, resignation or otherwise the vacancy occurs: *Provided*, That in case the office of Chairman of the County Committee shall become vacant by death, resignation or otherwise, the Committee shall have power to fill the

vacancy by electing a Chairman to serve until the organization of the next regular County Convention: *And provided, further,* That any officer so elected who is not a member of the Committee shall not be entitled to vote on any question except the Chairman, and then only in case of a tie vote. The tenure of office of the Committee shall be until the first Monday in May in each election year.

The County Committee shall meet on or before the first Monday in August of each election year and designate a polling place for each club in its own club district and appoint the Managers for the primaries. Three Managers and a Clerk shall be appointed for each voting place and their names published in one or more county papers at least two weeks before the election.

1915, XXIX, 170.

(295) § 11. Election on Last Tuesday in August—Arrangements of Voting Place—Opening and Closing Polls—Duty of Managers—Ballot Boxes—Oaths—Tickets—Ballots in Wrong Box—Excessive Ballots—Challenges.—For the purpose of nominating candidates for Governor, Lieutenant Governor, and all other State officers, including Solicitors in the respective Circuits, United States Senator and Congressmen in their respective districts, and all county officers, except Masters, Magistrates and Supervisors of Registration, a direct primary election shall be held on the last Tuesday in August of each election year, and a second and third primary each two weeks successively thereafter if necessary: *Provided,* That the County Committee of any county shall be at liberty to order a primary election for Masters and Magistrates, but not for members of the County Board of Control of the dispensaries, nor for county dispensers.

The Managers at each voting place shall arrange the table, desk or other place upon which the ballot boxes shall be placed, so that there shall be no crowding or confusion immediately around the boxes, and suitable means shall be provided to enable each voter to approach the boxes and deposit his ballot without interference or hindrance, and the right of each person regularly enrolled to vote and the secrecy of the ballot shall be preserved at all times.

The Managers shall open the polls at 8 o'clock a. m., and shall close them at 4 o'clock p. m.: *Provided,* That in the cities of Charleston and Columbia the polls shall open at 8 o'clock a. m., and close at 6 o'clock p. m. The Managers shall then proceed publicly to count the votes. After tabulating the result, the Managers shall certify the same and forward the ballot box, containing the ballots, poll list and all other papers, including the club roll, relating to such election, by one of their number to the Chairman of the County Committee within 36 hours after the close of the polls.

Each County Committee shall furnish the Managers at each voting precinct two ballot boxes, one for State officers and United States Senator and one for county officers, Congressmen and Solicitors. The Managers, before opening the polls, shall take and sign the following oath: "We do solemnly swear that we will conduct this election according to law and the rules of the party, and will allow no person to vote whose name is not regularly enrolled in this club, and we will not assist any voter to prepare

his ballot and will not advise any voter as to how he should vote at this election." The Managers shall direct each voter, if requested, to the proper box for his ticket, but the boxes in all cases shall be marked in a suitable manner so as to designate in which box the respective tickets shall be placed.

The Managers at each box at the primary shall require every voter to take the following oath and pledge, viz.: "I do solemnly swear that I am a resident of this club district and am duly qualified to vote at this election —, and that I have not voted before at this election."

Each voter shall deposit in the appropriate box a ballot on which shall be printed the names of the candidates for the offices to be filled, with the titles of the respective offices. The tickets shall be furnished by the State Committee for all except county officers, Congressmen and Solicitors, for which the County Committee shall furnish the tickets. Each ticket shall contain the names of all candidates for the respective offices and no other tickets shall be used. One ticket shall contain the names of all persons running for State offices and United States Senator. The other ticket shall contain the names of all persons running for members of the General Assembly, county officers, Congressmen and Solicitors. No vote for the House of Representatives, nor for County Commissioners, shall be counted unless it contains as many names as the county is entitled to Representatives and to County Commissioners, respectively.

Any ballot deposited in the wrong box shall not be counted.

That in case the Managers find more ballots in the ballot box than names on the poll list, the Managers shall draw out the excess ballots and destroy them.

At any election when the right of a person to vote is challenged, the Managers shall place the vote so challenged in an envelope and indorse thereon the name of the voter and that of the challenger, and the person so challenged shall be allowed to vote, and the challenged votes shall be kept separate and apart and not counted, but turned over to the County Committee, who shall at its first meeting thereafter hear all objections to such votes, and where no person appears to sustain an objection made at the polls the ballot shall be removed from the envelope and mingled with the regular ballot and counted, but where the challengers appear, or produce witnesses in support of the challenge, the Committee shall proceed to hear and determine the question, and in all instances the voter shall have the right of appealing to the State Committee.

1915, XXIX, 170.

(296) § 12. Tabulation of Returns—Result of Primary—State Committee Protests and Contests—Appeals—Majority Vote.—The County Committees shall assemble at their respective court houses on the morning of the second day after the election on or before 12 o'clock noon to tabulate the returns and declare the results of the primary, so far as the same relates to members of the General Assembly and county officers, and shall forward immediately to the Chairman of the State Committee at Columbia, S. C., the result of the election in their respective counties for

United States Senator, State officers, Congressmen and Solicitors. The State Committee shall proceed to canvass the vote and declare the result.

The protests and contests for county officers and members of the General Assembly shall be filed within two days after the day of the declaration by the County Committee of the result of the election with the Chairman of the County Committee, and said County Committee shall hear and determine the same at its first meeting thereafter, which shall be held within five days after said protest or contest is filed. The State Committee shall meet on the Tuesday after each primary or at such other time as may be designated by the Chairman, to hear and decide protests and contests as to United States Senators, State officers, Congressmen and Solicitors: *Provided*, That no member of either the County Committee or State Committee shall act in any contest wherein his candidacy is acted on. The protests and contests for all officers, except county officers and members of the General Assembly, shall be filed within five days after the election with the Chairman of the State Committee.

The State Committee shall also review, on appeal, the decision of the County Committee as to county officers, and members of the General Assembly, and its action shall be final.

No candidate shall be declared nominated in a primary election unless he receives a majority of the votes cast for the office for which he was a candidate.

The question of a majority vote shall be determined by the number of votes cast for any particular office, and not by the whole number of votes cast in the primary.

1915, XXIX, 172.

(297) § 13. Second Primary.—A second primary, when necessary, shall be held two weeks after the first and shall be subject to the rules governing the first primary. At said second primary the two highest candidates alone shall run for any one office, but if there are two or more vacancies for any particular office, then the number of candidates shall be double the number of vacancies to be filled.

In the event of a tie between two candidates in the second primary, the County Chairman, if it is a county office, and the State Chairman, if it is for United States Senator, State officers, Congressmen or Solicitors, shall order the third primary.

Other primaries, if necessary, shall be ordered by the County Chairman, if it is a county office, and the State Chairman, if it is for United States Senator, State officers, Congressmen or Solicitors.

1915, XXIX, 173.

(298) § 14. Certain Municipal Registration.—For all municipal primary elections, in cities of more than twenty-five thousand inhabitants and less than fifty thousand inhabitants according to the last United States census, the same provisions as now obtain as to the registration of voters shall prevail, the provisions of the Act of 1910, "An Act to amend the Code of Laws of South Carolina, Volume I, Chapter XLIX, relating to municipal corporations, by adding thereto an Article to be known as Article VII," etc.,

and amendments thereto, remaining in full force and effect, except as may be specifically amended or repealed by this Article.

1915, XXIX, 174.

(299) § 15. **Act Acumulative—Additional Party Vote.**—This Act is not intended, and shall not be construed, to prevent any political party, organization or association from prescribing and requiring any additional requirements and safeguards for the conduct of its primary election, and shall not be deemed or construed to repeal or effect the provisions of the law of this State, providing additional requirements and safeguards for primary elections in cities of more than forty thousand inhabitants: *Provided, however,* That no political party, organization or association shall enact rules or regulations based upon an educational or property qualification as a requisite for voting in a primary. That the provisions of this Act shall not be construed to repeal an Act entitled "An Act to regulate the holding of all primary elections and the organization of clubs in cities containing forty thousand inhabitants, or more," and also known as Senate Bill No. 37, passed at regular session of 1915.

1915, XXIX, 174.

(300) § 16. **Violation of Act—Penalties—Oaths.**—Any person violating the provisions of this Article other than swearing falsely shall be guilty of a misdemeanor, and fined not over five hundred (\$500) dollars, or imprisoned not over six (6) months, or both, at the discretion of the court. Any person swearing falsely in any of the matters pertaining to primary elections shall be guilty of perjury and punished as now provided by law for perjury. The officers and Managers of all clubs, and members of the State and County Executive Committees of political parties, organizations or associations, are hereby authorized to administer oaths in all matters relating to such primary elections, and to swear falsely before any of them touching such matters shall be perjury. The said Managers shall be sworn to conduct the election fairly and legally, and each voter shall be sworn as to his right to vote and that he has not voted before at said election.

1915, XXIX, 174.

ARTICLE II.

Regulations for the Use of Booths at Primary Elections.

(301) § 1. **Booths at Primary Elections—Not to Apply Outside Incorporated Cities and Towns.**—That in every primary election in this State there shall be provided at each polling precinct one booth for each one hundred enrolled voters or majority fraction thereof. The booths shall be made of wood, sheet metal, or any other suitable substance; shall not be less than thirty-two inches wide and thirty two inches deep and six feet six inches high, shall be provided with a curtain hanging from the top in front to within three feet of the floor, and shall have a suitable shelf on

which the voter can prepare his ticket: *Provided*, The provisions of this Article shall not apply to any precinct where there are less than fifty (50) voters enrolled on the club roll at such precinct.

1918, XXX, 811; 1919, XXXI, 77.

(302) § 2. Polling Places.—The polling places shall be provided with a table for the Managers. The polls shall be provided with a guard rail, so that no one except as hereinafter provided shall approach nearer than five feet to the booths in which the voters are preparing their ballots.

1918, XXX, 811.

(303) § 3. Tickets.—The tickets shall be printed on clear white paper in the usual manner, but shall have a coupon at the top perforated so as to be easily detached. On the coupon shall be printed "Official Ballot." "Club, Ward, No." The numbers shall run *seriatim* for each club. There shall be 50 per cent. more ballots than there are voters enrolled at each polling place.

1918, XXX, 811.

(304) § 4. Preparation of Ballots.—The Managers shall be responsible for all ballots furnished. When a voter presents himself he shall be given a ballot. The Manager in charge of the poll list shall enter the number of the ballot next the name of the voter. The voter shall forthwith retire alone to one of the booths, and without undue delay prepare his ballot by scratching out the names of the candidates for whom he does not care to vote. No voter shall remain in the booth longer than five minutes. After preparing his ballot, the voter shall present himself to the Manager. His ballot must be folded in such a way that the number can be seen and the coupon can be readily detached by the Manager without in any way revealing the printed portion of the ballot. If the voter is not challenged, and takes the prescribed oath, the Manager shall tear off the coupon, put it on file, stamp the ballot, and the voter shall deposit his ticket in the box, and shall immediately leave the polling place. If a voter shall mar or deface his ballot, he may obtain one additional ballot upon returning to the Manager in charge of the ballots the ballot so marred or defaced, with the coupon attached. The Manager in charge of the poll list shall change the number of the ballot on his poll list, and place the defaced ballot on a file. No voter shall be given a second ballot until he has returned the first one with coupon attached.

1918, XXX, 811.

(305) § 5. When and How Voter May Be Assisted.—No person shall be allowed within the guard rail except as hereinafter provided. If a voter cannot read or write, or is physically disabled, and by reason thereof did not sign the enrollment book, he may appeal to the Managers for assistance, and the Chairman of the Managers shall appoint one of the Managers, and a bystander to be designated by the voter, to assist him in preparing his ballot: *Provided*, After the voter's ballot has been prepared, the bystander so appointed shall immediately go behind the guard rail: *Provided, further*, That in cities containing fifty-five thousand inhabitants or more, the Chairman of the Managers shall appoint two of the watchers represent-

ing different factions to assist him in preparing the ballot. After the voter's ballot has been prepared, the watchers so appointed shall immediately go behind the guard rail: *Provided, further*, That if there be no such watchers available, the Chairman may appoint two bystanders who are qualified to vote in such primary to assist the voter in the preparation of his ballot.

1918, XXX, 811; 1920, XXXI, 808.

(306) § 6. Admission to Polling Place.—From the time of the opening of the poll until the announcement of the result and the signing of the official returns, no person shall be admitted to the polling place except the Managers, duly authorized watchers and challengers, the Chairman of the Executive Committee or member of the Executive Committee appointed in his stead to supervise this polling place, persons duly admitted for the purpose of voting, police officers admitted by the Managers to preserve order or enforce the law: *Provided, however*, That candidates for public office voted for at such polling place may be present at the canvass of the votes: *Provided*, Canvass of the votes shall be open to the public.

1918, XXX, 811.

(307) § 7. Interference With Election.—If the watchers or officers of the law who are admitted to the polling place by the Managers shall interfere with the Managers or obstruct the voting, it shall be the duty of the Managers to suspend the election until order is restored, or as may be provided by the rules of the party. No person shall be allowed to approach polling places within twenty-five (25) feet while polls are opened, other than the persons herein provided for.

1918, XXX, 811.

(308) § 8. Managers to Account for Ballots.—Upon the close of the election, Managers shall account to the Executive Committee for all ballots delivered to them, and make the following returns: (a) The number of official ballots furnished to each polling precinct. (b) The number of official ballots spoiled and returned by voters. (c) The number of official ballots returned to the Executive Committee. (d) The number of official ballots actually voted.

1918, XXX, 811.

(309) § 9. Inconsistent Acts Repealed—Act (1915; 81) Not Affected.—That all Laws and parts of Laws in conflict with the provisions of this Law are hereby repealed, except an Act to regulate the holding of all primary elections and the organization of clubs in cities containing forty thousand inhabitants or more, approved 16th day of February, 1915, which said Act shall remain in full force and effect.

1918, XXX, 811.

(310) § 10. State Executive Committee to Make Regulations for Voting by Persons in U. S. Service.—The State Executive Committee provided for under the laws regulating primary elections in this State be, and they are hereby, authorized and empowered to make such regulations as may be

necessary to provide for the enrollment and voting of citizens of this State holding positions under the Government of the United States, or any branch thereof and residing temporarily out of the State, but within the United States.

1918, XXX, 811.

ARTICLE III.

Regulations for the Holding Primary Elections and the Organization of Clubs in Cities Containing Forty Thousand Inhabitants or More.

(311) § 1. **Provisions and Regulations.**—That in counties containing a city of forty thousand inhabitants or more the following provisions shall obtain for all primaries: State, County and Municipal Books of enrollment for voting in all primary elections shall be opened by the Secretary of each club at such place or places as may be designated by the Municipal or County Executive Committee on the second Tuesday in June in each year, wherein a State or county election is to be held and on the twelfth Tuesday, prior to the Monday preceding the date of the primary in each year wherein a municipal election is to be held. Notice thereof shall be given by the County or Municipal Chairman showing the names of the clubs, the boundaries of the clubs districts, when the clubs are in cities or towns or adjacent thereto the names of the Secretaries, such other information as the respective County or Municipal Chairman may desire to give, and when the books are to be opened. Thereafter no new clubs shall be organized in that election year. For the year 1916 for the purposes of organization of the clubs and for the election of officers, Executive Committeemen, and delegates to the County Convention to be held in May, 1916, books of enrollment shall be opened by the Secretary of each club on the 16th day of March, 1916, under the same regulations and requirements as is herein provided and with full power in the Executive Committee to purge the same, and shall remain open not later than ten days prior to the date fixed for the club meeting, and the persons so enrolled for such organization shall not be required to reenroll when the books are reopened for enrollment for the primary election in said year.

1915, XXIX, 81; 1916, XXIX, 921.

(312) § 2. **Duties of Applicant for Enrollment.**—Each applicant for enrollment shall, in person, write upon the club roll his full name and, immediately thereafter, his age, height, occupation and postoffice address, and, if in a city or town, shall write the name of the street and the number of the house in which he resides, if such designation exists in said city or town. In the event of the inability of the applicant to write, he may make his mark upon the roll, which shall be witnessed by the Secretary or other person then having the custody thereof, who shall fill in the other requirements.

1915, XXIX, 81.

(313) § 3. **Enrollment Books.**—The Municipal and County Committees shall furnish to the Secretaries suitable books for such enrollment. The enrollment books shall be kept in the custody of the Secretaries of the

respective clubs, at such places as shall be designated by the Municipal or County Executive Committee. The enrollment books shall be opened to inspection by any member of the party.

1915, XXIX, 81.

(314) § 4. Oath of Applicant for Enrollment.—Each voter applying for enrollment on any club roll shall take an oath that he is duly qualified to vote in said election, and that he has not enrolled as a member of any club.

1915, XXIX, 81.

(315) § 5. Violation of Article—Perjury—Books of Enrollment—Prima Facie Evidence.—Every person enrolling himself who is not entitled to be enrolled, or who shall violate any of the provisions hereof, shall be deemed guilty of perjury, and the production of the books of enrollment, showing the enrollment of any such person, shall be *prima facie* evidence that the person so enrolled has acted in violation of the provisions of law.

1915, XXIX, 81.

(316) § 6. Closing of Enrollment Books—Duties of Secretary—County Auditor—Subject to Inspection—Publication—Committee Meeting—Complaints—Purging Rolls—Notice.—On the fifth Tuesday prior to the Monday preceding each primary election, at 12 o'clock noon, which shall be the last day of enrollment, the enrollment books shall close, and within three days thereafter each Secretary shall transmit the original enrollment books to the Municipal or County Chairman, who shall immediately deposit the same in the office of the County Auditor, where said books shall be open to public inspection subject to the rules of the party, and said Municipal or County Chairman shall forthwith cause to be made, and shall publish in a daily newspaper published in the county wherein such primary election is to be held, a copy of the names, with their respective addresses, appearing on said enrollment books. At least ten days before the primary election, the Municipal or County Committee shall meet, after three days' published notice in a newspaper of general circulation in the county, of the time and place of meeting, and examine the rolls. Any person may complain of errors therein, and the Municipal or County Committee, after hearing complaints, shall, in a fair and impartial manner, correct and purge the rolls, striking off the names of all persons not properly enrolled: *Provided*, No name shall be stricken from any club roll without three days' notice, by registered letter, to the address appearing on the books of enrollment to the person whose name is proposed to be stricken off from the roll, to show cause why said name should not be stricken off.

1915, XXIX, 81.

(317) § 7. Certification of Rolls—Names Stricken to Be Published.—When said rolls have been revised and corrected by the said Municipal or County Committee, they shall be certified to, and shall thereupon become the official club rolls. Upon the completion of said revision, the Municipal or County Chairman shall immediately cause to be made and published in a

daily newspaper published in the county wherein such primary election is to be held, a list, duly certified by him, of all names stricken, with their addresses as appearing on the rolls, off said enrollment books.

1915, XXIX, 81.

(318) § 8. Book Delivered to Managers—When to Be Returned.—The original enrollment books shall be delivered to the Managers of the primary elections by the Municipal or County Executive Committee the day before the opening of the polls located in cities, and not more than three days before the opening of the polls located in the country districts. The Managers of the primary election shall return said enrollment books to the Chairman of the Municipal or County Executive Committee immediately after the counting of the vote, along with the boxes.

1915, XXIX, 81.

(319) § 9. Booths.—There shall be provided at each polling precinct one booth for each one hundred (100) enrolled voters. The booths shall be made of wood, sheet metal or any other suitable substance, shall be not less than thirty-two (32) inches wide and thirty-two (32) inches deep, and six (6) feet six (6) inches high; shall be provided with a curtain, hanging from the top in front to within three (3) feet of the floor, and shall have a suitable shelf on which the voter can prepare his ticket.

1915, XXIX, 81.

(320) § 10. Provision for Polling Places.—The polling places shall be provided with a table for the Managers. The polls shall be divided with a guard rail, so that no one except as hereinafter provided shall approach nearer than five feet to the booths in which the voters are preparing their ballots.

1915, XXIX, 81.

(321) § 11. Tickets.—The tickets shall be printed on clear white paper, in the usual manner, but shall have a coupon at the top, perforated, so as to be easily detached. On the coupon shall be printed, "Official Ballot." "Club —, Ward —, No. —." The numbers shall run *seriatim* for each club. There shall be fifty per cent. more ballots than there are voters enrolled at each polling place.

1915, XXIX, 81.

(322) § 12. Managers Responsible for Ballots—When Voter Receives Ballot—Regulations for Casting.—The Managers shall be responsible for all ballots furnished. When a voter presents himself he shall be given a ballot, provided he is a native citizen of the United States, or if he is a naturalized citizen he must show his naturalization papers before the Managers shall give him a ballot. The Manager in charge of the poll list shall enter the number of the ballot next the name of the voter. The voter shall forthwith retire alone to one of the booths and, without undue delay, prepare his ballot by scratching out the names of the candidates for whom he does not care to vote. No voter shall remain in the booth longer than five minutes. After preparing his ballot the voter shall present himself to the Managers. His ballot must be folded in such a way that the number can

be seen and the coupon can be readily detached by the Manager without in any way revealing the printed portion of the ballot. If the voter is not challenged, and takes the prescribed oath, the Manager shall tear off the coupon, put it on a file, stamp the ballot, and the voter shall deposit his ticket in the box, and shall immediately leave the polling place. If a voter shall mar or deface his ballot he may obtain one additional ballot, upon returning to the Manager in charge of the ballots the ballot so marred or defaced, with the coupon attached. The Manager in charge of the poll list shall change the number of the ballot on his poll list and place the defaced ballot on file. No voter shall be given a second ballot until he has returned the first one, with coupon attached.

1915, XXIX, 81.

(323) § 13. Assistance to Illiterate or Physically Disabled Voter.—No person shall be allowed within the guard rail except as hereinafter provided. If a voter cannot read or write, or is physically disabled, and by reason thereof did not sign the enrollment book, he may appeal to the Managers for assistance, and the Chairman of the Managers may appoint two of the watchers representing different factions to assist him in preparing his ballot: *Provided*, After the voter's ballot has been prepared the watchers so appointed shall immediately go behind guard rail.

1915, XXIX, 81.

(324) § 14. Certain Persons Admitted to Polling Place.—From the time of the opening of the poll until the announcement of the result, the signing of the official returns, no person shall be admitted to the polling place except the Managers, duly authorized watchers and challengers, the Chairman of the Executive Committee or member of the Executive Committee appointed in his stead to supervise this polling place, persons duly admitted for the purpose of voting, police officers admitted by the Managers to preserve order or enforce the law: *Provided, however*, That candidates for public office voted for at such polling place may be present at the canvass of the votes.

1915, XXIX, 81.

(325) § 15. Watchers or Officers Not to Obstruct Managers or Voters—Polls Not to Be Approached.—If the watchers or officers of the law who are admitted to the polling place by the Managers shall interfere with the Managers or obstruct the voting, it shall be the duty of the Managers to suspend the election until order is restored, or as may be provided by the rules of the party. No person shall be allowed to approach polling places within one hundred (100) feet while the polls are open.

1915, XXIX, 81.

(326) § 16. Duties of Managers.—Upon the close of the election, Managers shall account to the Executive Committee for all ballots delivered to them, and make the following returns: (a) The number of official ballots furnished to each polling precinct. (b) The number of official ballots spoiled and returned by voters. (c) The number of official ballots returned to the Executive Committee. (d) The number of official ballots actually voted.

1915, XXIX, 81.

(327) § 17. **Party Rules.**—Except as herein provided, the primary election shall be conducted in accordance with the party rules.

1915, XXIX, 81.

(328) § 18. **Misdemeanor—Perjury—Penalty—Oaths Administered.**—Any person violating the provisions of this Act other than swearing falsely, shall be guilty of a misdemeanor and fined not over five hundred (\$500.00) dollars, or imprisoned not over six (6) months, or both, at the discretion of the court. Any person swearing falsely in any of the matters pertaining to primary elections shall be guilty of perjury, and punished as now provided by law for perjury. The officers and Managers of all clubs, and members of the State and County Executive Committees of political parties, organizations or associations, are hereby authorized to administer oaths in all matters relating to such primary elections, and to swear falsely before any of them, touching such matters, shall be perjury. The said Managers shall be sworn to conduct the election fairly and legally, and each voter shall be sworn as to his right to vote and that he has not voted before at said election.

1915, XXIX, 81.

ARTICLE IV.

Special Provisions as to Primary Elections.

(329) § 1. **Board for Appeals in Municipal Primaries—Protests—Papers.**—That in every political primary election held by any political party, organization or association in any of the cities or towns of this State for the purpose of choosing candidates for offices therein or the election of delegates to conventions thereof, the decision of any protest or contest that may arise shall be subject to appeal to the Board of State Canvassers of Municipal Primaries of this State herein provided for, and upon such appeal it shall be the duty of the committee or canvassing officers from whose decision such appeal may be made to transmit to said Board of State Canvassers, any protest and all papers relating to the election with a copy of any evidence taken before them within ten days from their first meeting to canvass the returns of Managers of such election.

1920, XXXI, 931.

(330) § 2. **Board of State Canvassers for Municipal Primaries—Oath—Powers.**—That the State Executive Committee of every political party in this State which may have such a committee shall immediately after its appointment elect from its body a committee of seven, one from each Congressional District, which shall constitute the Board of State Canvassers for Municipal Primaries, each of whom, before hearing any appeal, shall take and subscribe an oath that he will fairly and impartially and honestly decide such appeal, and shall have power upon security being given to their Chairman for the payment of the expenses of such appeal by the person or persons making the same, to decide as judicial officers all cases under protest or contest that may come before them on appeal from any decision of said committees and canvassing officers from whose decisions appeal is

made upon the papers transmitted to them by said committees or canvassing officers, and the person or persons declared by said State Board of Canvassers for Municipal Primaries to be nominated at such election shall be the nominee or nominees of such political party in the respective elections for which such nominations were made.

1920, XXXI, 931.

(331) § 3. Vacancies.—Any vacancies in said Board of State Canvassers of Municipal Primaries, of whom five shall be a quorum, shall be filled by the State Executive Committee, or in case they should not be in session, by the Chairman of the State Executive Committee, and the members of said Board shall serve until the appointment of the next State Executive Committee.

1920, XXXI, 931.

(332) § 4. Appointment of Watchers—Registration—Filing Lists and Furnishing Copies—Publication of Lists.—Candidates in all counties in which there is a city containing twenty thousand inhabitants or more shall have the right to appoint a watcher at each polling place to look after the interest of such candidates. And in all cities of twenty thousand inhabitants or more there shall be a party registration of voters under regulations to be prescribed by the rules of the respective party.

Civ. '12, § 285; Civ. '02, § 258; 1896, XXII, 56; amd. by 1900, XXIII, 375; 1903, XXIV, 9; 1908, XXV, 1154; 1915, XXIX, 81; 1916, XXIX, 921.

(333) § 5. Restrictions of Voters in Primary Elections.—That hereafter only citizens of this State, or other cities of the United States, who shall have been residents of this State for at least one year, with the *bona fide* intention of becoming citizens of this State, shall be entitled or allowed to vote in any primary election, State, county or municipal, in this State; and that upon a person offering to vote, and his vote being challenged for noncitizenship, the challenge being accompanied by an affidavit of some registered voter, made of his own knowledge, or on information and belief, to the effect that such person is not a citizen, as defined above, he shall not be allowed to vote, unless he file with the Managers at the polls his affidavit that he is a citizen, specifying whether born or naturalized, and if naturalized, exhibit to the Managers his certificate of naturalization.

1912, XXVII, 751.

TITLE III.

OF THE ASSESSMENT AND COLLECTION OF TAXES.

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CHAPTER XIV.**The Assessment of Taxes.**

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ARTICLE I.**Subjects and Lien of Taxes.**

(334) § 1. **Poll Tax—Who Liable For.**—There shall be assessed on all taxable polls in this State an annual tax of one dollar on each poll, the proceeds of which tax shall be applied solely to educational purposes. All males between the ages of twenty-one and sixty years, except those incapable of earning a support from being maimed or from any other cause, shall be deemed taxable polls.

Civ. '12, § 286; Civ. '02, § 259; G. S. 168; R. S. 216; 1882, XVII, 985, § 153; 1909, XXVI, 77.

Poll tax constitutional, but limited to use for educational purposes. *State v. Cobb*, 8 S. C. 123.

(335) § 2. **What Property Is Taxable.**—All real and personal property in this State, and personal property of residents of this State which may be kept or used temporarily out of the State, with the intention of bringing the same into the State, or which has been sent out of the State for sale and not yet sold; all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, of parties residents in this State shall be subject to taxation.

Civ. '12, § 287; Civ. '02, § 260; G. S. 164; R. S. 217; 1882, XVII, 982, § 149.

Personal property taxable where found. *Jenkins v. Charleston*, 5 S. C. 400. Generally. *State v. Charleston*, 1 Mill 36; *Bubow v. City Council*, 3 N. & McC. 527; *Hayne v. DeLiesseline*, 3 McC. 374; *Insurance Co. v. Bradley*, 83 S. C. 430, 65 S. E. 433.

(336) § 3. **Who Liable for Taxes on Real Estate.**—Every person shall be liable to pay taxes and assessments on the real estate of which he or she may stand seized in fee or for life, by courtesy, in dower, as husband in right of his wife, or may have the care of as guardian, executor, trustee or committee.

Civ. '12, § 288; Civ. '02, § 261; G. S. 165; R. S. 218; 1882, XVII, 983, § 150.

Taylor et al v. Strauss et al, 95 S. C., 295; 78 S. E. 833.

(337) § 4. **Personal Property Held in Trust or Charge—Who Liable for Taxes On.**—All executors, administrators, guardians, trustees, receivers, officers, husbands, fathers, mothers, agents or factors shall be personally liable for the taxes on all personal property which they are required, respectively, to list for taxation by the provisions of this Chapter, and which was in their possession at the time when the return thereof for taxation shall have been made by themselves or the County Auditors, and may retain in their hands a sufficient amount of the property, or proceeds thereof, to pay such taxes for the entire year; and the County Treasurer may collect such taxes by any and all the means provided by Chapter XV, either of the principal or beneficiary, or of the persons so acting as executor, administrator, guardian, trustee, husband, father, mother, agent or factor, receiver or officer.

Civ. '12, § 289; Civ. '02, § 262; G. S. 166; R. S. 219; 1882, XVII, 983, § 151.

(338) § 5. **Taxes a Debt Due State, and a First Lien Upon Property—Enforcement.**—All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State by a party against whom the same shall be charged; and such taxes, assessments and penalties shall be a first lien in all cases whatsoever upon the property taxed; the lien to attach at the beginning of the fiscal year during which the tax is levied; and such taxes shall be first paid out of the assets of any estate of deceased persons, or held in trust as assignee or trustee, as aforesaid, or proceeds of any property held on execution or attachment; and the County Treasurer may enforce the said lien by execution against the said property; or, if it cannot be levied on, he may proceed by action at law against the person holding said property.

When any real estate shall be sold under any writ, order of proceedings in any court, the court shall, on motion of any person interested in such real estate or in the purchase or proceeds of the sale thereof, order all taxes,

assessments and penalties charged thereon to be paid out of the proceeds of such sale as a lien prior to all others.

Civ. '12, § 290; Civ. '02, § 263; G. S. 170; R. S. 220; 1882, XVII, 987, § 155.

State taxes are a first lien on the property of the taxpayer, and a sale for such taxes gives purchaser a good title as against any taxes then due the town of Mount Pleasant, which, under the town charter, 20 stat. 1262, is not a first lien on the property. *Holmes v. Weinheimer*, 66 S. C. 18, 44 S. E. 82.

Liens, as preferred. *State v. Allen*, 2 Bay 244. Must be expressly made so by the law or arise by necessary implication. *Barker v. Smith*, 10 S. C. 225. Continues as long as Statute provides. *Id.* It is not given priority over previously attached inchoate right of dower. *Shell v. Duncan*, 81 S. C. 547, 10 S. E. 330.

Executions, as to, Section is unconstitutional. *State v. Allen*, 2 McC. 55; *State v. Columbia*, 6 S. C. 11. It was held under certain tax acts that the personalty must be exhausted before land can be sold. *Ebaugh v. Mullinax*, 34 S. C. 364, 13 S. E. 613; *Curtis v. Renneker*, 34 S. C. 468, 13 S. E. 664. Under later Acts it has been held that the omission to exhaust the personalty does not affect the purchaser's title.

Interstate B. & L. Ass'n v. Waters, 50 S. C. 459, 27 S. E. 948.

Taylor et al v. Strauss et al, 95 S. C. 295; 78 S. E. 883.

(339) § 6. Enforcement of Lien on Realty.—That all real property returned delinquent by County Treasurers, upon which the taxes shall not be paid by distress or sale of personal property, or otherwise, shall be seized and sold as provided by law. The distress and sale of personal property shall not be a condition precedent to seizure and sale of any real property hereunder.

Civ. '12, § 291; 1902, XXIII, 1132.

See *Johnson v. Jones*, 72 S. C. 270, 288, 51 S. E. 805, as to necessity for sale of personal property in 1876.

(340) § 7. Collection of Tax to Pay Township Bonds Issued in Aid of Railroads Prohibited.—No Board of Township Commissioners, nor County Board of Commissioners, nor any other officer or officers, shall assess or levy, and no County Treasurer nor other officer or officers shall collect any tax for the payment of township bonds, or the coupons thereof, issued in the aid of a railroad: *Provided*, This Section shall not apply to those bonds issued in the aid of railroads that have been completed and finished through such townships as have issued such bonds, nor until such road or portion thereof shall have been accepted by the Railroad Commissioners: *Provided, further*, That the provisions of this Section shall not apply to Newberry County or any part thereof.

Civ. '12, § 292; Civ. '02, § 264; 1897, XXII, 534.

ARTICLE II.

Definition of Terms.

(341) § 1. Meaning of Words, Terms and Phrases.—The phrase "real property," as used in this Chapter, shall be held to mean and include not only land, city, town and village lots, but all structures and other things therein contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot. The phrase "personal property," as used in this Chapter, shall be held to mean and include all things, other than real estate, which have any pecuniary value, and moneys, credits, investments in bonds, stocks, joint stock companies or otherwise. The term "moneys" or "money" as used in this Chapter, shall be held to mean and include gold, silver and other coin, bank bills and other bills or notes authorized to be circulated as money, whether in possession or on deposit subject

to the draft of the depositor or person having the beneficial interest therein on demand. The term "credits," as used in this Chapter, shall be held to mean the remainder due, or to become due, to a party, after deducting from the amount of all legal debts, claims and demands in his favor, the amount of all legal debts and demands against him, whether such demands be payable in money, labor or other valuable things. But, in ascertaining such remainder, no deduction shall be made for any obligation to any mutual insurance company, given for insurance, nor any subscription to the capital stock of any joint stock company, nor of any taxes assessed against the party, nor of any subscription to any religious, scientific, literary or charitable purpose, nor of any acknowledgment of a liability not founded on a legal and valuable consideration, nor any more of any joint liability with others than the party honestly believes he will be compelled to pay, nor any contingent liability, nor of any acknowledgment of debt or liability made for the purpose of diminishing the amount of credit to be returned for taxation. The phrase "investment in bonds," as used in this Chapter, shall be held to mean all investments of money or means in bonds of whatever kind, whether issued by the Government of the United States, or of this or any other State or Territory of the United States, or any foreign government, or any county, city, town or other municipality, or by any corporation or company of this or any other State or country. The phrase "investments in stocks," as used in this Chapter, shall be held to mean and include all investments of money or means in the evidences of indebtedness, other than bonds or bills designed to circulate as money, issued by any government or municipality, and shares of the capital of any corporation, company or association, and every interest in any such shares or portion thereof; also all interests or shares in ships, boats or other vessels used or designed to be used exclusively or partially in navigating the waters within or bordering on this State, whether such ship, boat, or vessel be within the jurisdiction of this State or not, and whether such vessel be registered or licensed at any Collector's office in this State or not. The word "oath," as used in this Chapter, shall be held to mean and include an affirmation duly made. The words "person" and "party," and other words or words importing the singular number as used in this Chapter, shall be held to include firms, companies, associations and corporations; and all words in the plural number shall apply to single individuals, in all cases in which the spirit and intent of this Chapter require it. All words in this Chapter importing the masculine gender shall apply to females also; and all words in this Chapter importing the present tense shall apply to the future also.

Civ. '12, § 293; Civ. '02, § 265; G. S. 167; R. S. 221; 1897, XXII, 983-985.

ARTICLE III.

Property Exempt from Taxation.

(342) § 1. **Exemptions from Taxes.**—The following property shall be exempt from taxation, to wit: 1. All public schools and the grounds actually occupied by them, not exceeding in any case three acres. 2. All houses used exclusively for public worship, the books and furniture therein, and the ground actually occupied by them, not exceeding in any case two

acres, and the parsonage and lot on which it is situated, so long as no income is derived therefrom. 3. All incorporated public colleges, academies and institutions of learning, with the funds provided for their support, and the grounds and the buildings actually occupied by them and not used with a view to pecuniary profit; but this provision shall not extend to leasehold estates held by others under the authority of any college or other institution of learning. 4. All real and personal property the rents, issues, incomes and profits of which have been or shall be given to any city, town, village, school district or subdistrict in this State exclusively for the endowment or support of public schools therein, so long as such property or the rents, issues, incomes or profits thereof shall be used or applied exclusively for the support of free education in said schools by such city, town, village, district or subdistrict. 5. All graveyards or cemeteries, except such as are held with a view to profit or speculation in the sale thereof. 6. All property owned exclusively by the United States or this State. 7. All buildings owned by counties and used exclusively as court houses, jails or public offices, with the grounds on which such buildings are or may be erected, not exceeding ten acres in any county. 8. All lands, houses, fixtures and property owned by any county or city used exclusively for the support of the poor. 9. All property belonging to institutions of purely public charity and used exclusively for the maintenance and support of such institutions. 10. All fire engines and other implements used in the extinguishment of fires, with the buildings and grounds used exclusively for the keeping and preservation thereof, when owned by any city, town or village, or any fire company organized therein. 11. All public squares or grounds and market houses owned by any city, village or town and used exclusively for public purposes, and not for revenue. 12. All city, town and village halls owned and used exclusively for public purposes, and not for revenue, by any city, town or village. 13. All waterworks to supply water for the use of a town or city, the machinery and fixtures connected therewith, and the grounds occupied thereby, when owned by any city or town. 14. All bonds and stocks of this State. All municipal bonds in this State which, by the terms of the Act under which they are or may be issued, are or may be exempted from taxation. 15. All bonds and stocks of the United States which are not authorized by the laws of the United States to be taxed under State authority. 16. All rents accruing from real estate which shall not become due within two months after the first day of January of the year in which taxes are to be assessed thereon. 17. All of any annuity not payable on or before August 1st of the year for which taxes are to be assessed thereon. 18. All pensions payable to any person by the United States or any State of the United States. 19. All shares of the capital stock of any company or corporation which is required to list its capital and property for taxation in this State. 20. All the wearing apparel of the person required to make return, and his family. 21. Articles actually provided for the present subsistence of the person or his family, to the value of one hundred dollars. 22. Fair grounds of agricultural and mechanical societies when not used for purposes of profit. 23. All houses, together with the grounds occupied by them, not exceeding in any case three acres, together with books, furniture and appurtenances therein, belonging to any Young Men's Christian

Association in this State and used by them for the purposes of, or in support of, such association are exempt from taxation for State, county, school, municipal and special taxes: *Provided*, That the exemption herein provided for shall not apply to such portions of the buildings as may be rented for other purposes. 24. All bonds hereafter issued or sold, or to be hereafter issued or sold, by the trustees of any school district, or school districts, pursuant to the vote of the majority of qualified voters of such school district, or such school districts, voting at an election heretofore or hereafter held for the erection of buildings, for equipment, for maintaining public schools in such district or districts, or for paying indebtedness of such district or districts, shall be exempt from all taxation for State, county, municipal or school purposes. 25. All premises owned in fee by any military organization in this State and used by said organization solely for military purposes, and in case any premises owned in fee by any such military organization be used in part by such military organization for military purposes and part for any other purpose, then the County Auditor shall reduce the assessment on such premises in proportion that value of the part used solely for military purposes bears to the whole premises. 26. All premises belonging to any Young Women's Christian Association or to the Salvation Army in this State and used by them for the purpose of, or in support of, such association or army: *Provided*, That the exemption herein provided for shall not apply to such portions of any buildings as may be rented for other purposes. 27. All bonds hereafter issued by any city or county. 28. That the South Carolina Baptist Hospital in the City of Columbia, with all houses, furniture and property of every kind belonging to said hospital and used for the purpose of said hospital, be, and the same is hereby, exempt from taxation for State, county, school, municipal and special taxes. 29. All building and loan associations heretofore chartered, or hereafter to be chartered, under the laws of the State of South Carolina, for the purpose of lending money to be expended in the erection, repairs or improvements of buildings in this State, shall be exempt from the payment of any State, county or municipal taxes within this State: *Provided*, That no building and loan associations be allowed to make loans under the provisions authorized by law to banks, banking houses or other corporations or persons conducting business in the nature of banks or banking houses, except in the usual way of lending to individuals, without discount, and showing the evidence of the indebtedness of such loans to be by promissory notes or bonds and secured by mortgages of real estate, or other security: *Provided, further*, That no building and loan association, or other corporation conducting business in the nature of building and loan associations, chartered under the laws of this State, and desiring the benefit of this Act, shall be permitted to lend money to be used in the erection, repairs or improvements of property located without the county limits in which they are located. 30. That in computing for taxation for State, county or municipal purposes, the true value in money in all shares of stock in any bank or banking association doing business in this State, there shall be deducted therefrom so much thereof as is invested in United States Liberty Bonds or other bonds hereafter to be issued by the United States Government and

Federal Farm Loan Bonds of the Federal Land Bank of Columbia, not, however, to exceed twenty-five per cent. of the capital stock and surplus of such bank or banking institution invested.

Civ. '12, § 294; Civ. '02, § 266; G. S. 169; R. S. 222; 1882, XVII, 985, § 154; 1908, XXV, 1051; 1912, XXVII, 682; 1915, XXIX, 574; 1918, XXX, 710; 1919, XXXI, 136; 1920, XXXI, 746.

City of Columbia v. Tindal, 43 S. C. 547, 22 S. E. 341.

General Assembly may exempt in act authorizing their issuance bonds issued by county to pay its bonded debt under § 1, Art. X, Constitution. Chester County v. White, 70 S. C. 433, 448, 50 S. E. 28.

As to enforcement of collection of unpaid taxes upon municipal property not used exclusively for public purposes and for revenue, see post, § (524).

Legislature may exempt County bonds. Chester County v. White, 70 S. C. 433, 50 S. E. 28.

See Const. 1895, § 1, Art. X.

ARTICLE IV.

General Rules as to the Return and Assessment of Property.

(343) § 1. **Comptroller General to Prescribe Forms.**—The Comptroller General shall prescribe the forms of all returns of taxation, and the oaths that shall be made thereto, and transmit the same to the several County Auditors; and any return made in any way varying therefrom shall not be regarded as a return: *Provided*, Returns of property in the City of Florence may be made upon a special form furnished by said city through its Council, and approved by the Comptroller General.

Civ. '12, § 295; Civ. '02, § 267; G. S. 213; R. S. 223; 1896, XXII, 63; 1914, XXVIII, 516.

(344) § 2. **Return and Assessment of Property.**—Every person of full age, and of sound mind, shall annually list for taxation the following personal property, to wit:

1. All the tangible personal property in the State, owned or controlled by him.
2. All the tangible property owned by him or other resident of South Carolina, and under his control, which may be temporarily out of the State, but is intended to be brought into the State.
3. All tangible personal property owned or controlled by him which may have been sent out of the State for sale, and not yet sold; and,
4. All the moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, owned or controlled by him, whether in or out of this State.

The property of every ward shall be listed by his guardian; of every minor child, having no other guardian, by the father, if living; if the father be dead, by the mother, if living; and if the mother be dead or married, by the person having it in charge; of the wife, by the husband, if living and sane, and the parties are residing together; if the husband be dead, or is insane, or is not living with his wife, by the wife; of every person for whose benefit property is held in trust, by the trustee; of every deceased person, by the executor or administrator; of those whose property or assets are in the hands of receivers, by such receivers; of every firm, company, body politic or corporate, by the president or principal accounting officer, partner, or agent thereof; of all persons in the hands or custody of any public

officer or appointee of a court, by such officer or appointee; of those absent or unknown, by their agent or the person having it in charge; of lessees of real property, by such lessees.

Civ. '12, § 296; Civ. '02, § 268; G. S. 173; R. S. 224, 225.

(345) § 3. How Property Listed and Returned.—All persons required by law to list property for others shall list it separately from their own, and in the name of the owner thereof; but shall be personally responsible for the taxes thereon for the year in which they list it, and may retain so much thereof, or the proceeds of the sale thereof, in their own hands, as will be sufficient to pay such taxes: *Provided*, That all lands shall be listed and assessed as the property of the person or persons having the legal title to, and the right of possession of, the land at the time of listing and assessment, and in case of persons having possession of lands for life, in the name of the life tenant: *Provided, further*, That in the case of estates administered, the property shall be listed and assessed as the property of "the estate of" the person deceased; that in case of trust, the property shall be listed and assessed as the property of the trustee, styled as trustee, committee, or guardian, as the case may be; and that in case of bankruptcy, the property shall be listed and assessed as the property of the bankrupt. And any one who shall knowingly return land in the name of one not having the legal title to, and right of possession of, the land at the time of listing and assessment as provided in this Section, shall be liable in an action of damages in an amount at least equal to the tax assessed at the suit of the one entitled to the possession of said land.

Civ. '12, § 297; Civ. '02, § 269; G. S. 174; R. S. 226; 1882, XVII, 987.

"Property" embraces land. *Pollitzer v. Beinkempen*, 76 S. C. 523, 57 S. E. 475. Listing in name of estate of deceased where estate was not administered. *Koth v. Pallochucala Club*, 79 S. C. 514, 61 S. E. 77. Return made by agent as "unknown" renders proceedings void. *Hudson v. Schumpert*, 80 S. C. 23, 61 S. E. 104.

(346) § 4. Same.—All horses, neat cattle, mules, asses, sheep, hogs, dogs, wagons, carts, and other vehicles used in any business; furniture and supplies used in hotels, restaurants, and other houses of public resort; all personal property used in or in connection with storehouses, manufactories, warehouses, or other places of business; all personal property on farms; all merchants' and manufacturers' stock and capital, shall be returned for taxation and taxed in the city, village, and town in which it is situated; all bankers' capital and personal assets pertaining to their banking business, in the city, town, and village in which the banking house is located; all shares of stock in incorporated banks located in this State, in the city, town, and village where the bank is located; all property of deceased persons shall be returned for taxation at the residence of the executor or administrator, if in the county where administration may be legally granted; but if the executor or administrator reside out of such county, at the county seat of such county, until distribution thereof, and payment may be made to the parties entitled thereto; and all other personal property shall be returned for taxation and taxed at the place where the owner thereof shall reside at the time of listing the same, if the owner reside in this State; if not, at the residence of the person having it in charge; and all real estate shall be taxed in the county, city, ward, and town where it is located.

Civ. '02, § 270; G. S. 175; R. S. 227; 1882, XVII, 989.

SEPARATE TAX RETURNS.—The owners of real property situate partly within and partly without any incorporated town or city are hereby required to list the part in the town or city separately from the part outside the incorporated limits thereof.

Civ. '12, § 298; 1901, XXIII, 615.

Politzer v. Beinkampen, 76 S. C. 517, 523, 57 S. E. 475.

(347) § 5. When Returned and How Valued—Listing of Agricultural Products for Taxation—Conditions.—Every person required by law to list property shall annually, between the first day of January and the twentieth day of February, make out and deliver to the Auditor of the county in which the property is, by law, to be returned for taxation, a statement, verified by his oath, of all the real estate which has been sold or transferred since the last listment of property for which he was responsible, and to whom, and of all the personal property possessed by him, or under his control, on the first day of January of each year, either as owner, agent, parent, husband, guardian, executor, administrator, trustee, receiver, officer, partner, factor, or holder, with the value thereof, on said first day of January, at the place of return, estimating according to the rules prescribed by law: *Provided*, That the returns of the following agricultural products, to wit: Corn, cotton, wheat, oats, rice, peas and long forage, made on the day specified by law, shall be the amounts actually on hand on August 1, immediately preceding the date of said return: *And provided, further*, That this shall apply only to such of said products as are actually in the hands of the producer thereof.

Which statement shall set forth:

1. The number of horses, and their value.
2. The number of neat cattle, and their value.
3. The number of mules and asses, and their value.
4. The number of sheep and goats, and their value.
5. The number of hogs, and their value.
6. The value of gold and silver plate, and number of gold and silver watches, and their value.
7. The number of pianofortes, melodeons, and cabinet organs, and their value.
8. The number of pleasure carriages, and their value.
9. The number and value of dogs.
10. The value of goods, merchandise, moneys, and credits, pertaining to his business as a merchant.
11. The value of materials received, used, or provided to be used, in his business as a manufacturer.
12. The value of all machinery, engines, tools, fixtures, and implements used, or provided to be used, in his business as a manufacturer, and of all manufactured articles on hand one year or more.
13. The value of moneys, including bank bills and circulating notes.
14. The value of all credits.
15. The value of investments in the stocks of any company or corporation out of this State, except National Banks.

16. The value of all investments in bonds, except bonds of the United States and this State expressly exempted from taxation.

17. The value of all other property.

Civ. '12, § 299; Civ. '02, § 271; G. S. 176; R. S. 228; 1882, XVII, 990; 1887, XIX, 798.

(348) § 6. Return of Real Estate for Taxation.—It shall be the duty of all persons, who are required by law to make returns of personal property, to make full returns of all real estate and improvements thereon between the first day of January and the twentieth day of February, 1898, and at the same time in every fourth year thereafter: *Provided*, That for that portion of the Township of Florence, for the County of Florence, lying within the limits of the City of Florence, like returns shall also be made between the first day of March and the fifteenth day of March: *Provided, further*, That in cities having a population of fifty thousand inhabitants or over, such returns of real estate shall also be made between the first day of January and the twentieth day of February in any intermediate year upon the order of the Special Board of Equalization for such cities: *Provided*, That in Florence County returns of all real estate and improvements thereon shall be made during the year 1916: *Provided*, That the time for making such returns is hereby extended until the first day of April, 1916.

Civ. '12, § 300; Civ. '02, § 272; 1897, XXII, 46; 1910, XXVI, 753; 1916, XXIX, 837.

(349) § 7. Dog Tax—Return—Collection—Lien.—Dogs shall be returned in the same manner and at the same time that other property is returned for taxation.

The capitation tax on dogs provided for in the following section shall be collected at the same time and in the same manner that other taxes are now collected, and shall constitute a first lien in favor of the State of South Carolina on all property owned by any person who owes any such capitation tax. The collection of the capitation tax provided for in this Section may be enforced against any property owned by the debtor of such tax in the same way and manner as if it were a tax assessed on that specific piece of property. No dog which is not returned for taxation, as required in this Section, shall be held to be property in any of the courts of this State. It shall be the duty of the County Auditor and the Township Assessors and School Trustees to enforce the provisions of this Section, so far as it relates to listing dogs for taxation.

Civ. '12, § 301; 1904, XXIV, 469; 1906, XXV, 13; 1909, XXVI, 88.

(350) § 8. Annual Dog Tax Imposed.—There shall be levied on all dogs, six months old or older, in the State of South Carolina an annual tax of one dollar and twenty-five cents (\$1.25) per head.

Civ. '12, § 1790; 1909, XXVI, 88; 1914, XXVIII, 448; 1915, XXIX, 118; 1916, XXIX, 731, 838; 1919, XXXI, 89; 1920, XXXI, 1082.

(351) § 9. Collar Tags — Payment — Tax Exclusive — Disposition of Proceeds.—That upon the payment of said annual tax of one dollar and twenty-five cents (\$1.25) by the owner of any dog in the State, the County Treasurer shall issue to the said owner a receipt therefor, and a metal tag marked "Dog Tax" and the year for which it is issued. Each County

Treasurer shall keep a numerical record of every dog taxed, and, in addition thereto, furnish to the owner of each dog such number stamped on the metal tag. Which tax shall be levied and paid to the County Treasurer as other taxes are paid: *Provided, further*, That this tax shall be exclusive of all other license taxes, either municipal or otherwise: *Provided*, That all such taxes collected hereunder shall be credited to the schools of the school district from which it is collected to be used in support of the schools of the district: *Provided, further*, That said tax shall become due and payable at the same time State and county taxes become due and payable.

1920, XXXI, 1082.

(352) § 10. Owners Required to Keep Collar and License Tag on Dogs—Except While Hunting.—That every owner of a dog shall be required to collar and place the aforesaid dog tax upon the said collar, except when such dog shall be used for the purpose of hunting, when such dog shall be upon a chase or hunt.

1920, XXXI, 1082.

(353) § 11. Owning or Harboring of Dog, Without Return and Payment of Tax, a Misdemeanor—Penalty—Disposition of Fine.—Any person owning, harboring or maintaining a dog, failing or refusing to return and pay the tax aforesaid, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five (\$5.00) dollars nor more than twenty (\$20.00) dollars, one-half of which shall go to the person reporting said failure to pay said tax, and one-half to the public school fund in which said derelict occurs.

1920, XXXI, 1082.

(354) § 12. Fees of County Treasurer.—That each County Treasurer shall be allowed to retain twenty-five cents of the said tax to reimburse him for furnishing said tags and keeping the records, as are required under the provisions of this Article.

1920, XXXI, 1082.

ARTICLE V.

Special Provisions as to Returns of Manufacturers and Pawnbrokers, and Respecting Mines and Mining Claims.

(355) § 1. Manufacturers.—Every person engaged in making, fabricating or changing things into new forms for use, or in refining, rectifying or combining different materials for use, shall be held to be a manufacturer, and shall, at the same time he is required to list his other property, make and deliver to the Auditor of the county in which his place of business is situated, a statement of the average value of all articles purchased, received or otherwise held for the purpose of being used by him in his business, at any time during the year preceding the first day of January of the year in which the return is made; to ascertain which he shall set down the value on the first day of January of the preceding year, or other time of commencing business during the year, add thereto all purchases, when made, at

cost, ascertain the average value on hand for the month, deduct the average amount of sales for the month, at cost, and the remainder shall be the average on hand for that month; and, in like manner, ascertain the average value for each month, down to the first day of January of the year in which the return is to be made, add together such monthly values, divide the aggregate by the number of months he has been in business during the preceding year, as aforesaid, and to the quotient add the moneys and credits on hand the first day of January for the year in which the return is made, and the product of this last addition shall be the sum upon which he shall pay taxes for the year in which the return is made: *Provided*, That when business is opened after the first day of January of the preceding year and closed before the first day of January of the year in which the return is made, the parties opening and closing such business shall make returns on material—the time of opening and closing such business being the times used as the basis of the return as established in this Section. And he shall also list at their full value all machinery, tools, implements, fixtures and engines used or purchased for use in his business (except such as have been appraised for taxation as part of the realty), together with all manufactured articles which have been on hand and remain unsold for one year or more prior to the first day of January of the year in which the return is made; also all the moneys and credits pertaining to said business on hand on said first day of January: *Provided*, That all materials provided for use in said business shall be estimated as on hand until sold, or remain on hand in a manufactured state for one year.

Civ. '12, § 303; Civ. '02, § 274; G. S. 210; R. S. 231; 1882, XVII, 992.

(356) § 2. **Pawnbrokers.**—Every pawnbroker, person, or company engaged in the business of receiving property on pledge, or as security for money or other thing advanced to the pawner or pledger, shall, annually, in the month of January, or before the twentieth of February, return, under oath, to the Auditor of the county in which his place of business is located, the average monthly value of all property pawned or pledged to him during the year ending January first of the year in which the return shall be made, or, if engaged in the business for less than a year prior to said first day of January, then for such shorter period; and such average shall be ascertained by the rule prescribed in this Chapter for ascertaining the average value of the property of manufacturers, and taxes charged on such average value as upon other property at the same place.

Civ. '12, § 303; Civ. '02, § 274; G. S. 210; R. S. 231; 1882, XVII, 992.

(357) § 3. **Mines and Mining Claims.**—All personal property used in connection with mines and mining claims, and all land not actually mined connected with mines and mining claims, shall be assessed for taxation and taxed as is done in the case of all other personal and real estate. In all cases where land is actually mined, such land shall not be assessed for taxation or taxed, but, in lieu thereof, the gross proceeds alone of such mines and mining claims shall be assessed and taxed. And such gross proceeds shall be ascertained and determined by the cash market value of the material mined.

Civ. '12, § 304; Civ. '02, § 275; G. S. 211; R. S. 231; 1882, XVII, 1004; 1909, XXVI, 77.

ARTICLE VI.**State Tax Commission—Its Powers and Duties.**

(358) § 1. Tax Commission Created.—That in order to effectively carry into execution the equitable assessment of property for taxation, there is hereby created a Commission composed of three members to be known as the South Carolina Tax Commission.

1915, XXIX, 125.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(359) § 2. Appointment of Members of Commission—Term—Removal from Office.—The three members first to compose said Commission shall be appointed by the Governor, with the advice and consent of the Senate, no two of whom shall be chosen from any one Congressional District, if practicable, before the adjournment of the session of the General Assembly for the year 1915. Of such three members, one shall be appointed and designated by the Governor for a term ending on the first day of February, 1922; one for a term ending on the first day of February, 1920, and one for a term ending on the first day of February, 1918, or until their successors shall be appointed and shall qualify. Upon the expiration of the terms, respectively, of the three Commissioners first appointed and designated as aforesaid, each succeeding Commissioner shall be appointed by the Governor, with the advice and consent of the Senate, at a regular session of the General Assembly, and the term of office of such succeeding Commissioner shall be for six years, or until his successor shall have been appointed and shall qualify. Should a vacancy occur when the General Assembly is not in session, it shall be filled by the Governor's appointment for the unexpired term, subject to confirmation by the Senate at the next session of the General Assembly. And said Commissioners, or any of them, may be removed by the Governor for cause shown, with the advice and consent of the Senate; and if cause for such removal shall arise when the Senate is not in session the Governor may suspend one or more of said Commissioners, and shall fill the vacancies thus created until the General Assembly shall next convene.

1915, XXIX, 125.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(360) § 3. Qualifications and Duties of Members of Commission—Chairman.—The persons to be appointed as members of such Commission shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. The Chairman of the Commission shall devote his entire time to the duties of the office, and shall not hold any position of trust or profit, engage in any occupation or business interfering with, or inconsistent with, his duty, or serve on or under any committee of a political party, or contribute, directly or indirectly, money or other thing of value in support of any candidate for office, or to any political organization.

1915, XXIX, 125.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(361) § 4. Oath of Office Prescribed—Compensation—Governor Shall Designate Chairman.—Each Commissioner within thirty days after notice

of his appointment, and before entering upon the discharge of the duties of his office, shall take, subscribe and file with the Secretary of State the oath of office prescribed by the Constitution of the State. The Governor shall designate which of the three appointed Commissioners shall act as Chairman of the Commission, and such Chairman shall receive an annual salary of \$2,500.00, payable in the same manner that salaries of other State officers are paid. The two other Commissioners shall receive a per diem of five dollars and their actual traveling and hotel expenses while engaged in the work of the Commission.

1915, XXIX, 125; 1916, XXIX, 959.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(362) § 5. Appointment of Chairman—To Hold Frequent Sessions—May Transact Business at Places Other Than Capitol.—The Commissioners hereafter appointed, after having duly qualified, shall elect one of their number as Chairman. A majority of said Commissioners shall constitute a quorum for transaction of business and the performance of the duties of the Commission. The said Commission shall hold frequent sessions and as often as the Chairman or the other two members desire, necessary to the transaction of its business, which meetings may be called on twenty-four hours' notice. The Commission may hold sessions, transact business or conduct investigations at any place other than the Capitol in the performance of its duties.

1915, XXIX, 125.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(363) § 6. Appointment of Secretary, Stenographer, Etc.—Duties of Secretary—Rules.—The Commission may appoint a Secretary and a stenographer, and may employ such other persons as experts and assistants as may by it be deemed necessary to perform the duties that may be required of the Commission, and fix their compensations. The Secretary shall keep full and correct minutes of all hearings, transactions and proceedings of said Commission and shall perform such other duties as may be required by the Commission. The Commission shall have power to make all needed rules, not inconsistent with law, for the orderly and methodical performance of its duties, and for conducting hearings, appeals and other proceedings before it.

1915, XXIX, 125.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(364) § 7. Office, Furniture, Etc., Provided For—Necessary Traveling Expenses.—The Commission shall keep its office at the Capitol and shall be provided with suitable rooms, necessary office furniture, supplies, stationery, books, periodicals and maps, and all necessary expenses shall be audited and paid as other State expenses are audited and paid. The Commissioners' Secretary and such experts and assistants as may be employed by the Commission shall be entitled to receive from the State their actual necessary expenses while traveling on the business of the Commission, such expenditures to be sworn to by the party who incurred the expenses and approved by the Chairman of the Commission, or a majority of the members of such Commission.

1915, XXIX, 125.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(365) § 8. State Board of Equalization and State Board of Assessors Abolished—Powers and Authorities of Commission.—It shall be the duty of the Commission, and it shall have the power and authority to have and exercise all the powers heretofore conferred by law upon the State Board of Equalization and upon the State Board of Assessors, which two last mentioned Boards are abolished, and said Commission shall have and exercise:

(1) General supervision over the administration of the assessment and tax laws of the State, over all Boards of Assessors and Equalization and all other assessing officers in the performance of their duties to the end that all assessments of property be made relatively just and equal in compliance with the laws of this State; to prepare suitable forms for the listing of property each year, and to arrange and classify the items of all property in such groups and classes, and from time to time change and separate or consolidate the same as it may deem advisable for securing more accurate information concerning, and the more perfect listing and valuation of, all property of the State.

(2) To confer with, advise and direct Assessors, Boards of Equalization as to their duties under the laws of the State, and to that end, call meetings of all Assessors in each county, to be held at the county seat of such county, or elsewhere, most convenient, or at the Capitol, for the purpose of necessary instruction from the Commission as to the law governing the assessment and taxation of all classes of property, and to formulate and prescribe rules to govern such Assessors and Boards of Equalization in the discharge of their duties, which rules shall be obeyed and carried out by such Assessors and Boards of Equalization.

(3) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to penalties, liabilities and punishment of public officers and officers and agents of corporations for failure or neglect to comply with the provisions of the laws of this State governing the assessment and taxation of property and such rules, etc., and to cause complaints to be made against Assessors or Boards of Equalization or other assessing and taxing officers to the proper authority for their removal from office for official misconduct or neglect of duty.

(4) To require the Attorney General or Circuit Solicitor to assist in the commencement and prosecutions of actions and proceedings for penalties, forfeitures, removals and punishment for violation of the laws of this State in respect to the assessment and taxation of property in their respective districts or counties.

(5) To require town, city, county and other public officers to report information as to the assessment of property, collection of taxes, receipts from licenses and other sources, and such other information as may be needful in the work of the Commission, in such form and upon such blanks as the Commission may prescribe.

(6) To require individuals, partnerships, companies, associations and corporations to furnish information concerning their capital, bonded or other debts, current assets and liabilities, value of property, earnings,

operating and other expenses, taxes and other facts which may be needful for the Commission to ascertain the value and relative tax burden borne by all kinds of property in the State.

(7) To summon witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters which the Commission shall have authority to investigate or determine.

(8) To cause the deposition of witnesses residing within or without the State or absent therefrom to be taken upon notice to the interested party, if any, in like manner that deposition of witnesses are taken in civil actions pending in the Circuit Court in any manner which the Commission shall have authority to investigate or determine.

(9) One or more members of the Commission may visit any of the counties in the State to investigate the work of all Assessors and all taxing officers in the assessment, equalization and taxation of all property subject to taxation.

(10) To carefully examine into all cases where evasion or violation of the laws of the State relating to the assessment and taxation of property is complained of or discovered and into all cases where property subject to taxation has not been assessed, or has been fraudulently, or for any reason, improperly or unequally assessed, or the laws in any manner evaded or violated, and to cause to be instituted such proceedings as will remedy improper or negligent administration of the taxing of the property of the State.

(11) To formulate and recommend such legislation as may be deemed expedient to prevent evasions of assessments and taxing laws, and to secure just taxation and improvements in the system of taxation in this State.

(12) To consult and confer with the Governor of the State upon the subject of taxation, the administration of the laws in relation thereto, and the progress of the work of the Commission, and to furnish the Governor from time to time such reports, assistance and information as he may require; to transmit to the Governor, and to each member elected at the last preceding election to the Legislature, thirty days before the meeting of the Legislature, the report of the Commission showing all taxable property in the State, and the value of the same in tabulated forms, with such other information as may be advisable, with recommendations for improvement in the system of taxation in the State, together with such measures as may be formulated for the consideration of the Legislature.

(13) To require County Auditors to place upon the assessment rolls omitted property which may be discovered to have for any reason, in whole or in part, escaped assessment and taxation in the current or previous years.

(14) To order reassessment of real and personal property, or any class or classes of either, in any assessment district, when, in the judgment of said Commission, such reassessment is advisable or necessary to the end that any and all classes of property in such assessment district shall be assessed in compliance with the law, and for that purpose may require the Assessors making the original assessment to make such reassessment; or if

said Commission deem it advisable it may appoint a special County Assessor and the Deputy Assessors under him to reassess all or any real and personal property, or any class or classes of either, in any assessment district, whether or not the same has been equalized by any Board, or the County Board of Equalization, or the Tax Commission. In making such reassessment either the Assessor making the original assessment, or Special Assessors so appointed, the Assessors shall proceed to carefully examine and reassess the property so as to be reassessed, and shall duplicate the lists of such assessments in such form as the Commission may prescribe, showing the property and person so reassessed, the amount of the original assessment thereof made in such year, and opposite the same the reassessment so made. He shall file both copies of such list with the said Commission within the time designated by said Commission. The said Commission shall thereupon examine, equalize and correct such reassessment so as to substantially conform with the assessment of like property throughout the State; and shall transmit to the County Auditor of the county wherein such reassessment was so made, one copy of such reassessment by it so corrected and equalized. Such lists shall for all purposes, supersede and be in place of the original assessment made for such year upon such property, and the County Auditor, upon receipt thereof, shall extend and levy against said property so reassessed, the taxes thereon for each year according to such reassessment in the same manner as though such list was the original assessment list of such property: *Provided*, Nothing in such reassessment proceedings shall be construed to prevent any person feeling aggrieved thereby to appeal to the State Tax Commission. The compensation allowed such Special Assessor or his Deputies shall be the same as by law allowed Deputy Assessors for making the original assessment and payable in the same manner.

(15) To annually make such levy upon the assessed value of property subject to taxation as may be necessary to raise the annual appropriations made by the General Assembly.

(16) In addition to the powers and duties heretofore imposed upon the State Board of Assessors and now imposed upon the South Carolina Tax Commission, the said Commission shall also assess and equalize taxable values upon the property and franchises of street railway companies, electric railways, water, heat, light and power companies, and private car lines, and said companies and private car lines shall make the returns to the South Carolina Tax Commission in like time and, so far as may be practicable, in like manner and form as railroads and other corporations make their returns; and private car lines shall be subject to taxation to be assessed in the manner and mode, as nearly as may be, as dining or sleeping car companies: *Provided*, The said Tax Commission shall have power to prescribe the manner of making and the form of all returns provided for in this subsection whenever the same, in its judgment, is necessary for the purposes of carrying out the intention of this Article to impose a reasonable tax upon said property and franchises: *Provided, further*, That failure to comply with the provisions of this Article or to pay the required tax shall subject all such companies, railway and private car lines, where the same is

not otherwise provided by law, to penalties and forfeitures to like extent and upon like conditions as are railroads for failure to make returns and pay the required tax.

1915, XXIX, 125; 1916, XXIX, 959.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(17) In addition to the powers and duties heretofore imposed upon the State Board of Equalization, and now imposed upon the South Carolina Tax Commission, the said Tax Commission shall also have and exercise the powers hereinafter provided: The returns of all banks, banking corporations, insurance and trust companies, and corporations of their property and taxable stocks of stockholders therein, as heretofore required to be made to the several County Auditors, shall continue to be so made to the County Auditor and assessed and equalized by the County Boards as heretofore provided by law, and when so assessed and equalized by the County Boards, the said returns shall forthwith be transmitted to the South Carolina Tax Commission, and said Tax Commission shall have the power and it shall be its duty to review, reassess and equalize the same in like manner and mode as the State Board of Equalization reviewed, reassessed and equalized the returns and assessments of textile, cotton seed oil and fertilizer companies.

1915, XXIX, 125; 1916, XXIX, 959.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(18) To exercise and perform such other powers and duties that may be granted to, or imposed upon, the Commission by law.

1915, XXIX, 125 (17); 1916, XXIX, 959.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(366) § 9. Administration of Oaths—Failure or Refusal to Obey Summons or Order—Perjury to Testify Falsely—Compensation of Officers and Witnesses.—Oaths to witnesses in any matter under investigation or consideration by the Commission may be administered by the Secretary of the Commission or by any member thereof. In case any witness shall fail to obey any summons to appear before said Commission, or any member thereof, or shall refuse to testify, or to answer any question, or to produce records, books, papers or documents when required so to do, such failure or refusal shall be reported to the Attorney General, who shall thereupon institute proceedings in the Circuit Court to compel obedience to any summons or order of the Commission. Any person who shall testify falsely in any matter under consideration by the Commission shall be guilty of, and punished for, perjury; officers who serve summons or subpoenas and witnesses attending shall receive like compensation as officers and witnesses in the Circuit Court: *Provided*, That such compensation shall be paid by the county for whose benefit such investigation is made upon certificate of the Tax Commission.

1915, XXIX, 125.

Oats v. Fountain, 113 S. C. 372; 103 S. E. 830.

(367) § 10. To Collect Statistics Relative to Natural Resources of State—To Devise Legislation Necessary for Levying of License Fees, Etc.—To ascertain, compile, record and report the statistics relative to the natural resources of the State, including school and public land and waters for the

purpose of conservation, use and operation and the collection of such royalties therefrom for State revenue purposes as may now or hereafter be provided for by law. To devise and report in favor of such legislation as may be deemed necessary and expedient for the levying and collection of State purposes of license fees, franchise or charter fees, stamp taxes, royalties, privileges and business taxes and other revenues derived from the regulation of State affairs and the exercise of the police powers of the State.

1915, XXIX, 125.

Oats v. Fountain, 113 S. C. 372; 101 S. E. 830.

(368) § 11. Equalization.—The State Tax Commission shall have power to equalize the assessment of all property in this State between persons, firms or corporations of the same assessment district, between cities, towns and townships of the same county, and between different counties of the State, and the property assessed by the said Commission in the first instance.

1916, XXIX, 959.

(369) § 12. Tax Board of Review—Appeals—Proceedings.—Whenever the Tax Commission shall increase any assessment it shall mail or otherwise transmit notice thereof to the person affected thereby; or where as many as twenty per cent. of the taxpayers of the county, municipality or tax district is affected thereby, to the Chairman of the Board of Equalization of such county, municipality or tax district. And said Chairman shall give public notice for at least one week in one or more county newspapers, and any person, firm or corporation feeling aggrieved and desiring a review by the Tax Board of Review, or upon the request of any one or more taxpayers of any such county, municipality or tax district affected by such increase, that he or they have been aggrieved, the said person, firm or corporation or the said Chairman of the County Board of Equalization or any other taxpaying citizen shall have the right in behalf of himself and in behalf of all the taxpayers of the said county, municipality or tax district as a body to appeal to the said Tax Board of Review. Within the ten days after receipt by mail or otherwise of such notice of increase by said Tax Commission, the said person, firm, corporation or representative of the said county, municipality or tax district hereinabove provided, shall serve by mail or otherwise upon the Chairman of the South Carolina Tax Commission a written notice of intention to appeal to the Tax Board of Review together with the specific grounds upon which a reversal or modification of the action of the Tax Commission is desired; and upon such notice and grounds being served, the South Carolina Tax Commission shall transmit to the Tax Board of Review all papers, books and documents relating to the matters to be reviewed, together with any statement said Commission may desire to make; that upon such notice, exceptions, records and statement the Tax Board of Review shall make its findings and shall have the power to affirm, modify or reverse the action of the Tax Commission therein. On hearing such appeal before the Board of Review, the appellant and the South Carolina Tax Commission shall be entitled to a hearing in person or by such attorney or attorneys as either appellant or Tax Commission or both may select or employ. The said Chairman of the County Board of Equalization shall

be paid a per diem of five dollars and actual railroad fare for the necessary time engaged in the aforesaid appeal, not exceeding five days in any one year, to be paid by the county he represents.

1916, XXIX, 959.

(370) § 13. Compensation of Board—Powers and Duties.—The said Board of Review shall consist of a Chairman and six other members, who shall be appointed by the Governor, one from each Congressional District, by and with the advice and consent of the Senate. The term of office of the Chairman shall be four years and until his successor is appointed and qualified. The terms of office of the other six members shall be coterminal with that of the Governor appointing them, and until their successors are appointed and qualified. It shall be the duty of the Chairman of the Tax Board of Review to familiarize himself with the statutes relating to the taxation and the procedure of said Tax Commission. He shall preside over all meetings of said Board of Review and shall see that the required reports to the Governor and to the Tax Commission are promptly made. The Chairman shall fix the order of hearing such appeals as may come before the Board, and shall, before each meeting of the Board, prepare a roster of cases and mail a copy thereof to each appellant. He shall see that all records, books and papers necessary to hearing an appeal are in order and convenient for the use of the Board of Review. The Tax Commission shall supply such clerical help to the Chairman as may be necessary for the prompt discharge of the duties herein provided. Five members of the Board of Review shall constitute a quorum, but it shall take the vote of the majority of the whole Board to reverse or modify the State Tax Commission. The said Board of Review may select a Chairman *pro tem.*, who, in the absence of the Chairman, may preside over the meetings of the said Board of Review. Said Board shall meet in the City of Columbia at such time as it may deem necessary, or upon ten days' notice of meeting given each member by the said Tax Commission for the disposition of all appeals to it: *Provided*, That whenever the Board of Review shall modify or reverse the South Carolina Tax Commission in any particular, the said Board of Review shall make a report to the Governor thereof, which shall set forth a full and complete statement of the facts involved, together with the reasons upon which such modification or reversal is based. Such Board of Review shall also report its conclusions to the South Carolina Tax Commission.

1916, XXIX, 959.

(371) § 14. Compensation.—The compensation of the members of the Tax Board of Review shall be five dollars per day and mileage as paid members of the General Assembly, the per diem not to exceed thirty days in any one year: *Provided*, That the Chairman shall not be limited to thirty days' service in any one year, and he shall also receive actual expenses while engaged in the performance of his duties.

1916, XXIX, 959.

ARTICLE VII.

Special Rules as to Returns and Assessments of Railroad, Express, Telegraph and Insurance Companies, and Provisions as to Other Corporations.

(372) § 1. **Railroads and Other Companies of Like Character.**—The roadbed, right of way, station buildings, toll houses, structures, tools, machinery, poles, wires, fixtures, vessels and real estate owned and necessarily in daily use by any railroad, turnpike, plank road, bridge, telegraph, canal or slack water navigation company, in the prosecution of its business, shall, for the purposes of this Chapter, if the company be organized in this State, be treated as personal property. But the lien for taxes shall attach to the property as if the same were real property, and the President, Secretary or principal accounting officer thereof shall include the value thereof in the return of the other personal assets of such company for taxation; which return shall be made in the month of January, or before the twentieth of February, annually, to the several Auditors of the counties in which such road, canal, bridge, telegraph line, or slack water navigation company may be situated, according to the value of such property in each, together with a statement of the amount of such assets situate in each city, town, village or ward in said counties, respectively; and the value of the movable assets of such company shall be apportioned to each town, city, ward or village in proportion to the value of the roadbed, canal, slack water navigation, bridge or telegraph line in each.

Civ. '12, § 305; Civ. '02, § 276; G. S. 179; R. S. 233; 1882, XVII, 992.

Prior to the Constitution of 1895, municipalities were not bound by assessment by the State Board. *State ex rel. Southern Rwy. Co. v. Talley*, 50 S. C. 374, 27 S. E. 803.

Railroad held not liable for taxes, when exempt by its charter, as against bonds having first statutory lien thereon. *Hand v. R. R. Co.*, 17 S. C. 219. An assessment to pay expenses of Railroad Commissioners valid. *Charlotte C. & A. R. Co. v. Gibbs*, 24 S. C. 60; *Ib.*, 27 S. C. 385, 4 S. E. 49.

(373) § 2. **When Returns Made to the Tax Commission.**—The President and Secretary of every railroad company whose track or roadbed, or any part thereof, is in this State, shall annually, between the first of January and twentieth of February, return to the Tax Commission, under their oaths, the total length thereof in each county, city, town and incorporated village in this State; the total length of their double track in this State, and the length thereof in each county, town, city and incorporated village of this State; the total length of all their sidetracks, and the length thereof in each city, county, town or incorporated village in this State, the location and value of all their shops, depots, grounds, station houses, wood and water stations, buildings, stationary engines, tools, implements and fixtures in South Carolina, and all other real estate necessary to the daily running operations of the road; the number and value each of all their locomotive engines, passenger, freight, platform, gravel, construction, hand and other cars; the value of their moneys and credits; the total value of the entire road, appurtenances and equipments, and the total value of said road in South Carolina, with its appurtenances and equipments.

Civ. '12, § 306; Civ. '02, § 277; G. S. 180; R. S. 234; 1882, XVII, 993; 1915, XXIX, 125.

(374) § 3. **When Returns Made to County Auditor.**—The President and Secretary of every railroad company mentioned in the preceding Section

shall also, annually, between the first of January and the twentieth of February, return to the County Auditor of each county in South Carolina through or into which such road, or any part thereof, may be located, a statement of the value of said road and the property of the company in said county, and in each of the towns, cities and villages of said county through or into which said road or part thereof is located, in the manner and form required by this Chapter in the return to the Tax Commission.

Civ. '12, § 307; Civ. '02, § 278; G. S. 181; R. S. 235; 1882, XVII, 993; 1915, XXIX, 125.

(375) § 4. Returns, How Made and Valuation.—In ascertaining the value of the road and property of any railroad company, the value of the right of way, bed and track of the whole road shall be fixed and such value apportioned *pro rata* to each mile of the main track; and to the value of the number of miles of main track in each town, city or incorporated village of each county in this State through and into which said road is located, shall be added the value of the real estate, fixtures, stationary engines, tools, implements, machinery and other stationary property provided for use in the daily operations of the road situate in said town, city or village; and the total value of the rolling stock, moneys and credits shall be apportioned *pro rata* to each mile of the main track of said road, and the amount thereof, according to the number of miles of main track in each town, city and village in this State, added to the value of the main track in each town, city and village, respectively; and the aggregate value of said road and property in this State, and in each county, city, town and incorporated village of this State through or into which said road is located, shall be stated in said return.

Civ. '12, § 308; Civ. '02, § 279; G. S. 182; R. S. 236; 1882, XVII, 993.

(376) § 5. Returns, How Verified.—The return and oath required of officers of railroad companies shall be made in such form as shall be prescribed by the Tax Commission.

Civ. '12, § 309; Civ. '02, § 280; G. S. 183; R. S. 237; 1882, XVII, 994; 1915, XXIX, 125.

(377) § 6. When Railroad in Hands of a Receiver, Returns to Be Made by Him.—If any railroad, its appurtenances, equipments and property of any kind soever shall be in the hands of a receiver or other officer, such receiver or other officer shall make the returns required by this Chapter.

Civ. '12, § 310; Civ. '02, § 281; G. S. 184; R. S. 238; 1882, XVII, 994.

(378) § 7. The Tax Commission May Question Officers, Examine Books, Etc.—The Tax Commission, or any person appointed by them for that purpose, may put any question, in writing, they may deem proper to any officer, agent or receiver of any railroad company having any portion of its track in this State; and they may summon any officer, receiver or agent of such company to appear before them and testify, under oath, touching such railroad company's property, and the management and disposition thereof; and they may, by themselves or some person appointed by them, examine the books and papers of such company in the hands of the company, or any of its officers, agents or receivers; and all such officers, agents and receivers shall answer, under oath, all such questions as shall be put to them, or either of

them, by said Tax Commission or any person appointed by them for that purpose, relative to the condition, amount and value of said company's property and the management or disposition thereof.

Civ. '12, § 311; Civ. '02, § 282; G. S. 185; R. S. 239; 1882, XVII, 994; 1915, XXIX, 125.

For violation of this section, see Criminal Code.

(379) § 8. Proceedings in Cases of No Return—Penalty—Auditors to Be Certified.—If any railroad company, or its officers, shall fail to make the returns to the Tax Commission and to each County Auditor in each county in which such railroad or part thereof may be located, as herein required, on or before the twentieth day of February, annually, the Tax Commission shall proceed to ascertain the value of said company's road and property according to the principles prescribed herein from the best information they can conveniently obtain, and add thereto fifty per centum as penalty, and apportion the same to the several counties, towns, townships, cities and incorporated villages through or into which said road or any part thereof may be located, and the Tax Commission shall certify the same to the several County Auditors, who shall place the same on their duplicates for taxation.

Civ. '12, § 314; Civ. '02, § 285; G. S. 188; R. S. 242; 1897, XXII, 453; 1915, XXIX, 125.

(380) § 9. Proceedings to Test Right of Railroad Companies to Exemption from Taxation.—The Attorney General is hereby directed to proceed to institute proceedings to test the right of any railroad company in this State to an exemption from taxation if in his judgment he thinks it proper to do so.

ONE ACTION FOR ALL TAXES.—The State, in such case, may bring one action for all taxes due, State, county, "ordinary" and "special," and recover the whole in one proceeding.

DISTRIBUTION OF TAXES RECOVERED.—Any taxes so recovered shall, after paying the expenses of collection, be distributed amongst the State and counties interested, according to the respective interests of each under their respective levies for the year for which recovery is made.

RIGHT OF COMPROMISE.—The Tax Commission, on behalf of the State, and the Supervisors of the counties and the attorneys representing them in any such proceeding, on behalf of the counties, shall have the right to compromise and settle with any such railroad companies as may be proceeded against under this Section on such basis as they shall deem proper and just.

INAPPLICABILITY OF OTHER PARTS OF CODE TO PROCEEDINGS.—Nothing contained in Chapter III, Title II, Part II of the Code of Civil Procedure shall apply to any action or proceeding instituted under this Section.

OTHER REMEDIES NOT IMPAIRED.—Nothing in this Section shall be construed to impair any other remedy than those herein provided which the State or any of its agents or the counties now have for the collection of any such taxes.

Civ. '12, § 315; Civ. '02, § 286.

The Circuit Court has jurisdiction of an action brought under this Section, and the complaint must show that the tax has been legally assessed. *State v. Cheraw and D. Ry. Co.*, 54 S. C. 564, 32 S. E. 691.

(381) § 10. Assessment and Valuation of Railroad Property—Not on Tax Books.—When railroad property has not been returned nor assessed for any year, and not put on the tax books for such year or years, and no taxes were paid thereon, and more than a year has elapsed since taxes for such years, if assessed at the proper time, would have been due, the said taxes shall be assessed by the Tax Commission, which shall be convened in extra session for such purpose, on the petition of any County Supervisor in whose county any part of such railway may lie.

Such Commission shall fix the value of said road for each year in which it shall appear that said road has been off the books, separately, and its valuation, and this, with the number of miles in each county, shall be certified to the respective County Auditors, as the valuation of railroad property is done when regularly returned and assessed.

AUDITOR TO ENTER ASSESSMENT IN TAX BOOKS.—Said Auditor shall enter the said assessment each year separately in the tax books in his office for the respective years, and charge the taxes on said assessment under the levies for those years, as if they had been assessed and levied at the usual time; and he shall furnish a certified statement to the County Treasurer, showing the property taxed, the value of the same, and the amount due for each year separately.

TREASURER TO DEMAND TAXES.—The Treasurer shall immediately demand the said taxes of the company in default; or, if he find the property in control of another company, demand shall be made of the company which he finds in the possession of the property.

SUITS MAY BE BROUGHT FOR COLLECTION OF; WHEN AND HOW.—Said taxes shall become due as soon as said demand is made, and if they are not paid within sixty days from the demands made, there may be an action brought in the name of the State, by the Attorney General, and such counsel as the counties interested may employ, against the company in default, and any company which may be in possession of the property which has escaped taxation, for the recovery of said taxes; and suit may be brought for each year separately, or for all the years consolidated.

LIMITATION OF ASSESSMENT.—The assessment herein provided for shall be limited to the period of ten years immediately preceding the restoration of said railroad property to the tax books, and no recovery shall be had hereunder for a longer period than ten years.

Civ. '02, § 287; 1900, XXIII, 354.

THE PROVISIONS OF THIS SECTION SHALL NOT APPLY to any railroad property which may be hereafter adjudged by the courts to be exempt by law from the taxes which may be assessed against it under this Section.

1901, XXIII, 871.

OTHER REMEDIES NOT IMPAIRED.—Nothing herein contained shall be construed to impair in any way the right of the State, of any of its officers or agencies, to collect such taxes in any other method provided by law.

Civ. '12, § 316; 1900, XXIII, 355.

(382) § 11. Telegraph Companies Defined.—Any joint stock association, company, copartnership or corporation, whether incorporated under the laws of this State, or of any other State, or of any foreign nation, engaged in transmitting to, from, through, in or across the State of South Carolina telegraphic messages, shall be deemed and held to be a telegraph company.

Civ. '12, § 317; Civ. '02, § 288; 1898, XXII, 713.

(383) § 12. Express Companies Defined.—Every joint stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other State, or any foreign nation, engaged in conveying to, from, through, in or across this State, or any part thereof, money, packages, gold, silver, plate, merchandise, freight or other articles, under any contract, express or implied, with any railroad company, or the managers, lessees, agents or receivers thereof, provided such joint stock association, company, copartnership or corporation is not a railroad company, shall be deemed and held to be an express company within the meaning of this Article.

Civ. '12, § 318; Civ. '02, § 289; 1898, XXII, 713.

Southern Express Co. v. Hood, 15 Rich. 66.

(384) § 13. Sleeping Car Companies Defined.—Every joint stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other State, or of any foreign nation, and conveying to, from, through, in or across this State, or any part thereof, passengers or travelers in palace cars, drawing-room cars, sleeping cars, dining cars, or chair cars, under any contract, express or implied, with any railroad company, or the managers, lessees, agents or receivers thereof, shall be deemed and held to be a sleeping car company for the purposes of this Article.

Civ. '12, § 319; Civ. '02, § 290; 1898, XXII, 713.

(385) § 14. Verified Statements of Telegraph, Telephone, Express and Sleeping Car Companies to Tax Commission.—Every such telegraph, express, sleeping car, and every telephone company doing business in this State, whether incorporated under the laws of this State, or of any other State, or of any foreign nation, shall annually, between the first day of January and the twentieth day of February, make out and deliver to the Tax Commission of this State a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the thirty-first day of December next preceding, showing:

First. The total capital stock or capital of said association, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share; and in case no shares of capital stock are issued, in what manner the capital thereof is divided, and in what manner such holdings are evidenced.

Third. Its principal place of business.

Fourth. The market value of the said shares of stock on the first day of December next preceding, and if such shares have no market value, then the

actual value thereof; and in case no shares of stock have been issued, state the market value, or the actual value in case there is no market value, of the capital thereof, and the manner in which the same is divided.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of South Carolina, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the improvements thereon, owned by said association, company, copartnership or corporation, situate outside the State of South Carolina, and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situate.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

And in the case of telegraph and telephone companies:

Eighth. (a) The total length of the lines of said association or company.

(b) The total length of so much of their lines as is outside the State of South Carolina.

(c) The length of the lines within each of the counties and townships within the State of South Carolina.

And in the case of an express company:

Eighth. (a) The total length of the lines or routes over which such association, company, copartnership or corporation transports such merchandise, freight or express matter.

(b) The total length of such lines or routes as are outside the State of South Carolina.

(c) The length of such lines or routes within each of the counties or townships within the State of South Carolina.

And in the case of a sleeping car company:

Eighth. (a) The total length of the main lines of all the railroad companies over which said cars are run.

(b) The total length of so much of the main lines of all the railroad companies over which said cars are run as is outside the State of South Carolina.

(c) The length of the lines of said railroad companies over which said cars are run within each of the counties and townships within the State of South Carolina: *Provided*, That where the railroads over which said lines run have double tracks, or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but a single track; and in case the Tax Commission shall require it, such statement shall show in detail the number of miles of each or any particular railroad system or division.

Civ. '12, § 320; Civ. '02, § 291; 1898, XXII, 713; 1915, XXIX, 125.

(386) § 15. Tax Commission to Examine Statements—Duties of in Relation Thereto, Etc.—Upon the filing of such statements, the Tax Commission shall examine them, and each of them, and if they shall deem the same insufficient, or in case they shall deem that other information is requisite, they shall require such officer to make such other and further statements as said Tax Commission may call for. In case of the failure or refusal of any association, company, copartnership or corporation to make out and deliver to the Tax Commission any statement or statements required by Sections 11 to 19, inclusive, of this Article, such association, company, copartnership or corporation shall forfeit and pay to the State of South Carolina one hundred (\$100) dollars for each additional day such report is delayed beyond the twentieth day of February, to be sued and recovered in any proper form of action in the name of the State of South Carolina on the relation of the Tax Commission, and such penalty, when collected, shall be paid into the general fund of the State.

Civ. '12, § 321; Civ. '02, § 292; 1898, XXII, 713, § 5; 1915, XXIX, 125.

(387) § 16. Auditors May Require Agents to Report, Etc.—To enable said County Auditors to properly apportion the assessments between the several townships, they are authorized to require the agent of said association or company to report to them, respectively, under oath, the length of the lines in each township, and the Auditor shall thereupon add to the value so apportioned the assessed valuation of the real estate, structures, machinery, fixtures and appliances situated in any township, and extend the taxes thereon upon the duplicates, as in other cases.

Civ. '12, § 326; Civ. '02, § 297; 1898, XXII, 713, § 10.

(388) § 17. Actions for Penalty for Failure or Refusal to Pay Taxes—Distribution.—In case any such association, copartnership or corporation as named in Sections 11 to 14, inclusive, shall fail or refuse to pay any taxes assessed against it in any county or township in the State, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the State of South Carolina by the Solicitors of the different Judicial Circuits of the State on the relation of the Auditors of the different counties of this State, and the judgment in said action shall include a penalty of fifty per cent. of the amount of taxes as assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over or across which the line or route of any such association, copartnership, company or corporation shall extend, or in any county where such association, company, copartnership or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership or corporation shall have refused to pay the whole of the taxes assessed against the same by said Tax Commission, or in case such association, company, copartnership or corporation shall have refused to pay the taxes, or any portion thereof assessed to it in any particular county or counties, township or townships, such action may include the whole or any portion of the taxes so unpaid in any county or counties, township or townships; but the Attorney General may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions in each sepa-

rate county or township, or join counties and townships, as he may prefer. All collection of taxes for or on account of any particular county made in any such suit or suits shall be by said Comptroller General accounted for as a credit to the respective counties for or on account of which such collections were made by said Comptroller General at the next ensuing settlement with such county; but the penalty so collected shall be credited to the general fund of the State; and upon such settlement being made, the Treasurers of the several counties shall, at their next settlement, enter credits upon the proper duplicates in their offices, and at the next settlement with such county report the amount so received by him in his settlement with the State, and the proper entries shall be made with reference thereto: *Provided, however*, That in any such action the amount of the assessment fixed by said State Tax Commission, and apportioned to such county, or apportioned by the County Auditor to any particular township, shall not be controverted.

Civ. '12, § 327; Civ. '02, § 298; 1898, XXII, 713, § 11; 1915, XXIX, 125.

(389) § 18. Special Provisions as to Past Due Taxes on Such Companies.

—All moneys now due the State, or which may become due on the 20th day of February, 1898, or at any other time, on account of any assessment or charge made against any of the joint stock associations, persons, companies or corporations on account of per cent. on gross or net earnings for the preceding year or years, and all penalties and charges thereon growing out of any failure to make reports on payments as now required by the provisions of any Act repealed hereby, shall be paid and collected under the provisions of said repealed Acts the same as if said Acts were not repealed; and any suit brought for the recovery of such money, taxes or penalties shall be begun under the provisions of said repealed Acts and prosecuted to final judgment thereunder in all respects, the same as if said Acts were continued in full force; and it is hereby expressly provided that all the rights of the State accrued, or which may accrue on the 20th day of February, 1898, on account of receipts for the preceding years, are hereby saved from the operations of the aforesaid repealing clause.

Civ. '12, § 328; Civ. '02, § 299; 1898, XXII, 713, § 11.

(390) § 19. Penalty for Failure of Companies to Make Statements.—If any express, telegraph, telephone or sleeping car company shall fail to make and deliver to the Tax Commission the statement required in this Chapter on or before the 20th day of February, annually, such company shall forfeit and pay to the State of South Carolina five hundred dollars as a penalty; and the Tax Commission shall certify the fact of such failure to the Auditor of any county in this State in which said company may have an office or agent, and said Auditor shall place the same on the duplicate of said county; and if any express or telegraph company shall fail to make to the Auditor of any county in this State the statement required by this Chapter on or before the 20th day of February of any year, such County Auditor shall notify the Tax Commission thereof; and if the Tax Commission shall have received from said company the statement required to be made to it by said company, said Commission shall certify the amount returned as in said county to such County Auditor, and add thereto, as

penalty, the sum of ten dollars, which shall be charged to said company on the duplicate of said county, collected and paid over to the State Treasurer, in the same manner herein provided as to the penalty for not making the return to the Tax Commission: *Provided*, That if any express or telegraph company shall fail to return the statement required by this Chapter to the Tax Commission, and the Tax Commission shall certify such failure to any County Auditor, such County Auditor shall proceed to ascertain the gross receipts of each agent of said company in his county for the year ending the first day of January of that year, together with the value of all other property of the company in his county, add fifty per cent. thereto as penalty, and charge the company with taxes thereon at the several localities required by this Chapter, without any reduction for expenses paid out by the company. And if such company shall have no principal office or agency in this State to which the other agents in the State are required to make return, each agent thereof in any county shall make return in the month of January on or before the 20th of February, annually, of the gross receipts of his agency for the year ending the first day of that month, with the value of all other property of the company in the city, village or town in which his agency is situate, and the County Auditor shall charge the company with taxes thereon at the same rate as other property in the same localities; and if such agent or agents refuse or neglect to make such return, the County Auditor shall ascertain the amount of such gross receipts and value of property, add fifty per cent. thereto as penalty, and charge such company with taxes thereon at the same rates charged other property at the several localities where such property may be situate and such agencies located.

Civ. '12, § 329; Civ. '02, § 300; G. S. 190; R. S. 244; 1882, XVII, 997; 1915, XXIX, 125.

(391) § 20. Form of Return of Foreign Express, Telegraph, Telephone and Sleeping Car Companies.—All returns required to be made by express, sleeping car and telephone and telegraph companies having their principal offices out of this State, shall be made in such form as the Tax Commission shall prescribe; and the Tax Commission is authorized to require answers, under oath, to any questions he may put to the principal, or any other agent of any of said companies in this State, and to examine any of such agents, under oath, relative to the property and affairs of such companies, and the management thereof, which oath he may administer.

Civ. '12, § 330; Civ. '02, § 301; G. S. 191; R. S. 245; 1882, XVII, 998; 1915, XXIX, 125.

(392) § 21. Return of Domestic Insurance Companies.—Every insurance company organized under the laws of this State shall return all its personal property, moneys, credits (including notes taken on subscription of stock), investments in bonds, stocks, securities and assets of every kind for taxation at the place where its principal office is located.

Civ. '12, § 331, Civ. '02, § 303; G. S. 193; R. S. 247; 1882, XVII, 999.

(393) § 22. Return of Domestic Corporations Owning Property in Other States.—Any company or corporation organized under the laws of this State, and owning property in any other State or county, as well as in this State, shall not be required to return its capital for taxation in this State,

but shall return such property as it owns in this State, and such proportion of the value of its other property as if owned by the individual residents of this State, would be taxable in this State; and if such return be made by such company, the shareholders therein shall not be required to return their shares for taxation.

Civ. '12, § 332; Civ. '02, § 304; G. S. 194; R. S. 248; 1882, XVII, 999.

(394) § 23. Domestic Corporations Owning No Property in the State.—A corporation organized under the laws of this State, but owning no property in this State, shall not be required to return its capital for taxation in this State.

Civ. '12, § 333; Civ. '02, § 305; G. S. 195; R. S. 249; 1882, XVII, 999.

(395) § 24. How Property of Corporations Listed.—All companies and corporations, whether organized under the laws of this State or not, the manner of listing whose personal property is not otherwise specifically provided for by law, shall list for taxation all their personal and real property and effects at the same time, in the same manner, and in the same localities as individuals are required to list similar property and effects for taxation.

Civ. '12, § 334; Civ. '02, § 306; G. S. 196; R. S. 250; 1882, XVII, 999.

(396) § 25. Corporations Organized as Well Under Laws of This as of Another State—Taxes.—Any company incorporated under a joint charter granted by this and some other State or States, and the manner of taxing which, or the amount upon which it shall be taxed, or the specific proportion of its capital or property upon which taxes shall be assessed in South Carolina, is prescribed or fixed in its charter, shall be assessed for taxation and taxed as prescribed in this Chapter until otherwise legally provided.

Civ. '12, § 335; Civ. '02, § 307; G. S. 197; R. S. 251; 1882, XVII, 1000.

(397) § 26. Refusal to Pay Works a Forfeiture.—Whenever any corporation chartered under the laws of this State shall, within thirty days after the time required and permitted by law for taxes to be paid, with or without penalty, as now required by law, refuse, neglect or omit to pay the taxes for State and county purposes, as assessed and levied upon the property of such corporation, the charter of such corporation, with all the rights, privileges and franchises thereunder, shall become and be deemed forfeited, and the corporate existence of such corporation shall be annulled.

ATTORNEY GENERAL TO BRING ACTION TO ANNUL ACT OF INCORPORATION.—In every such case it shall be the duty of the Attorney General, and he is hereby required, to bring an action against such corporation for the purpose of vacating and annulling the Act incorporating such corporation and all Acts amendatory or in renewal thereof in the manner prescribed by Title XIII, Chapter II of the Code of Civil Procedure of this State.

Civ. '12, § 336; Civ. '02, § 308; 1893, XXI, 395.

ARTICLE VIII.

Special Rules as to Persons, Firms or Corporations Engaged in Textile Industries, Canals Providing Power for Rent or Hire, and Cotton Seed Oil Companies and Fertilizer Companies, and Banks Incorporated in This State Which Have Branches in More Than One County.

(398) § 1. **Returns of Textile Fabric, Power, Canal, Cotton Seed Oil, Fertilizer and Certain Banking Companies.**—All individuals, firms or corporations engaged, or that may be hereafter engaged in this State, in the manufacture of textile fabrics of any kind, and canals providing power for rent or hire, and cotton seed oil companies and fertilizer companies, and banks incorporated in this State which have branches in more than one county, shall make their returns of property belonging to or connected with such manufacture, as usual, for taxation, to the Auditor of the county in which the property is situate, and after the same shall be passed on by the Township and County Boards of Equalization they shall forward all such returns, with such comments and suggestions as he shall see fit, to the Tax Commission as soon as the time for making returns has expired.

Civ. '12, § 337; Civ. '02, § 309; 1901, XXIII, 613; 1909, XXVI, 36; 1915, XXIX, 125.

(399) § 2. **Certificate to Auditor.**—When said Tax Commission shall have finally acted on said returns, their actions shall be certified to the Comptroller General, who shall transmit the same, in so far as it affects the property of any county, to the Auditor of said county, who shall enter the same, according to law, on the tax books of his county.

Civ. '12, § 340; Civ. '02, § 312; 1915, XXIX, 125.

ARTICLE IX.

Special Rules as to Banks and Bank Stock and Unincorporated Bankers and Banking Associations.

(400) § 1. **Bank Stocks.**—All shares of the stockholders in any bank or banking association, located in this State, whether now or hereafter incorporated or organized under the laws of this State, or of the United States, shall be listed at their true value in money, and taxed in the city, ward, town or incorporated village where such bank is located, and not elsewhere: *Provided*, That the words "true value in money," as used in this Section, shall be so construed as to mean and include all surplus or extra moneys, capital and every species of personal property of value owned or in the possession of any such bank.

Civ. '12, § 341; Civ. '02, § 313; G. S. 198; R. S. 253; 1882, XVII, 1000.

National Union Bank of Rock Hill et al v. Neil, York County Treasurer; First Trust and Savings Bank of Rock Hill v. Same, 106 S. C. 173, 90 S. E. 744; *Carolina National Bank of Columbia v Spigner, Richland County Treasurer*, 106 S. C. 185, 90 S. E. 748.

(401) § 2. **Real Estate of Banks.**—The real estate of any such bank or banking association shall be taxed in the place where the same may be located, the same as the real estate of individuals.

Civ. '12, § 342; Civ. '02, § 314; G. S. 199; R. S. 254; 1882, XVII, 1000.

Carolina Nat. Bank of Columbia v. Spigner, Richland County Treasurer, 106 S. C. 185, 90 S. E. 748.

(402) § 3. Must Keep List of Shareholders and Depositors.—There shall at all times be kept in the office where the business of such bank or banking association is transacted, a full and correct list of the names and residences of the stockholders therein, and the number of shares held by each; also a list of all persons, parties, corporations or agents who may at any time have any deposit, either personal or general, in such bank, which shall be at all times during business hours open to the inspection of all State and county officers who are or may be authorized to list or assess the value of such shares for taxation.

Civ. '12, § 343; Civ. '02, § 315; G. S. 200; R. S. 255; 1882, XVII, 1000.

(403) § 4. Time of Return to Auditor of Shareholders and of Real Estate of Banks.—It shall be the duty of the President and Cashier of every such bank or banking association, between the first of January and 20th of February, annually, to make out and return, under oath, to the Auditor of the county in which such bank or banking association may be located, a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the actual value in money of such shares, together with a description of the real estate owned by said bank.

Civ. '12, § 344; Civ. '02, § 316; G. S. 201; R. S. 256; 1882, XVII, 1000.

(404) § 5. How Tax Assessed and Apportioned Among Shareholders.—The Auditor of the county in which any such bank or banking association may be located, upon receiving the return provided for in the preceding Section, shall deduct from the actual total value of the shares in any such bank or banking association the appraised value of the real estate owned by such bank or banking association, as the same stands assessed on the duplicate, and the remainder of the total value of such shares shall be entered on the duplicate of the county in the names of the owners thereof in amounts proportioned to the number of shares owned by each, as returned on said sworn statement, and be charged with taxes at the same rate as charged upon the value of other personal property at the place where such bank or banking association is located.

Civ. '12, § 345; Civ. '02, § 317; G. S. 202; R. S. 257; 1882, XVII, 1000.

(405) § 6. Tax a Lien on Shares.—Any taxes assessed on any such shares of stock, or the value thereof, in manner aforesaid, shall be and remain a lien on such shares from the first day of June in each year until such taxes are paid; and, in case of the nonpayment of such taxes at the time required by law by any shareholder, and after notice received of the County Treasurer of the nonpayment of such taxes, it shall be unlawful for the cashier or other officers of such bank or banking association to transfer, or permit to be transferred, the whole or any portion of said stock until the delinquent taxes thereon, together with the costs and penalties, shall have been paid in full; and no dividend shall be paid on any stock so delinquent so long as such taxes, penalties and costs, or any part thereof, remain due or unpaid.

Civ. '12, § 346; Civ. '02, § 318; G. S. 203; R. S. 258; 1882, XVII, 1001.

(406) § 7. Banks Required to Pay Taxes on Stock.—All banks or banking associations, chartered and doing business under the laws of this State, shall pay to the proper tax collecting officer of the county, city or munic-

ipality in which such bank or banking association may be located, all taxes that may be assessed in this State, as provided by law, upon its shares in the hands of its stockholders.

Civ. '12, § 347; Civ. '02, § 319; G. S. 204; R. S. 259; 1882, XVII, 1001; 1913, XVIII, 200.

Carolina Nat. Bank of Columbia v. Spigner, Richland County Treasurer, 106 S. C. 185, 90 S. E. 748.

(407) § 8. Proceedings Where Bank Fails to Make Return, and Penalty for False Return.—If any bank or banking association shall fail to make out and furnish to the County Auditor the statement required by Section — within the time required herein, it shall be the duty of said Auditor to examine the books of said bank or banking association, also to examine any officer or agent thereof, under oath, together with such other persons as he may deem proper, and make out the statement required by said Section, and enter the value of said shares on the duplicate for taxation. Any bank officer failing to make out and furnish the County Auditor the statement, or wilfully making a false statement, as herein required, shall be liable to a fine not exceeding one thousand dollars, together with all costs and other expenses incurred by the Auditor, or other proper officer, in obtaining such statement aforesaid.

Civ. '12, § 348; Civ. '02, § 320; G. S. 205; R. S. 260; 1882, XVII, 1001.

(408) § 9. Unincorporated Banks and Bankers—Mode of Assessing.—All unincorporated banks and bankers shall, annually, between the first of June and twentieth of July, make out and return to the Auditor of the proper county, under oath of the owner or principal officer or manager thereof, a statement, setting forth:

1. The average amount of notes and bills receivable, discounted, or purchased in the course of business by such unincorporated bank, banker, or bankers, and considered good and collectible.

2. The average amount of accounts receivable.

3. The average amount of cash items in possession or in transit.

4. The average amount of all kinds of stocks, bonds, or evidences of indebtedness, held as investment, or in any way representing assets.

5. The average amount of real estate at its assessed value for taxation.

6. The average amount of all deposits made with them by other parties.

7. The average amount of accounts payable, exclusive of current deposit accounts.

8. The average amount of government and other securities, specifying the kinds that are exempt from taxation.

9. The amount of capital paid in or employed in such banking business, together with the number of shares or proportional interest each shareholder or partner has in such association or partnership.

From the aggregate sum of the first five items above enumerated, the said Auditor shall deduct the aggregate sum of the fifth, sixth, seventh and eighth items, and the remainder thus obtained shall be entered on the duplicate of the county in the names of such bank, banker, or bankers, and taxes

thereon shall be assessed and paid, the same as is provided for other property as assessed and taxed in the same city, ward, town or incorporated village.

Civ. '12, § 349; Civ. '02, § 321; G. S. 206; R. S. 262; 1882, XVII, 1002.

(409) § 10. How Average Obtained.—The average provided for in the preceding Section shall be obtained by adding together the amounts of each item above specified, owned by or standing on the books of such bank, banker, or bankers, on the first day of each month of the year ending the last day of December next preceding the year in which the return is made, and dividing the same by the number of months in the year: *Provided*, That in cases where such bank, banker, or bankers commenced business during the preceding year, the division shall be made by the number of months elapsed after the commencement of such business: *Provided*, That all fractions of a month shall be counted as a month.

Civ. '12, § 350; Civ. '02, § 322; G. S. 207; R. S. 263; 1882, XVII, 1002.

(410) § 11. Who Are Bankers.—Every company, association, or person not incorporated under any law of this State, or of the United States, for banking purposes, who shall keep an office or other place of business, and engage in the business of lending money, receiving money on deposit, buying and selling bullion, bills of exchange, notes, bonds, stocks, or other evidences of indebtedness, with a view to profit, shall be deemed a bank, banker, or bankers, within the meaning of the provisions of this Chapter.

Civ. '12, § 351; Civ. '02, § 323; G. S. 208; R. S. 261; 1882, XVII, 1003.

(411) § 12. Auditor's Power to Enforce Returns—Penalty for Default of or False Returns.—The Auditor shall have the same powers to enforce correct returns from bank officers and bankers, to examine witnesses and enforce their attendance, and have the same aid of the Court of General Sessions of the county, as is provided by law in the cases where individuals fail to list their property for taxation, or are suspected of having made false returns; and in all cases of failure to make returns under this Article, or in case of false return by any unincorporated bank, banker, or bankers, the Auditor shall ascertain the true amount, as near as may be, add fifty per cent. penalty thereto, and charge the party or parties with the taxes on the amount so ascertained by him, with the penalty aforesaid; but in cases of unintentional mistake in making the return, the true amount only shall be charged against the parties, without penalty.

Civ. '12, § 352; Civ. '02, § 324; G. S. 209; R. S. 264; 1882, XVII, 1003, § 194.

(412) § 13. Provisions Hereinto Apply to Certain Banks.—The provisions of the various sections of this Article shall apply to Banks incorporated in this State which have branches in more than one county.

Civ. '12, § 353; 1909, XXVI, 36.

ARTICLE X.**Certain Corporations to Make Annual Reports and Pay Annual License Fees.**

(413) § 1. **Corporations to Make Annual Reports to Comptroller General.**—Every corporation organized under the laws of this State to do business for profit, doing business in this State, shall make a report in writing to the Comptroller General, annually, during the month of February, in such form as the Comptroller General may prescribe, containing: 1. The name of the company. 2. The location of its principal office. 3. The name and postoffice address of the President, Secretary, Treasurer, Superintendent and General Manager, and of the members of the Board of Directors. 4. The date of the annual election of such officers. 5. The amount of authorized capital stock and par value of each share. 6. The amount of capital stock subscribed, the amount of capital stock issued and outstanding, and the amount of capital stock paid up. 7. The nature and kind of business in which the company is engaged and its place or places of business. 8. The change or changes, if any, in the above particulars made since the last report. And all railroad companies, express companies, street railway companies, navigation companies, waterworks companies, power companies, light companies, telephone companies, telegraph companies, parlor, dining and sleeping car companies, exercising the right and privilege of doing business or operating under the authority of any grant of authority or permission by this State, whether by direct enactment of the General Assembly, or otherwise, and also foreign, nonresident corporations engaged in like business and exercising similar rights and privileges, shall, in addition to the information above stated, also state in said report to the Comptroller General. 9. The nature of the company or corporation and under the laws of what State organized.

10. **EXPRESS COMPANIES.**—In the case of express companies, the entire receipts, including all sums earned or charged, whether actually received or not, for business done in this State by each agent of such company doing business in this State, giving the name of the office for the fiscal year then next preceding for and on account of such company, including its proportion of gross receipts for business done by such company within the State in connection with other companies; also the total amount of such receipts for business done within the State.

11. **TELEGRAPH AND TELEPHONE COMPANIES.**—In case of telegraph and telephone companies, the entire gross receipts, including all sums earned or charged, whether actually received or not, for the fiscal year next preceding, from whatever source derived, whether messages, telephone tolls, rentals, or otherwise, for business done within this State, at each office within this State, giving the name of the office and the total receipts of the company for such period in South Carolina from business done within South Carolina.

12. **RAILROADS.**—In the case of each railroad or street railway, situated wholly within the State of South Carolina, the gross earnings from its operation, and in case of each railroad or street railway, located partly

within and partly without South Carolina, the gross earnings from the operation of the entire line for the fiscal year next preceding, with the number of miles of line within South Carolina, and the miles of line without South Carolina.

13. That the fiscal year for which reports shall be made by railroad companies in the State of South Carolina to the Board of Railroad Commissioners, the Tax Commission or other officers of the State of South Carolina, shall terminate on the 31st day of December, so as to conform to the calendar year and to the fiscal year as fixed by the Interstate Commerce Commission of the United States.

14. REPORTS TO BE MADE IN CONFORMITY TO CHANGE EFFECTED HEREIN.—That all reports now required by law to be made by railroad companies to the Board of Railroad Commissioners, to the Tax Commission, or to other officers of the State of South Carolina, at specified times and based upon the operations of said railroad companies for the fiscal year preceding such reports, such fiscal year now by law terminating on the 30th day of June of every year, shall be made to said Board or officers at like periods after the 31st day of December of every year, as they are now required to be made after the 30th day of June of every year.

1917, XXX, 163.

15. NAVIGATION COMPANIES.—And in the case of navigation companies, waterworks companies, power companies, light companies, the entire gross receipts of the company, including all sums earned or charged, whether actually received or not, for business done within this State for the fiscal year then next preceding, including the company's portion of gross receipts for business done by it within this State in connection with other companies.

16. Such other facts and information as he may require in the form of return prescribed by him.

Civ. '12, § 361; 1904, XXIV, 462; 1905, XXIV, 828; 1917, XXX, 163.

This Act construed in *British-American Mortgage Co. v. Jones*, 76 S. C. 218, 56 S. E. 983, and 77 S. C. 443, 58 S. E. 417. In the last cited case it was held constitutional as to foreign corporations, constitutional as to domestic corporations. *Ware Shoals Mfg. Co. v. Jones*, 78 S. C. 211, 218, 58 S. E. 811.

(414) § 2. Foreign Corporations.—Every corporation organized to do business for profit under the laws of any other State, territory, or country, now or hereafter doing business in this State, and owning or using a part of its capital or plant in this State, shall, in addition to the other requirements contained in the Code of Laws of South Carolina, 1922, and Acts amendatory thereto, during the month of February, annually, make a report in writing to the Comptroller General, in such form as he may prescribe, containing the same facts as required to be reported by domestic corporations in the preceding Section, and in addition thereto:

1. The name and location of its office or offices in South Carolina. The name and address of the officers or agents of the company in charge of its business in South Carolina.

2. The value of property owned and used by the company in South Carolina, and the value of the property owned and used outside of South Carolina, and where such property is situated, stating the county and township and other tax division where situated within this State.

3. The change or changes, if any, in the above particulars since the last annual report.

Civ. '12, § 362; 1904, XXIV, 462; 1905, XXIV, 828.

(415) § 3. How Reports shall Be Made.—The report required in Sections 1 and 2 shall be signed and sworn to before an officer duly authorized to administer oaths, by the President, Vice President, Secretary, Superintendent or Managing Agent of such company within this State and forwarded to the Comptroller General. Blanks for making the above report shall be prepared and, on application, furnished any company applying therefor by said Comptroller General.

Civ. '12, § 363; 1904, XXIV, 462; 1905, XXIV, 828.

(416) § 4. Annual License Fee.—Every corporation organized under the laws of this State to do business for profit, other than railroad companies, express companies, street railway companies, navigation companies, waterworks companies, power companies, light companies, telephone companies, telegraph companies, parlor, dining and sleeping car companies, shall, upon the filing of the report required of them in Section 1, pay to the Comptroller General, on or before the first day of April in each year, an annual license fee of one-half of one mill upon each dollar paid to the capital stock of said corporation, said license fee not to be less than five dollars in any case.

Civ. '12, § 364; 1904, XXIV, 462; 1905, XXIV, 828.

British-American Mortgage Co. v. Jones, Comptroller General, 76 S. C. 218, 223, 56 S. E. 983, and 77 S. C. 443, 450, 58 S. E. 417, rehearing.

(417) § 5. Valuation by Comptroller General and Annual License Fee of Foreign Corporations.—Upon the filing of the report required of foreign corporations in Section 2, the Comptroller General shall, from the facts thus reported, and any other facts coming to his knowledge, determine the value of the property of such corporation used within the State by them in the conduct of their business, and shall file a statement of the value so determined, with the license tax payable thereon, and shall charge and collect from such company, in addition to the initial fees provided for in the Code of Laws of South Carolina, 1922, and Acts amendatory thereto, an annual license fee of one-half of one mill upon each dollar of the value of the property of such corporation used within this State in the conduct of its business.

Civ. '12, § 365; 1904, XXIV, 462; 1905, XXIV, 828; 1915, XXIX, 125.

This section may be enforced against foreign corporation having paid in 1894 license required by Act of 1893, 21 Stat. 490 (see § 2664, et seq.) to do business in this State and having paid such license annually since and fully complied with such Act. *British-American Mortgage Co. v. Jones*, 77 S. C. 443, 450, 58 S. E. 417, overruling on rehearing *British-American Mortgage Co. v. Jones*, 76 S. C. 218, 223, 56 S. E. 983.

(418) § 6. Reports to Be Filed With State Tax Commission.—The State Tax Commission provided for in Article VI shall, annually, on the first Monday in March, or on such other day as they may be called to meet by the Comptroller General, meet in the office of the Comptroller General, and thereupon the Comptroller General shall lay before the Commission the statements and schedules returned to him by each and every railroad company, express company, street railway company, navigation company, waterworks company, power company, light company, telephone company,

telegraph company, parlor, dining or sleeping car company, under Section 1 of this Article. The reports made by railroad, telegraph, telephone, express and sleeping car companies to the Railroad Commissioners may be regarded and treated by the Commission as reports made to it, and the Commission shall have power at any time to call upon such Commissioners for information. The Commission may also consider reports filed with the Comptroller General by express, telegraph, telephone, sleeping car and railroad companies for purposes of taxation.

Civ. '12, § 366; 1904, XXIV, 462; 1905, XXIV, 828; 1915, XXIX, 125.

(419) § 7. State Tax Commission to Determine Gross Receipts.—The State Tax Commission shall proceed to ascertain and determine, on or before the first Monday in April, the entire gross receipts of such railroad companies, express companies, street railway companies, navigation companies, waterworks companies, power companies, light companies, telephone companies, telegraph companies, parlor, dining and sleeping car companies, for business done within this State for the fiscal year then next preceeding, and the amounts ascertained by said Commission shall be held and deemed to be gross receipts of such companies for business done within South Carolina for the year under consideration.

Civ. '12, § 367; 1904, XXIV, 462; 1905, XXIV, 828; 1915, XXIX, 125.

(420) § 8. Failure to Make Statement.—In case of the failure or refusal of any company to make the statement required by law, or furnish the Commission any information requested by it, the Commission shall inform itself as best it may on matters necessary to be known in order to discharge the duties under this Article.

At any time after the annual meeting of the Commission, and before the gross receipts of any company for business done within South Carolina, or the gross earnings from its operation within South Carolina are determined, any company or person interested shall have the right, on written application, to appear before the Commission and be heard in the matters of such determination. After the determination of the amount of the gross receipts of any such company or the gross receipts or earnings from its operation within South Carolina, and before the notification to the State Treasurer of such amount, the State Tax Commission may, on application of any person or company interested, or on its own motion, revise and correct its findings in such manner as seem to it to be just and proper.

Civ. '12, § 368; 1904, XXIV, 462; 1905, XXIV, 828.

(421) § 9. Tax Commission to Notify State Treasurer.—That the said State Tax Commission shall, after ascertaining the gross receipts for business done in South Carolina, or the gross earnings from its operation within South Carolina of any railroad company, express company, street railway company, navigation company, waterworks company, power company, light company, telephone company, telegraph company, parlor, dining and sleeping car company, notify the State Treasurer of the amount thereof on or before the first day of May of each year, and the State Treasurer shall thereupon proceed to charge and collect from such company and such company shall pay to said State Treasurer an annual license fee of three mills on the gross income of such company for business done within South Caro-

lina for the preceding fiscal year, an annual license fee of three mills on such gross income, which license fee shall be paid by such corporation on or before the first day of May in every year.

Civ. '12, § 369; 1904, XXIV, 462; 1905, XXIV, 828; 1915, XXIX, 125.

(422) § 10. **State Treasurer to Report to Comptroller General.**—On the production of the State Treasurer's receipt showing payment of the annual fees provided for in the preceding Sections of this Article, the Secretary of State shall make out and deliver to the corporation paying the same, a certificate of the compliance by such corporation with the provisions of this Article, and of the payment of the annual fees therein provided for, and the State Treasurer shall report to the Comptroller General the amount of the annual fees collected under this Article.

Civ. '12, § 370; 1904, XXIV, 462; 1905, XXIV, 828.

(423) § 11. **Failure to Pay License.**—In case any corporation required to file reports or pay license fees by this Article shall fail or neglect to make such report or pay such fees within the period prescribed in said Sections, respectively, such corporation shall be subject to a penalty of five hundred dollars, and an additional penalty of one hundred dollars per day for each day's omission after the time limited in this Article for filing such report and paying such fee. Such penalty and annual fee or fees may be recovered by an action in the name of the State, and on collection shall be paid into the State Treasury. The Attorney General, on the request of the Comptroller General, shall institute such action in the Court of Common Pleas for Richland County, or of any county in the State in which such corporation has an office or place of business, as he prefers. The State Tax Commission, upon good cause shown, may in their discretion remit the penalty, or any part thereof, prescribed in this Article.

Civ. '12, § 371; 1904, XXIV, 462; 1905, XXIV, 828; 1915, XXIX, 125.

(424) § 12. **Exceptions.**—The provisions of this Article shall not apply to insurance, fraternal, beneficial or mutual protection associations or companies.

Civ. '12, § 372; 1904, XXIV, 462; 1905, XXIV, 828.

(425) § 13. **Dissolution of Corporation.**—Every domestic corporation in case of dissolution, revocation of charter, or abandonment of its corporate purposes shall file with the Secretary of State a certificate of such dissolution, revocation of charter or abandonment. In case of dissolution or abandonment by voluntary action of the corporation, such certificate shall be signed by the President, Secretary and a majority of the Board of Directors of the corporation. In case of dissolution or revocation of charter by action of a competent court, such certificate shall be signed by the Clerk of the Court entering the decree of dissolution or revocation. The fees for making or filing of such certificate with the Secretary of State shall be taxed in the cost in favor of the party paying the same.

FOREIGN CORPORATIONS RETIRING FROM BUSINESS.—Every foreign corporation when it shall retire from business in this State, is hereby required to file with the Secretary of State a certificate to that effect, signed by the

President and Secretary of the corporation. The fee for filing certificates of dissolution, revocation of charter, abandonment or retirement of corporations shall be five dollars: *Provided*, That the charter of a corporation which is shown to have been no longer in active existence at the time of this Article may be surrendered on the payment of one dollar. The mere retirement from business of a domestic or foreign corporation without having filed the certificate provided for in this Section, shall not exempt it from the requirements to make their reports and pay fees in accordance with the provisions of this Article.

Civ. '12, § 373; 1904, XXIV, 462; 1905, XXIV, 828.

ARTICLE XI.

Proceedings on Default of Return and Penalties Therefor—Valuation of Property for Taxation.

(426) § 1. **Penalty for Refusing to Make Oath on Return.**—If any person shall refuse or neglect to make out and deliver to the Auditor a statement of personal property, as provided herein, or shall refuse or neglect to make and subscribe an oath as to the truth of such statement, or any part thereof, or in case of the sickness or absence of such person, the Auditor shall proceed to ascertain, as near as may be, and make up and return a statement of the personal property, and the value thereof, with which such person shall be charged for taxation, according to the provisions of this Chapter; and to enable such Auditor to make up such statement, he is authorized to examine any person or persons, under oath, and to ascertain, from general reputation and his own knowledge of facts, the character and value of the personal property of the person thus absent or sick, or refusing or neglecting to list or swear; and said Auditor shall return the lists so made up by him, endorsed, "Refused to List," or "Refused to Swear," or "Absent," or "Sick," as the case may be, and in his return, in tabular form, shall write the same words opposite the names of each of the persons so refusing or neglecting to list or swear, or absent or sick.

Civ. '12, § 374; Civ. '02, § 332; G. S. 214; R. S. 265.

(427) § 2. **Penalty for Failure to Make Returns.**—If any person shall fail to list the personal property he is required by law to list in any one year, and the same escapes taxation for that year, the value thereof shall be charged against him for taxation in any subsequent year, with fifty per cent. penalty added thereto, and the taxes and penalty collected as in other cases.

Civ. '12, § 375; Civ. '02, § 333; G. S. 215; R. S. 266; 1882, XVII, 1005.

(428) § 3. **Persons Beginning Business After January 1.**—Any person company, or corporation, commencing any business in any county of this State after the first day of January in any year, the capital or personal property employed in which shall not have been previously listed for taxation in said county for such year, shall, within thirty days after commencing such business, report to the Auditor of the county, under oath, the average amount of the capital intended to be employed in such business,

from the time of its commencement to the first day of January next ensuing; and upon making satisfactory proof to said Auditor that such capital or property has been regularly listed for taxation in some other county in this State, said Auditor shall file report and proofs in his office, and give to the party a certificate that he or they have complied with the provisions of this Section and are not liable to taxation in his county on such capital or property for the then current fiscal year. But if he or they shall not satisfactorily prove that such capital or property has been previously listed for taxation in some county of this State, said County Auditor shall charge him or them on his duplicate with such proportion of all taxes levied on others upon similar capital or property, at the place of the business, as the time from the commencement of the business to the ensuing first day of January bears to one year.

Civ. '12, § 376; Civ. '02, § 334; G. S. 216; R. S. 267; 1882, XVII, 1005.

(429) § 4. Duty of County Auditors With Respect to Persons With Property Unlisted.—It shall be the duty of each County Auditor to ascertain the names of all persons commencing any business in his county after the first day of January, annually, whose capital or property employed in such business was not listed for taxation in his county for the then current fiscal year.

Civ. '12, § 377; Civ. '02, § 335; G. S. 217; R. S. 268; 1882, XVII, 1005.

(430) § 5. Penalty Where Capital or Property Employed is Not Listed.—If any person, company, or corporation, shall commence any business in any county of this State after the first day of January in any year, the capital or property employed in which shall not have been previously listed for taxation in said county, and shall not, within thirty days thereafter, make such report to the Auditor of said county as is required in Section 3 of this Article, he or they shall forfeit and pay the sum of one hundred dollars, which shall be collected, by civil action, in the name of the County Commissioners, and paid into the County Treasury for the exclusive benefit of the county. And process in such case may issue out of the Court of Common Pleas of the county in which such business was commenced, directed to the proper officer, and be served in any county of this State.

Civ. '12, § 378; Civ. '02, § 336; G. S. 218; R. S. 269; 1882, XVII, 1005.

(431) § 6. How Property Valued.—All property shall be valued for taxation at its true value in money, which, in all cases not otherwise specially provided for by law, shall be held to be as follows, to wit: For personal property, the usual selling price on the usual terms of similar property at administrators' or executors' sales, at the place where the return is made; and for real property, the usual selling price on the usual terms of similar property at sales for partition under the order of the court, at the place where the return is to be made. If there is no usual selling price, then at what is honestly believed could be obtained for the same at a fair sale under the conditions before mentioned. It shall be the duty of each owner of lands, and of any new structures thereon which shall not have been appraised for taxation, to list the same for taxation with the County

Auditor of the county in which they may be situate, on or before the twentieth day of February next after the same shall become subject to taxation.

Civ. '12, § 379; Civ. '02, § 337; G. S. 219; R. S. 270; 1882, XVII, 1006.

Railroad property was assessed by State Board of Equalization for railroads at 80 per cent. of its real value, under provision of this section that all property should be valued "at its true value in money," while all other property in State was assessed by county boards of assessment at from 50 to 60 per cent. of the real value. Held, in view of general mode of assessing property for taxation, upon application of receiver for instructions, that there was no such evidence of intention on part of board of equalization to violate constitutional provision (art. 9, § 1) in relation to equality of taxation, and design to put burden of tax alone on railroads, as would warrant interference of court. *Chamberlain v. Walter*, 60 Fed. 738, 794.

(432) § 7. Personal Property—How Valued—What Deemed Personal Property.—The following articles of personal property shall be valued for taxation, as follows, to wit: Money, bank bills, and other bills lawfully circulating as money, at the par value thereof; credits, at the amount payable on the face of the contract, instrument, or account, unless the principal be payable at a future time without interest; then, at the sum payable, less the lawful interest thereon, for any term of credit not exceeding one year; contracts for the delivery of specific articles, at the usual selling price of such articles, at the time of listing; leasehold estates held for any definite term, at the yearly value thereof to the lessee; annuities, at the yearly value thereof to the owner at the time of listing. All leasehold estates, held on perpetual lease, or for a term certain, renewable forever at the option of the lessee, shall be valued at the full price of the land, and continued to be taxed at such value to the end of the term. When the fee of the soil in any tract or lot of land is in one person, and right to any minerals therein or structures thereon in another, the proceeds of the minerals and the said structures shall be valued and taxed as personal property, to the owners thereof, respectively.

Civ. '12, § 380; Civ. '02, § 338; G. S. 220; R. S. 271; 1882, XVII, 1006.

ARTICLE XII.

The County Auditor—Appointment, Tenure of Office, and General Powers and Duties.

(433) § 1. County Auditors—How Appointed—Term of Office.—The Governor is authorized by and with the advice and consent of the Senate, to appoint for each county in the State a County Auditor, who shall hold his office for a term of four years, and until his successor is appointed and qualified, and to require such bond from said officer as he may deem necessary: *Provided*, That in the Counties of Bamberg, Berkeley, Horry, Lexington, and Williamsburg the term of office of said County Auditor shall be two years and until his successor is appointed and qualified: *Provided*, The County Auditor of Beaufort County shall be elected by the qualified electors of said county in the general election of 1914 and in the general election every four years thereafter: *And provided, further*, That the bond of the County Auditor of Greenwood County shall be two thousand dollars, and the bond of the County Auditor of Dorchester County three thousand dollars, and the bond of the County Auditor of McCormick County

shall be five thousand dollars. Before entering on the duties of his office, the Auditor so appointed must take the oath prescribed by the Constitution, and also the oath in respect to dueling.

Civ. '12, § 381; Civ. '02, § 339; G. S. 221; R. S. 272; 1882, XVII, 1007, § 206; 1897, XXII, 439; 1913, XXVII, 43, 146; 1914, XXVIII, 400, 617, 619, 627; 1915, XXIX, 420, 445, 447, 515, 532; 1916, XXIX, 754, 793, 798, 799, 804; 1917, XXX, 120, 121; 1918, XXX, 798; 1919, XXXI, 75, 127, 132, 164; 1920, XXXI, 1041.

(434) § 2. For What Causes and How Suspended and Removed from Office.—When any County Auditor shall, during a recess of the Senate, be shown, by evidence satisfactory to the Governor, to be guilty of misconduct in office, or crime, or for any reason shall become incapable or legally disqualified to perform its duties, in such case, and in no other, the Governor may suspend such officer, and designate some suitable person to perform, temporarily, the duties of such office until the next meeting of the Senate, and until the case shall be acted upon by the Senate; and such person so designated shall take the oath and give the bond required by law to be taken and given by the person duly appointed to fill such office, and, in such case, it shall be the duty of the Governor, within ten days after the first day of such meeting of the Senate, to report to the Senate such suspension, with the evidence and reason for his action, and the name of the person so designated to perform the duties of such office; and if the Senate shall concur in such suspension, and advise and consent to the removal of such officer, they shall so certify to the Governor, who may thereupon remove such officer, and, by and with the advice and consent of the Senate, appoint another person to such office. But if the Senate shall refuse to concur in such suspension, such officer, so suspended, shall forthwith resume the functions of his office, and the powers of the person so performing its duties in his stead shall cease, and the official salary and emoluments of such officer shall, during such suspension, belong to the person so performing the duties thereof, and not to the officer so suspended: *Provided, however,* That the Governor, in case he shall become satisfied that such suspension was made on insufficient grounds, shall be authorized, at any time before reporting such suspension to the Senate as above provided, to revoke such suspension and reinstate such officer in the performance of the duties of his office.

Civ. '12, § 382; Civ. '02, § 340; G. S. 222; R. S. 273; 1882, XVII, 1007, § 206; 1897, XXII, 439.

(435) § 3. When Office to Be Kept Open to Receive Returns, Etc.—It shall be the duty of the County Auditor to receive the returns, and make the assessments provided for in this Chapter within the time prescribed by law, and for this purpose this office shall be kept open to receive the returns of taxpayers from January 1st to February 20th of each year. He shall, for the purpose of assessing taxes, attend at a convenient point in each township or tax district as many days as may be necessary, and for the remainder of the time allowed by law he shall be and return at the county seat. He or his assistant must give thirty days' public notice of the days upon which he will be at the place designated: *Provided,* That in Williams-

burg and Clarendon Counties the County Auditor shall not visit townships for the purpose of receiving and assessing taxes, but shall receive returns and assess taxes in his office only.

Civ. '12, § 383; Civ. '02, § 342; G. S. 225, 226; R. S. 275, 276; 1882, XVII, 1008; 1917, XXX, 68; 1920, XXXI, 1142.

Property sufficiently assessed as belonging to the "estate of"—"heirs of." *Koth v. Pallachucola Club*, 79 S. C. 514, 61 S. E. 77.

(436) § 4. Make Annual Lists of Persons Making Returns of Real and Personal Property.—Each Auditor shall, on or before the first day of March, annually, make out, in tabular form and alphabetical order, a list of the names of the several persons, companies and corporations in whose names any personal or real property shall have been listed, giving the first Christian name of the several persons; and he shall enter separately, in appropriate columns, opposite each name, the aggregate value of the several species of property mentioned herein, making separate lists of the property listed as taxable in incorporated villages, cities and wards, and that listed as taxable out of cities, wards and incorporated villages; all of which columns shall be accurately added up and footed; and at the same time file and preserve in his office statements of property listed by him, or received by him from others.

If the name of the owner of any tract or lot shall be unknown, the word "unknown" shall be entered in the column of names opposite said tract or lot.

Civ. '12, § 384; Civ. '02, § 343; G. S. 277; R. S. 277; 1882, XVII, 1009, § 211.

Gilliland v. Citadel Square Baptist Church, 33 S. C. 164, 11 S. E. 684.

One of main purposes of statute is to enable tax officers to identify the owner of property so that they may know with certainty on whose property to levy for the collection of taxes. *Koth v. Pallachucola Club*, 79 S. C. 514, 517, 61 S. E. 77.

Should not be construed as admitting of no other meaning or designation of owner except the use of Christian and family name. *Koth v. Pallachucola Club*, 79 S. C. 514, 517, 61 S. E. 77.

(437) § 5. Lists of Real Estate Not Previously Listed, Structures Newly Built or Destroyed, Etc.—The Auditor shall annually, at the time of taking the list of personal property, also take a list of all real property in the county subject to taxation which shall not have been previously listed; and of all new structures not previously listed, and of all old structures which were destroyed during the previous year; and shall affix a value thereto, with a description of the land or lot on which the same was or is situate, endorse his affidavit thereon that the same is correct, and that the valuations therein stated have been made according to the rules prescribed by this Chapter, and return the same, with the names of the owners, respectively; and if the owner of any such new structure shall be the owner of the land on which it is situate, or of a permanent leasehold estate therein, the Auditor shall add to or deduct from the value of the land or lease, as the case may be, as the same may stand on the duplicate, the value of such structure so returned; but he shall not deduct any greater amount for the destruction of any structure than was previously charged for the same on the duplicate.

Civ. '12, § 385; Civ. '02, § 344; G. S. 228; R. S. 278; 1882, XVII, 1009, § 211.

(438) § 6. Auditor's Remarks on Returns Regarding Value of Property—Penalty on Unlisted Property.—It shall be the duty of the Auditor to state, in the column of remarks opposite each taxpayer's name, in the return

made by him, any amount which he believes ought to be added to the valuation of the property listed by such taxpayer, his agent, or other person. But he shall not increase the return as made by any taxpayer, or his or her agent, except by authority of the Board of Assessors. It shall also be his duty, at any time after his return, if he ascertain that any personal property in his county has not been listed, to list the same and make return thereof, with the valuation thereof as fixed by the owner or himself, and the name of the owner or person to whom it is taxable; and he shall charge the same on the duplicate for taxation, adding fifty per cent. to the value as returned as penalty.

Civ. '12, § 386; Civ. '02, § 345; G. S. 229; R. S. 279; 1882, XVII, 1009, § 211.

Koth v. Pallachucola Club, 79 S. C. 514, 517, 61 S. E. 77.

Auditor has no authority to increase the assessment where it has been fixed by the Board of Assessors and Board of Equalization, even if ordered to do so by the Comptroller-General. *State v. Cromer*, 35 S. C. 213, 14 S. E. 493; *National Bank v. Boyd*, 35 S. C. 233, 14 S. E. 496; *State v. Covington*, 35 S. C. 245, 14 S. E. 499.

(439) § 7. **Auditor to State School District of Taxpayer.**—It shall be the duty of each Auditor to state, in a separate column, the school district in which the taxpayer resides.

Civ. '12, § 387; Civ. '02, § 346; G. S. 229a; R. S. 280; 1890, XX, 718.

(440) § 8. **Auditor to Report to County Superintendent of Education Poll Tax, Etc.**—The County Auditor, when he has completed the tax duplicates, shall report to the County Superintendent of Education, by school districts, the names listed for poll tax and the amount of taxable property when there is a special levy.

Civ. '12, § 388; Civ. '02, § 347; G. S. 229a; R. S. 280; 1890, XX, 718.

(441) § 9. **Description of Tracts or Lots of Land—Value—Mode of Information—Authority.**—It shall be the duty of the Auditor to make out, from the maps and descriptions in his possession, and from such other sources of information as shall be in his power, a correct and pertinent description of each tract and lot of real property in his county. When he shall deem it necessary to obtain an accurate description of any separate tract or lot in his county, he may require the owner or occupier thereof to furnish the same with any title papers he may have in his possession, and if such owner or occupier, upon demand made for the same, shall neglect or refuse to furnish a satisfactory description of such parcel of real property to such Auditor, he may employ a competent surveyor to make out a description of the boundaries and location thereof, and a statement of the quantity of land therein. To the expense of such survey he shall add the tax assessed upon such real property, and it shall be collected by the Treasurer, with such tax, and, when collected, shall be paid, on demand, to the person entitled to the same.

Civ. '12, § 389; Civ. '02, § 348; G. S. 230; R. S. 281; 1882, XVII, 1010, § 215.

(442) § 10. **May Enter and Examine Buildings to Ascertain Value.**—For the purpose of enabling the Auditor to determine the value of buildings and other improvements, he is authorized to enter and fully examine all buildings and structures (except dwellings), of whatever kind, which are not by law expressly exempted from taxation.

Civ. '12, § 390; Civ. '02, § 349; G. S. 231; R. S. 282; 1882, XVII, 1010, § 216.

(443) § 11. Makes List of Property Exempt.—The Auditor, at the time of making the assessments of other real estate for taxation, shall enter, in a separate list, pertinent descriptions of the real estate exempt from taxation by law, with the valuation thereof, made by himself, determined by the rules prescribed by law, and designating the owner of each several parcel.

Civ. '12, § 391; Civ. '02, § 350; G. S. 232; R. S. 283; 1882, XVII, 1010, § 17.

(444) § 12. When Tax Books Shall Be Made Up.—Transmission and Contents.—The Auditor shall, on or before the thirtieth day of June, in each year, make up and complete the tax books of his county, as required in the following Section; and shall, on or before that day, make out and transmit to the Comptroller General and the County Commissioners, an abstract of the property of each district in his county, in which he shall set forth:

1. The number of acres, exclusive of town lots, returned by said Auditor, with such additions as shall have been made thereto.

Civ. '12, § 392; Civ. '02, § 357; 1882, XVII, 1011; 1885, XIX, 164, § 4.

2. The aggregate value of such real property, other than town lots, as returned by said Auditor, inclusive of such additions as shall have been made thereto under the provisions of this Chapter.

3. The aggregate value of the real property in each town, city and village in his county, as returned by said Auditor, inclusive of such additions as shall have been made thereto.

4. The various kinds and descriptions of personal property returned for taxation.

Civ. '12, § 392; Civ. '02, § 351; G. S. 233; R. S. 284; 1897, XXII, 468, § 6.

(445) § 13. County Duplicate List—When Made Out—Form and Particulars.—The Auditor shall make out, in a book to be prepared for that purpose, in such manner as the Comptroller General shall prescribe, a complete list or schedule of all taxable property in his county, and the value thereof as equalized, so arranged as that each separate parcel of real property in each district, other than city, village and town property, shall be contained in a line or lines opposite the names of the owners, arranged in numerical or alphabetical order, and so that each lot or parcel of real property in cities, villages and towns shall be contained in a line or lines opposite the names of the owners thereof, respectively, arranged in alphabetical order. And the value of all personal property shall be set down opposite the names of the owners thereof, respectively; and if listed by any other person for and in the name of the owner, the name of such person, and the character in which he acted, shall also be stated in such list, which list or schedule shall be retained in his office, and another made for the County Treasurer, delivered to him on or before the thirtieth day of September, annually, as his warrant for the collection of the taxes, assessments and penalties charged thereon, each and both of which lists shall be denominated the County Duplicate.

Civ. '12, § 393; Civ. '02, § 352; G. S. 234; R. S. 28; 1882, XVII, 1010, § 219; 1885, XIV, 164.

Koth v Pallachucola Club, 79 S. C. 514, 517, 61 S. E. 77.
Taylor et al v. Strauss et al, 95 S. C. 295, 78 S. E. 883.

(446) § 14. Comptroller General Notifies Auditor of Rates for State Purposes.—The Comptroller General shall annually give due notice to each County Auditor of the rates per centum authorized by law to be levied for the various State purposes, which rates, or per centum, shall be levied by the County Auditor on the taxable property of the county, and charged on the duplicate with the taxes required to be levied and collected for other purposes.

Civ. '12, § 394; Civ. '02, § 353; G. S. 260; R. S. 286; 1882, XVII, 1022, § 244.

(447) § 15. County Auditor to Determine Sum to Be Levied on Parcels of Property.—Each County Auditor, after receiving from the Comptroller General, and from such other officers and authorities as shall be legally empowered to determine the rate or amount of taxes to be levied for the various purposes authorized by law, statements of the rates and sums to be levied for the current year, shall forthwith proceed to determine the sums to be levied upon each tract and lot of real property, and upon the amount of personal property, moneys, and credits listed in his county, in the name of each person, company, or corporation, which shall be assessed equally on all real and personal property subject to such taxes, and set down in one or more columns, in such manner and form as the Comptroller General shall prescribe; and in all cases where the whole amount of taxes upon the personal property, moneys, and credits of any person shall not amount to ten cents, the Auditor shall not enter the same upon the duplicate, if such person has no other taxable property.

Civ. '12, § 395; Civ. '02, § 354; G. S. 235; R. S. 287; 1882, XVII, 1011.

(448) § 16. Rate of Taxation a Decimal Fraction, and Not Less Than Half a Mill.—The County Auditors shall not be required to assess on the taxable property of their counties, or of any town, city or incorporated village, or school district therein, for any purpose, nor for all purposes added together, any rate of taxation containing or resulting in any fraction other than a decimal fraction, nor in any fraction less than one-half of a mill; but if the sum required to be raised for any or all purposes results in a fraction less than one-half of a mill, such fraction shall be dropped.

Civ. '12, § 396; Civ. '02, § 355; G. S. 236; R. S. 288; 1882, XVII, 1012.

Does not require auditor to drop in calculation of taxes any fraction less than one-half mill in the levy, but that provision refers to amount of taxes. *Dickson v. Burckmyer*, 67 S. C. 526, 541, 46 S. E. 343.

(449) § 17. Taxes to Be Entered on a Duplicate.—The County Auditor shall enter the taxes on the duplicate, to be retained in his own office, in such number of columns as the Comptroller General shall, from time to time, direct; but on the duplicate for the County Treasurer he shall enter the taxes against each parcel of real and personal property, on one or more lines, opposite the name of the owner or owners; and, in all other respects, the Comptroller General may prescribe forms for county duplicates as may seem to him most conducive to the interest and convenience of the public, and County Auditors shall conform thereto.

Civ. '12, § 397; Civ. '02, § 356; G. S. 237; R. S. 289; 1882, XVII, 1012.

Koth v. Pallachucola Club, 79 S. C. 514, 517, 61 S. E. 77; *Dickson v. Burckmyer*, 67 S. C. 526, 536, 46 S. E. 343.

(450) § 18. Disposition of Real Estate Regularly Returned, But Omitted from Duplicate.—If the County Auditor shall at any time discover that any real estate, or new structure, duly returned and appraised for taxation, has been omitted from the duplicate, he shall immediately charge the same on the duplicate, with the taxes of the current year, and the simple taxes of each preceding year the same may have escaped taxation. And if the owner of any real estate, or new structure thereon, subject to taxation, has not reported the same for taxation, according to the requirements of this Chapter, and the same has not been appraised for taxation, the Auditor shall, upon discovery thereof, appraise the same, and, upon making return of such appraisement, shall charge the same upon the duplicate, with the taxes of the then current year, and the taxes of each preceding year it may have escaped taxation, with twenty per cent. penalty upon such taxes of preceding years. And if any real estate shall have been omitted in any return, the Auditor of the county shall appraise the same immediately for taxation, file such appraisement in his office, and charge the same with the taxes of the current year, and the simple taxes of preceding years it may have escaped taxation.

Civ. '12, § 398; Civ. '02, § 257; G. S. 238; R. S. 290; 1882, XVII, 1012.

(451) § 19. Procedure in Case of Evasion or False Return—Party May Be Examined.—If the County Auditor shall suspect, or be informed, that any person or persons, corporation or company, has evaded making a return, or made a false return of his, her, or their personal property for taxation, or have or has not made a full return, or that the valuation returned is less than it should have been, according to the rules prescribed by this Chapter, it shall be his duty, at any time before the settlement with the Treasurer for the year, to notify such party to appear before him at his office, at a time fixed in said notice, together with such other person or persons as said Auditor may desire to examine, and the party, together with any witness called, shall be examined by said Auditor, under oath (which oath said Auditor is authorized to administer), touching the personal property, and the value thereof, of such party, and everything which may tend to evince the true amount such party should have returned for taxation.

Civ. '12, § 399; Civ. '02, § 358; G. S. 239; R. S. 291; 1882, XVII, 1013.

The Auditor's jurisdiction is special, and the fact giving it must affirmatively appear, cannot be presumed. *State v. Cromer*, 35 S. C. 213, 14 S. E. 493. It does not extend to cases regularly passed upon and determined by the tax boards. *State v. Cromer*, 35 S. C. 213, 14 S. E. 493; *State v. Covington*, 35 S. C. 245, 14 S. E. 499. He has no authority to increase valuation of property where return is not intentionally false. *National Bank v. Boyd*, 35 S. C. 233, 14 S. E. 496. And in no event to make such increase without notice to taxpayer, and proper inquiry and testimony as to true value. *Ib.* If he increase the assessment fixed by the tax boards he may be compelled by mandamus to restore it to the amount so fixed. *State v. Cromer*, 35 S. C. 213, 14 S. E. 493; *State v. Covington*, 35 S. C. 245, 14 S. E. 499.

National Union Bank of Rock Hill et al v. Neil, York County Treasurer; *First Trust & Savings Bank of Rock Hill v. Same*, 106 S. C. 173, 90 S. E. 744.

(452) § 20. Penalty in Case it Appear That Return Has Been Evaded or Falsified.—The County Auditor, when he shall deem it necessary, may adjourn the examination provided for in the preceding Section, from time to time; and if he shall find that the party has failed to make any return for taxation, or intentionally made a false return, or intentionally returned his or their property for taxation at less than its fair cash value, he shall determine what amount should have been returned by the party, and add fifty per cent. thereto as penalty, and charge the same, with said penalty,

against the party on the duplicate, with the taxes of the current year, and the taxes of each preceding year it may have escaped taxation, with twenty per cent. and penalties upon such taxes of preceding years; but if he shall find the party committed a merely unintentional mistake in any return made, he shall add such amount as he may deem just to such return, and charge the party with the simple taxes thereon.

Civ. '12, § 400; Civ. '02, § 359; G. S. 241; R. S. 292; 1882, XVII, 1014.

"Unintentional mistake" does not mean error of judgment; does not apply where property is returned and passed by the tax boards at a valuation less than others might estimate it. *State v. Boyd*, 35 S. C. 233, 14 S. E. 496.

(453) § 21. **How Costs of Examination to Be Settled.**—If upon the examination provided for in Section 19 of this Article, the return made to or by the Auditor shall be found to be correct, the expenses of the examination shall be paid by the County Auditor, out of the county treasury; but if it shall be found that the return, as made, was intentionally false, or that no return was made, the Auditor shall pay the expenses of the examination out of the county treasury and charge the same to the party on the duplicate, in addition to the penalty provided for such cases; and such amount shall be collected, with the taxes of the party, to reimburse the treasury of the county for the expenses paid as aforesaid. But if the return made was unintentionally erroneous, said Auditor shall pay the witness' fees and costs of serving the notice out of the county treasury, charge the same on duplicate to the party, and the same shall be collected and paid into the county treasury, as aforesaid.

Civ. '12, § 401; Civ. '02, § 360; G. S. 242; R. S. 293; 1882, XVII, 1014.

(454) § 22. **What Expenses to Be Allowed.**—The expenses to be allowed upon the examination provided for by Section 19 of this Article shall be, for serving the notice or notices, the fees allowed to Sheriffs and Constables for serving a summons; and to witnesses, the same fees to witnesses in suits before a Magistrate's Court.

Civ. '12, § 402; Civ. '02, § 361; G. S. 243; R. S. 294; 1882, XVII, 1014.

(455) § 23. **Penalty Added on Refusal or Neglect to List or to Swear to Return.**—Each County Auditor shall add to the value of all personal property which the owner or other person whose duty it is made to list the same shall have refused or neglected to list, or to the value of which such person shall have refused or neglected to swear, fifty per centum on the value, and charge the same on the duplicate upon which taxes shall be collected and apportioned to the several funds for which taxes are assessed against such owner in proportion to the respective levies.

Civ. '12, § 403; Civ. '02, § 362; G. S. 244; R. S. 295; 1882, XVII, 1014.

(456) § 24. **Assessment a Part of Collection—Construction of Sections of Tax Law.**—The assessment of property for taxation shall be deemed and held to be a step in the collection of taxes and the last five preceding Sections shall be construed to mean as giving full and complete power to the County Auditor, independent of any right conferred upon County Boards of Assessors or other officers, as to securing a full and complete return of property for taxation in all cases as expressed in said Sections, whether fraudulently or otherwise improperly or incompletely made.

Civ. '12, § 404; Civ. '02, § 363; 1892, XXI, 81; R. S. 296.

ACTION OF AUDITOR NOT REVIEWABLE BY COURTS.—The action of said Auditor under said Sections shall not be interfered with by any court of this State by *mandamus*, summary process or any other proceeding, but the taxpayer shall have the right, and no other, to pay his tax on such return under protest.

1902, XXIII, 790.

This Section shall only apply to State, county, municipal and school taxes. Civ. '12, § 404; Civ. '02, § 363; 1892, XXI, 81.

(457) § 25. What to Be Done When Taxpayer Fails to Make Return.—Whenever any taxpayer shall fail to make returns to the Auditor of his county within the time prescribed by law, it shall be the duty of the County Auditor to enter on the tax duplicate, against such taxpayer, the property charged to him the previous year, with fifty per cent. penalty added thereto, except in cases of sickness or absence from the county, when the true amount of property only shall be charged.

Civ. '12, § 405; Civ. '02, § 364; G. S. 245; R. S. 297; 1882, XVII, 1015.

(458) § 26. Failure to Make Return Caused by Sickness or Absence.—If any person required to list property for taxation shall have been prevented by sickness or absence from giving to the Auditor the statement or return for taxation required, such person or his agent may, at any time prior to the tenth day of September of the year of the assessment, make out and deliver to the County Auditor a statement of the same, sworn to (which oath the Auditor is authorized to administer), and shall also make oath before said Auditor that he was sick or absent during the whole time when he should have otherwise listed his property for that year; and, if absent, that such absence was not for the purpose of avoiding the listing of his property. The Auditor shall receive the return made by the absent person, and charge such party with taxes on the duplicate according to the return so made to him.

Civ. '12, § 406; Civ. '02, § 365; G. S. 246; R. S. 298; 1882, XVII, 1015.

(459) § 27. How Returns Are Made and Kept Correct.—Each County Auditor shall correct annually the valuation of any parcel or lot of real property on which any structures may have been constructed, or on which any structure may have been destroyed, according to the return thereof, made in accordance with the provisions hereof, and assess the tax upon each corrected valuation. Said Auditor shall also correct any errors he may discover in the name of the owner, in the description or quantity of any parcel or lot of real estate, or in any return made to his office. He shall also correct any errors in his duplicate when ordered by the Comptroller General, but he shall not reduce any assessment of personal property regularly made and returned to his office, nor make any deduction from the valuation of any tract, lot, or parcel of real estate, except upon the written order of the Comptroller General, which written order shall only be made by the Comptroller General upon a statement of facts submitted to him in writing; and when any personal or real property has been listed, returned, or entered for taxation in a wrong locality, the County Auditor shall correct the return or entry, and charge such property with the taxes in the locality required

by the provisions hereof: *Provided*, That any correction made in the duplicate by the County Auditor shall be entered on both the Auditor's and Treasurer's duplicate, except that, in case of the reduction of any assessment or tax, the Auditor may furnish the Treasurer with a certificate of such reduction: *And provided, further*, That each County Auditor shall keep a record of all sales or conveyances of real property made in his county, in which he shall enter, in columns, the names of the purchaser and seller, the quality of land conveyed, the location and price of the same, and therefrom correct the county duplicates annually; and, for the purpose of carrying out this provision the Clerks of Courts and Registers of Mesne Conveyances of each county are hereby required to have the endorsement of the County Auditor on each and every deed of conveyance for real property that the same is on record in his office, before the same can be placed on record in the offices of said Clerks of Courts or Register of Mesne Conveyances; and the said County Auditor shall be entitled to a fee of twenty-five cents, for his own use, for making such entry and endorsement.

Civ. '12, § 407; Civ. '02, § 366; G. S. 247; R. S. 299, 300; 1882, XVII, 1015.

Koth v. Pallachucola Club, 79 S. C. 534, 517, 61 S. E. 77.

Duty to correct tax duplicate. *Smith v. Cox*, 83 S. C. 1, 65 S. E. 222.

Presumption is that Auditor did his duty in regard to correcting tax duplicate. *Smith v. Cox*, 83 S. C. 1, 4, 65 S. E. 222.

(460) § 28. **Abstract of Duplicate to Be Sent Annually to the Comptroller General.**—Each County Auditor shall, annually, on or before September the thirtieth, make out and transmit, by mail, to the Comptroller General, a complete abstract of the duplicate of his county, which shall state the aggregate value of taxable property, and the total amount of taxes assessed thereon for that year; and he shall, at the same time, also make out and transmit to the Comptroller General an abstract of the number and value of each of the enumerated articles of personal property, the value of merchants' and manufacturers' stock, and the value of all other personal property as returned by him and fixed by the Board or Boards of Equalization; but such abstract shall be made out in such form and contain such details as the Comptroller General may prescribe.

Civ. '12, § 408; Civ. '02, § 367; G. S. 248; R. S. 301; 1882, XVII, 1016; 1885, XIX, 165.

(461) § 29. **County Auditor to Answer in Writing Inquiries of Comptroller General.**—Each County Auditor shall answer in writing all inquiries propounded to him by the Comptroller General touching the condition and value of the real estate of his county, and changes made in the valuation thereof in different towns, villages, cities, wards and other districts; also, as to the valuations of the different classes of personal property for taxation, as compared with their market value, and in relation to any and all matters which the Comptroller General may deem of interest to the public, or of value to him in the discharge of his duties as Comptroller General.

Civ. '12, § 409; Civ. '02, § 368; G. S. 250; R. S. 302; 1882, XVII, 1017.

(462) § 30. **Auditor May Administer Oaths.**—Each County Auditor is hereby authorized to administer all oaths necessary to be taken by any one in the assessment and return of property for taxation, or necessary in the performance of any duty enjoined upon County Auditors by law.

Civ. '12, § 410; Civ. '02, § 369; G. S. 251; R. S. 303; 1882, XVII, 1017.

(463) § 31. Comptroller General Furnishes Forms and Extends Instructions to Auditors.—The Comptroller General shall, from time to time, prepare and transmit to the several County Auditors all such forms and instructions as he may deem necessary to carry into effect the provisions of this Chapter, and shall decide all questions which may arise as to the true construction thereof, or in relation to the duty of any officer under the same; and the forms thus transmitted shall be observed and used by all county, town and municipal officers. The instructions thus given shall be obeyed by, and the decisions thus made shall be binding upon, all county, town and municipal officers.

Civ. '12, § 411; Civ. '02, § 370; G. S. 261; R. S. 304; 1882, XVII, 1023, § 245.

The order of Comptroller-General to Auditor to increase the assessment of property is without authority. *State v. Cromer*, 35 S. C. 213, 14 S. E. 493.

National Union Bank of Rock Hill et al v. Neil, York County Treasurer; *First Trust and Savings Bank of Rock Hill v. Same*, 106 S. C. 173, 90 S. E. 744.

(464) § 32. Comptroller General Visits Offices and Examines Books, Etc., of Auditors and Treasurers Annually.—He shall, as often as once a year, either in person or by some authorized agent of his office, examine all the books, papers and accounts pertaining to the office of the Auditors and the Treasurers of the respective counties, with a view of protecting the interests of the State, and rendering the said officers such aid or instruction as, in the discharge of their several duties, they may need to make their service the more efficient.

Civ. '12, § 412; Civ. '02, § 371; G. S. 224; R. S. 305; 1882, XVII, 1008, § 209.

(465) § 33. Returns to Auditors Be Preserved Five Years.—All original tax returns made to the County Auditors of this State shall be preserved in their respective offices as public records for a period of five years from the date of such returns.

1898, XXII, 745.

RETURNS TO AUDITORS DESTROYED AFTER FIVE YEARS.—After any original tax returns have been in the office of the County Auditor for a period of five years, the same may be destroyed or otherwise disposed of by the Auditor should it be inconvenient to preserve the same in his office, and after such destruction the Auditor's books shall be primary evidence to the contents of said original returns.

Civ. '12, § 413; Civ. '02, § 372; 1898, XXII, 745.

(466) § 34. County Auditors to Keep an "Abatement Book"—Use of Etc.—It shall be the duty of the County Auditor to keep as a permanent record in his office, a book to be known as the "Abatement Book" (to be furnished to him by the Comptroller General), wherein the County Auditor shall enter separately each and every abatement of taxes granted and allowed. Said abatement book shall be so kept as to show in each case, under appropriate columns, the number of the page and the number of the line of the tax duplicate where the item abated appears, the name of the taxpayer, the amount and kind of tax charged on the duplicate, and for what year; the amount abated and date of abatement, in each case, and if the tax be on property, a description of property, also the reason why the abatement was applied for and allowed. After the abatement papers are so entered, they shall be filed in Auditor's office by consecutive numbering

of each, and the number on the abatement paper shall be entered in the abatement book where the paper is entered, so there may be easy reference thereto. Said abatement book shall be kept by townships and summed up separately for each fiscal year; with a recapitulation showing at end of year the amount of State, county, school, poll and other tax abated during the fiscal year in the whole county.

RECORD IN ANNUAL SETTLEMENT.—The abatement allowed in annual settlements between County Auditor and Treasurer shall be according to the record in said abatement book.

Civ. '12, § 414; Civ. '02, § 373; 1900, XXIII, 307.

(467) § 35. When Duty of Auditor to Permit His Books Inspected.—After the County Auditor has completed his assessment it shall be his duty to permit any person authorized to assess or collect municipal taxes for any town or city to inspect and use his books, without charge, for the purpose of taking therefrom the assessed valuation of property within the limits of said city or town.

Civ. '12, § 415; Civ. '02, § 374; 1896, XXII, 59, § 3.

ARTICLE XIII.

Boards of Assessors and Equalization.

(468) § 1. Tax Districts.—In counties in which townships have been laid out, each township shall be a tax district. In any county in which townships have not been laid out, the County Auditor shall divide his county into as many tax districts as may be necessary, and for the purpose of this Section, each ward and parish in the City and County of Charleston shall be considered a tax district, and (1) so much of the County of Charleston as formerly was part of the parishes of Saint James, Santee and Christ Church (except Sullivan's Island), and (2) Sullivan's Island, and (3) so much of said county as was formerly a part of St. Andrew's Parish, and (4) that part of said county outside of the City of Charleston and part of the Parish of St. Philip, shall, severally, be tax districts of said county: *Provided*, That in the Counties of Darlington and Abbeville each school district shall constitute a tax district.

Civ. '12, § 416; Civ. '02, § 375; 1882, XXIII, 98; 1916, XXIX, 834; 1918, XXX, 722.

This Board of Assessors has *quasi* judicial authority, and when its action as to assessments is concurred in by the County Board of Equalization it is *res adjudicata* and final and conclusive, except in case of mistake or fraud. *State v. Cromer*, 35 S. C. 213, 14 S. E. 493; *State v. Covington*, 35 S. C. 245, 14 S. E. 499.

(469) § 2. Assessment of Property for Taxation Township Boards of Assessors, Etc.—Special Provisions.—Except in the Counties of Barnwell, Beaufort, Charleston, Cherokee, Chester, and Hampton, the duties relative to the valuation, assessment and return of property for taxation are hereby devolved upon Township Boards of Assessors, Special Boards of Assessors for cities and towns, as now provided by law, and the County Board of Equalization which said Township and Special Boards shall be appointed every two years by the Governor, upon the recommendation of the members of the General Assembly, from the respective counties, or a majority of

them and their office shall be coterminal with that of the Governor appointing them, and until their successors shall be appointed and qualified, and the Chairman of each of said Boards shall be *ex officio* a member of the County Board of Equalization: *Provided*, That in Horry, Newberry and Pickens Counties, the Township and Town Boards shall be appointed by the Auditor: *Provided*, That in the County of Hampton the Township Board of Assessors shall consist of three in each township, who shall hold their offices for two years and until their successors shall be appointed and qualified. The Chairman of each of the Township Boards of Assessors, who shall be elected out of their number by the members of each of the said Township Boards, shall constitute the Boards of Equalization for the said county, who shall, with the assistance of the Auditor of said county, perform the duties of equalization now provided by the general law of this State: *Provided*, That in Berkeley County the County Auditor shall hereafter take the annual returns of property and that there shall be appointed by the Governor, upon the recommendation of the members of the General Assembly, or a majority thereof, one good and discreet person from each parish in said county, and such person so appointed from said parishes in said county shall constitute the County Board of Equalization for Berkeley County, the County Auditor being *ex officio* a member of same, and the term of office of said person so appointed shall be coterminal with that of the Governor appointing them. It shall be the duty of the said County Board of Equalization for said county, together with the County Auditor as *ex officio* member, to meet at the county court house on some convenient day fixed by the County Auditor after the returns have been taken by the County Auditor, and to assess and equalize property of said county as between individuals or corporations, and shall perform all the duties now required to be performed by County Boards of Equalization under the general law of the State: *Provided, further*, That at the first meeting of said County Board of Equalization they shall organize and elect one of their members as Chairman: *Provided, further*, That one of the days above mentioned shall be used by the said County Board of Equalization for the purpose of comparing the original returns of property in said county with the entries of said property on the books of the County Auditor, who shall call a meeting of the Board after entries have been made on said books for inspection of the same: *Provided*, That in the Counties of Darlington and Abbeville the Board of Assessors for the various tax districts shall consist of the Boards of Trustees for the respective school districts, and they shall perform all duties and receive such compensation as is now provided by law for Township Assessors: *Provided*, That in School District No. 22, in Abbeville County, the Board of Trustees of said school district shall select three of their number to perform the duties of Tax Assessors in said school district: *Provided*, That in the County of Richland the Boards of Assessors for the various tax districts outside of the City of Columbia shall consist of the trustees for the respective school districts, and they shall perform all duties and receive such compensation as is now provided by law for Township or Tax District Assessors: *Provided, further*, That in the County of Saluda the Board of Assessors for the various tax districts shall consist of the Chairmen of the Board of Trustees for the respective school districts,

and they shall perform all duties and receive such compensation as is now provided by law for Township or Tax District Assessors: *Provided*, That there shall be appointed by the Governor, by and with the advice and consent of the Legislative Delegation for Hampton County, one suitable person for each school district in Hampton County, residing within such school district, who shall be vested with power and authority, and whose duty it shall be to report to the Board of Assessors for Hampton County, before the annual meeting of such Board of Assessors for Hampton County each year, a list of the personal property owned by each person in such school district represented by them, respectively, including the qualifications of each and every person resident within such school district for the payment of poll and road tax, and who shall, in addition thereto, report the number of dogs owned by each and every person residing within such respective school district: *Provided*, That said School District Assessors are hereby empowered to make a thorough investigation of all returns, and if same are found by them to be incorrect, they are hereby authorized and required to report same to the County Auditor, whereupon the County Auditor shall be required to enter same upon his books for collection; *Provided, further*, That said School District Assessors are hereby authorized and required to report any and all land not returned in their respective districts for taxation to the County Auditor, who shall enter the same for collection: *Provided, further*, That the School District Assessors and the County Auditor shall constitute a committee and are authorized, empowered and directed to hear any and all complaints from taxpayers, and if said returns appear to be unjust or incorrect, they shall have power to correct same: *Provided, further*, That the said School District Assessors shall make their report to the County Auditor on or before the first day of May of each year. That such persons, when so appointed by the Governor, shall receive as compensation for their services, upon the filing of their report to the County Board of Assessors, the sum of five (\$5.00) dollars for each and every day actually engaged in the discharge of their duty, not to exceed five (5) days in any one calendar year. That the tenure of office of such person shall be at the pleasure of the Governor, and until their successors are appointed and qualified.

That before entering upon the discharge of their duties, such persons, upon their appointment by the Governor, shall qualify by taking the oath of office provided for other county and State officers: *Provided*, That the Governor, upon recommendation of the members of the General Assembly from Marlboro County, or a majority thereof, shall appoint three competent men in each school district in Marlboro County, who shall constitute a Board of Tax Assessors, whose duty it shall be to equalize and assess all property for taxation as now provided by law with the same duty, powers and authority as now granted to Township Boards of Assessors by law. The said Board of Assessors in each school district shall elect one of their number Chairman, who shall preside over their meetings, and the Chairman of all the School District Boards of Assessors shall constitute the County Board of Assessors for the purpose of equalizing and assessing the property for taxation within the said county with the same duties, powers and authority now conferred by law upon the County Board of Assessors:

Provided, That in Florence County there shall be appointed for each school district Boards of Assessors for the equalization of property, said Boards to be appointed and to perform the duties as is now provided for by law: *Provided*, That the Governor shall appoint, upon the recommendation of a majority of the Legislative Delegation, two competent persons in each township of Cherokee County, who, with the Township Commissioner from such township, shall constitute the Township Board of Assessors. They shall be appointed for a term of two years from the date of their appointment, and shall remain in office until their successors shall have been duly appointed. It shall be the duty of said Township Assessors to value and assess for taxation, all the property within their respective townships, and the Township Commissioners shall constitute the Board of Equalization. Said Assessors shall receive as compensation, the sum of three dollars per day, for each day actually engaged in their duties, not to exceed twenty days in each year.

Civ. '12, § 417; Civ. '02, § 376; 1899, XXII, 116; 1900, XXIII, 284; 1901, XXIII, 671; 1908, XXV, 1190; 1912, XXVII, 679; 1914, XXVIII, 760; 1916, XXIX, 832, 835; 1917, XXX, 347; 1918, XXX, 722; 1919, XXXI, 132; 1920, XXXI, 780, 859; 1921, XXXII, 163.

(470) § 3. **Compensation of Township and City Board of Assessors.**— That the Township Assessors and City Board of Assessors of the various counties and towns and cities of the State shall each receive as a compensation for their service, the sum of two dollars per day for the time actually employed, not to exceed three days in any one year, except in those years when real estate is to be assessed, when the numbers of days charged for shall not exceed five: *Provided*, That in those townships or tax districts in which is situated an incorporated town or city of one thousand and less than five thousand inhabitants they shall be paid for not exceeding five days; and in those townships or tax districts in which there is an incorporated town or city or manufacturing community of four thousand and less than ten thousand they shall be paid for not exceeding ten days; and in those townships or tax districts in which there is an incorporated town or city of ten thousand inhabitants or more they shall be paid for not exceeding thirty days: *Provided, further*, That no per diem shall be paid unless accompanied by the affidavit of such members giving the number of days actually employed and by the certificate of the County Auditor to the effect that such member has fully performed all the duties required by this Article and the Chairman of all townships: *Provided, further*, That in Hampton County the said Board of Township Assessors shall each receive as compensation for his services, in the performance of the duties devolving upon them as such Assessors, two dollars per day, without mileage, for each day actually employed in the performance of their duties, not exceeding three days in each year; and the members of the said Board of Equalization shall each receive three dollars per day for each day employed in the performance of their duties as such Equalization Board for not exceeding three days in each year, in addition to the time employed with the Board of Assessors: *Provided*, That no per diem of any member of said Board shall be paid unless a statement of the claim shall be presented, showing the number of days actually employed, accompanied by the affidavit of the claimant

to the effect that such number of days have been employed in the performance of their duties and by a certificate of the County Auditor to the same effect: *Provided, further*, That the Special Board of Assessors for the City of Greenville shall each receive as compensation for his services the sum of three dollars per day for the time actually employed, not to exceed sixty days in any one year, except in those years when real estate is to be assessed, when the number of days charged for shall not exceed ninety. Said Board may employ a Clerk, who shall receive as compensation for his services the sum of three dollars per day for the time actually employed, not exceeding the periods last above mentioned, and an Appraiser, who shall receive as compensation for his services the sum of five dollars per day for the time actually employed, not exceeding the periods last above mentioned.

Civ. '12, § 418; 1902, XXIII, 1085; 1908, XXV, 1190; 1914, XXVIII, 475, 565.

(471) § 4. Duties of Township Assessors Devolving on Township Commissioners in Certain Counties.—In the Counties of Barnwell, Beaufort, Charleston, Chester, the duties of the Township Boards of Assessors are devolved upon the Township Boards of Commissioners, who, upon taking the oath prescribed by the Constitution (Article III, Section 26), shall meet at some convenient place in their respective districts for the purpose of assessing the value of real and personal estate in their tax districts for taxation. The Chairmen of the Township Boards of Commissioners shall be *ex officio* members of the County Boards of Equalization in said counties.

Civ. '12, § 419; Civ. '02, § 377; G. S. 253; R. S. 306; 1899, XXIII, 117, § 8; 1900, XXIII, 280; 1901, XXIII, 666; 1902, XXIII, 1084; 1903, XXIV, 27; 1912, XXVII, 679; 1914, XXVIII, 760.

(472) § 5. Compensation of Township Assessors.—Each member of the Township Board of Commissioners shall receive for his services in performing the duties devolved upon him by Section 4 two dollars for each day actually employed, not exceeding three days: *Provided*, That in those townships or tax districts in which is situated an incorporated town or city of one thousand and less than five thousand inhabitants they shall be paid for not exceeding five days; and in those townships or tax districts in which there is an incorporated city or town of five thousand and less than ten thousand inhabitants they shall be paid for not exceeding ten days; and in those townships or tax districts in which there is an incorporated town or city of ten thousand inhabitants or more they shall be paid for not exceeding twenty days: *Provided, further*, That no per diem shall be paid unless accompanied by the affidavit of such member, giving the number of days actually employed, and by the certificate of the County Auditor to the effect that such member has fully performed all the duties required by this Article, and the Chairmen of said Township Boards of Commissioners when acting as members of the County Board of Equalization shall receive as compensation for their services three dollars per day for each day actually employed in performing such duties, and mileage at five cents per mile each way for travel actually performed, to be paid by the County Treasurer upon the warrant of the County Board of Commissioners on the certificate of the County Auditor.

Civ. '12, § 420; Civ. '02, § 378; 1897, XXII, 468, § 7; 1909, XXVI, 35.

(473) § 6. Compensation of County Board of Equalization.—The members of the County Board of Equalization of the various counties of this State shall each receive as a compensation for their service the sum of two dollars per day for the time actually engaged and five cents per mile for necessary travel, the number of days charged for in any one year not exceeding five, except in those years when real estate is to be assessed, when the number of days charged for shall not exceed ten: *Provided*, That in Greenville county such compensation may be charged for not exceeding ten days in any one year, except in those years when real estate is to be assessed, when the number of days charged for shall not exceed twenty: *Provided, further*, That in the County of Berkeley, the members of the said Board shall receive as compensation for their services three (\$3.00) dollars each per day for the time actually spent in attending the duties of said Board, together with a mileage fee of ten cents per mile one way for the distance necessary to be traveled by each member in getting from his home or place of business to the court by most direct route.

Civ. '12, § 421; Civ. '02, § 378; G. S. 255; R. S. 310; 1882, XVII, 1020; 1902, XXIII, 476; 1914, XXVII, 476; 1920, XXXI, 780.

(474) § 7. Duty of County Auditor and Township Assessors to Seek for Property Unreturned.—It shall be the duty of the County Auditor and the Township Board of Assessors, on or before the first Tuesday of March in each year, to diligently seek for and discover all property, both real and personal, in his county subject to taxation and not previously returned or listed with him; and it shall be his duty to list the same for taxation, giving the valuation thereof, with the name of the owner or person to whom it is taxable.

Civ. '12, § 422; Civ. '02, § 379; 1897, XXII, 465, § 2.

COUNTY AUDITOR TO LAY BEFORE TOWNSHIP ASSESSORS LIST OF PROPERTY NOT RETURNED.—It shall be the duty of the County Auditor, on or before the first Tuesday of March in each year, to lay before the Township Boards of Assessors and the Special Boards of Assessors the returns of all property, both real and personal, made to him, together with a list of all property, both real and personal, which he can discover has not been previously returned or listed for taxation, as required by law, stating in the columns of remarks upon each return and list what he believes ought to be the valuation of the property returned or listed.

Civ. '12, § 422; 1897, XXII, 465, § 3.

(475) § 8. Annual Meeting of Township Boards of Commissioners and Assessors—Duties—Assessment of Real Estate.—The Township Boards of Assessors and Special Board of Assessors shall meet annually, on the first Tuesday in March, or as soon thereafter as practicable, at some convenient place or places for the purpose of performing the duties devolved upon them. It shall be their duty to carefully consider the returns and lists laid before them by the County Auditor, and if necessary to compare the same with the tax returns and tax duplicate for the previous year or years. They shall diligently seek for and discover all property, both real and personal, in their respective tax districts not previously returned by the owner

or agents thereof or not listed for taxation by the County Auditor, and thereupon it shall be their duty to list the same for taxation in the name of the owner or person to whom it is taxable. It shall thereupon be their further duty to fairly and impartially assess the value of all property, both real and personal, in their respective tax districts, entering upon their returns and lists furnished them. And they shall have the right in performing their duties hereunder to increase or to lower the valuation of any property, real or personal, as fixed by the County Auditor or as returned by any person; and it shall not be deemed material whether the return so increased was intentionally or unintentionally false, or whether the property whose value is so raised was intentionally or unintentionally returned at less than its fair cash value by the County Auditor and upon the lists made out by them, the valuation fixed by them; but they shall not reduce the aggregate value of real and personal property below the aggregate value thereof as returned by the County Auditor, said returns and lists with said valuations to be by them laid before the County Auditor on or before the third Tuesday of March in each year: *Provided, however,* That real estate shall be valued and assessed by said Board only in those years when real estate is by law required to be returned, except that the Board may, in any year, value and assess any real estate and improvements thereon which they may ascertain or discover have not previously been returned or assessed for taxation. Whenever the valuation and assessment of any property is fixed by said Boards at a sum greater by one hundred dollars or more than the amount returned by the owner or his agent, or whenever any property is valued and assessed for taxation which has not been previously returned or assessed, it shall be the duty of the County Auditor, on or before the fourth Monday in March of the year in which the valuation and assessment is made, to give to the owner or agent of such property written notice thereof, which notice may be served upon such owner or his agent personally, or by mailing the same to such person or his agent at his last known place of residence, and such owner or his agent, if he objects to such valuation and assessment, shall have the right of appeal to the County Board of Commissioners sitting on the County Board of Equalization, which appeal shall be heard by said County Board. The account of the County Auditor for the necessary stationery and postage to enable him to give the notice herein required shall be a valid claim against the county and shall be paid as other county claims are paid. Nothing in this Article contained shall be construed as interfering with the duty of the County Auditor of adding fifty per cent. to the value of personal property as a penalty, as provided in Sections 6, 18, 23, and 25 of Article XII of this Chapter, nor with the duties of the County Auditor prescribed in Section 19 of Article XII of this Chapter. The Special Board of Assessors for the City of Greenville shall personally visit and inspect every piece of real property in said city in each year when real estate is by law required to be returned; and in all other years they shall personally inspect all real estate and improvements thereon not previously assessed for taxation. They shall lay said returns and lists, together with their valuations, before the County Auditor on or before the first Tuesday in May in each year when real estate is by law required to be returned, and on or before the first Tuesday in April in all other years:

Provided, That such additional time as may be necessary for the proper performance of their duties in any year may be granted to said Board by a resolution or resolutions adopted by a majority of the Greenville County Delegation to the General Assembly.

Civ. '12, § 423; Civ. '02, § 380; 1897, XXII, 465; 1901, XXXIII, 617; 1914, XXVIII, 477.

(476) § 9. Each Township Commissioner to Canvass Territory.—Each Chairman, or his agent, of the Boards of Assessors of the townships of the State shall, under the direction and supervision of the County Auditor, canvass the territory within which his Board is charged with the assessment of property for taxation, immediately after the expiration of the time limited for returning property for taxation, for the purpose of discovering and having placed upon the tax books all taxable property of every description, and polls, which has not been returned to the County Auditor, and shall make a sworn written report of all such property and polls to the County Auditor. The said Chairman, or his agent, shall receive from the county a per diem of two dollars for each day while actually engaged in making such canvass for not more than five days in any one year: *Provided*, Said return of polls shall be in lieu of return of polls now required by law to be made by school trustees.

Civ. '12, § 424; 1905, XXIV, 901, § 1.

(477) § 10. Compensation of Chairman of Board of Assessors for Canvass in Incorporated Cities and Towns.—In those townships or tax districts in which there is an incorporated city or town of four thousand inhabitants and more, said Chairman, or his agent, shall receive from the county a per diem of two dollars for each day while actually engaged in making such canvass, for not more than ten days: *Provided, further*, That no per diem shall be paid unless accompanied by the affidavit of such Chairman, or his agent, giving the number of days actually employed, and by the certificate of the County Auditor to the effect that such Chairman, or his agent, has fully performed the duties required by this and the preceeding Section, and is entitled to said per diem.

Civ. '12, § 425; 1905, XXIV, 901, § 2.

(478) § 11. Alphabetical List of Persons.—It shall be the duty of the County Auditor, immediately after the expiration of the time limited for returning property, to prepare for each township or tax district in his county an alphabetical list of all persons who have made returns of property and polls for taxation, for the use of the Chairman of the Board of Assessors in making the canvass herein provided for.

Civ. '12, § 426; 1905, XXIV, 901, § 3.

(479) § 12. When County Boards of Equalization Shall Meet.—The County Boards of Equalization shall meet on the fourth Tuesday in March in each year, and at such other times as the Chairman or a majority of the Board shall direct, at the office of the County Auditor, who shall act as their Clerk. The County Board of Equalization for the County of Greenville shall also meet each year at the office of the County Auditor within three days of the issuing by him of notice that a special Board of Assessors

for the City of Greenville have completed the work of equalizing the valuations of the real and personal property of said city. The County Auditor shall thereupon lay before them the returns of property made to him and all property listed by him and by the Board of Township Assessors and special Boards of Assessors. Each member, having taken an oath, before some officer duly qualified to administer the same, fairly and impartially to equalize the value of the real and personal property of their county according to the provisions of law, the Board shall immediately proceed to equalize the valuations fixed by the Board of Township Assessors and special Board of Assessors so that each piece of property shall be entered on the tax list at its true value. They shall hear all grievances and appeals from the valuations and assessments fixed by the Township Boards of Assessors and special Boards of Assessors and act upon the same. For the purpose of performing their duties said Board shall also observe the following rules:

First. They shall raise the valuation of such tracts and lots of real property, or articles of personal property, as in their opinion have been returned or assessed below their true value to such price or sum as they may believe to be the true values thereof, and due notice shall be given to the owner or agent of such property.

Second. They shall reduce the valuation of such tracts and lots of real property, and articles of personal property, as in their opinion have been returned or assessed above their value as compared with the average valuation of the property of such county, having due regard to the relative situation, quality of soil, improvement and natural and artificial advantages possessed by each tract or lot of real property.

Third. They shall not reduce the aggregate value of real and personal property below the aggregate value thereof as returned to the County Auditor. The Auditor shall keep an accurate journal or record of the proceedings and orders of said Board.

Any person whose property has been or may be assessed before its true value who cannot secure relief from said Board shall have the right to appeal to the Comptroller General, to whom shall be forwarded all testimony relative to each alleged grievance, and who shall act thereupon.

In the County of Berkeley the said Board of Equalization shall meet at least two and not more than six days in each year immediately after the time for making tax returns has expired for the purpose of executing the duties of such Board as prescribed by law, and they shall meet at least one day after the Auditor's books have been prepared for the purpose of comparing returns with the Auditor's books and making corrections, if any be necessary.

Civ. '12, § 427; Civ. '02, § 381; 1897, XXII, 466; 1914, XXVIII, 478; 1920, XXXI, 780.

The decision of the County Board can only be reviewed on this appeal. *State v. Cromer*, 35 S. C. 213, 14 S. E. 493; *State v. Covington*, 35 S. C. 245, 14 S. E. 499.

(480) § 13. Valuations Thus Made to Be Adopted by Auditor.—The said returns and list of taxable property, with the valuations fixed as hereinbefore provided, shall thereupon be adopted by the County Auditor for the purposes of taxation for the ensuing year, and shall be permanently entered of record by him upon the tax books of his county.

Civ. '02, § 382; 1897, XXII, 466, § 6.

(481) § 14. How Board of Assessors Appointed in Cities and Towns.—

The Governor shall appoint, upon recommendation of the Senator and members of the House of Representatives from the respective counties, three discreet electors in each incorporated city and town of this State having a population of not less than five hundred inhabitants, who shall be known as the Board of Assessors of such cities and towns, whose terms of office shall be coterminal with that of the Governor by whom such Assessors shall have been appointed, and, until their successors shall have been appointed and qualified. The duties heretofore devolved upon the Township Board of Commissioners as Assessors shall be devolved upon the Board of Assessors herein provided for within the limits of their respective cities and towns: *Provided*, That nothing contained in this Section shall be construed as affecting the Special Board of Assessors in the cities of Charleston and Columbia.

Civ. '12, § 429; Civ. '02, § 383; 1897, XXII, 466, § 9.

(482) § 15. Special Board—Equalization for City of Charleston—Powers—Duty of County Auditor.—There shall be a special Board for the equalization of real and personal property, moneys and credits in the City of Charleston, to be composed of the County Auditor and six citizens of said city, to be elected by the City Council of Charleston, and subject to removal by the said City Council, which Board shall meet annually at the County Auditor's office on the first Tuesday in March, and shall have power to equalize the value of the real and personal property, moneys and credits within said city, and shall be governed by the rules, provisions and limitations prescribed for the government of the annual County Boards of Equalization: *Provided, however*, That if for any reason the Special Board of Equalization of real and personal property, money and credits in the City of Charleston shall consider it advisable to have a reassessment of real estate in said city in any year, said Board shall order such reassessment to be made by the Board of Assessors for the City of Charleston, and by advertisement in some newspaper published in the City of Charleston, once a week for four weeks previous to the first day of January in any year, order and require all persons in said city to make returns of real estate, as well as personal property, in such year in the manner provided by law, but said Board shall not continue in session for more than two weeks in one year; and it shall be the duty of the County Auditor, and he is hereby required, on or before the twentieth day of March, in each and every year, to furnish to the municipal authorities, for the purpose of municipal taxation, an abstract of the real and personal property in the City of Charleston, with the assessment of valuation thereon, according to the said County Auditor's books. And in order that the said County Auditor may comply with this requirement, the City Assessor of the City of Charleston, his deputies and clerks, shall attend and assist the County Auditor in his office, and under his direction, control and supervision, between the first day of January and the twentieth day of March, shall receive and enter the tax returns for all property within the County of Charleston, that is within the corporate limits of the City of Charleston, and make an abstract with the assessment of valuation thereon, according to the County Auditor's books, which abstract shall be certified by the

County Auditor as a complete assessment of the property assessed, and such abstract so made and certified shall be deemed official and shall be available as a basis for the assessment of such taxes for municipal purposes on or before the twentieth day of March in each year.

Civ. '12, § 430; Civ. '02, § 384; G. S. 256; R. S. 311; 1897, XXII, 430; 1910, XXVI, 626.

(483) § 16. Special Board for the City of Columbia.—There shall be a Special Board of Assessors for the City of Columbia, to consist of three discreet residents of said city, to be appointed annually by the City Council of the City of Columbia on or before the first day of January in each and every year, who shall have all the duties, powers, privileges and compensation as are now devolved by law upon the Board of Township Assessors for Columbia Township so far as said duties, powers and privileges relate to the assessment and valuation of property in the City of Columbia, and the duties, powers and privileges of the said Board of Township Assessors for Columbia Township so far as they relate to the assessment and valuation of property shall be confined to so much of Columbia Township as lies outside of the limits of the City of Columbia.

Civ. '12, § 431; Civ. '02, § 385.

(484) § 17. Special Board of Assessors for Towns of Manning and Summerton.—There shall be a special Board of Assessors for the Town of Manning and the Town of Summerton, respectively, to consist of three discreet residents and freeholders of said towns, to be appointed annually by the Town Council of the Town of Manning and the Town of Summerton, respectively, on or before the first day of May in each and every year, who shall have all the duties, powers, privileges and compensations as are now devolved by law upon the Board of Township Assessors for Manning, Friendship and Concord Townships, so far as said duties, powers and privileges relate to the assessment and valuation of property in the Town of Manning and the Town of Summerton, respectively, and the duties, powers and privileges of the said Board of Township Assessors for Manning, Friendship and Concord Townships, so far as they relate to the assessments and valuation of property, shall be confined to so much of Manning, Friendship and Concord Townships as lies outside of the limits of the Towns of Manning and Summerton.

Civ. '12, § 432; 1908, XXV, 1126.

(485) § 18. Special Board of Assessors for Florence.—That there shall be a Special Board of Assessors for the City of Florence, to consist of three discreet residents and freeholders of the said city, to be appointed annually, by the City Council of said city, on or before the first day of May of each and every year, who shall have all the duties, powers and compensation that are now devolved by law upon the Board of Township Assessors for Florence Township, so far as said duties, powers and compensation relate to the assessment and valuation of property in the City of Florence: *Provided*, They may receive such additional compensation for their services as may be allowed by the City Council of said city and paid out of the city treasury.

1914, XXVIII, 756.

(486) § 19. **Board of Assessors for Town of Lake City.**—There shall be a Special Board of Assessors for the Town of Lake City, to consist of three discreet residents and freeholders of said town, to be appointed annually by the Town Council of the Town of Lake City on or before the first day of May, 1913, in each and every year, who shall have all the duties, powers, privileges and compensations as are now devolved by law upon the Board of Township Assessors for Lake City Township, so far as said duties, powers and privileges relate to the assessment and valuation of property in the Town of Lake City.

1913, XXVIII, 200.

(487) § 20. **Board of Equalization.**—There shall be a special Town Board of Equalization for the Town of Lake City, composed of three resident freeholders, to be appointed by the Town Council of the Town of Lake City. Their duties shall be the same, as affecting the property in said town, and the Special Board of Assessors for said Town of Lake City (as above provided), as provided in Section 12 of this Article. There may be appeals from the Special Town Board of Assessors to the Special Town Board of Equalization, and the decision of the latter shall be final as affecting the property of the Town of Lake City, and the Chairman of said Special Board of Equalization shall report the result of both Boards as to the assessment of all property in the Town of Lake City to the County Auditor.

1913, XXVIII, 200.

(488) § 21. **Special Town Board of Equalization for Towns of Manning and Summerton.**—There shall be a Special Town Board of Equalization for the Towns of Manning and of Summerton, respectively, composed of three resident freeholders, to be appointed by the Town Council of the Town of Manning and of Summerton, respectively. Their duties shall be the same, affecting the property in said towns, and the Special Board of Assessors for said Town of Manning and of Summerton (as above provided), as provided in Section 12 for County Board of Equalization. There may be appeals from the Special Town Board of Assessors to the Special Town Board of Equalization, and the decision of the latter shall be final as affecting the property of the Town of Manning and of the Town of Summerton, and the Chairman of said Special Boards of Equalization shall report the result of both Boards as to the assessment of all property in the Town of Manning and the town of Summerton to the County Auditor.

Civ. '12, § 433; 1908, XXV, 1126, § 3.

(489) § 22. **County Auditor to Add to, or Deduct From, Valuation as Directed by the Board.**—The County Auditor shall add to, or deduct from, the value of real estate or personal property such per centum, in villages, towns, wards, blocks, or other districts, as may be ordered by the Board of Equalization of the city or county, as the case may be, on the duplicate, distributing the same *pro rata* to each owner, and shall add to, or deduct

from, the valuation of the real or personal property of individuals, companies, or corporations, such sum or sums as may be ordered by either of said Boards.

Civ. '12, § 434; Civ. '02, § 386; G. S. 257; R. S. 312; 1897, XXII, 1021.

Auditor cannot add to the valuation of property of corporations where same has been approved by the Board. *State v. Cromer*, 35 S. C. 213, 14 S. E. 493; *State v. Covington*, 35 S. C. 245, 14 S. E. 499.

(490) § 23. **Uniform Assessment.**—Taxes for township, school, municipal and all other purposes provided for or allowed by law shall be levied on the same assessment, which shall be that made for State taxes.

MUNICIPAL AUTHORITIES TO COPY ASSESSMENT FROM AUDITOR'S BOOKS.—All persons charged with the assessment or collection of taxes for municipal purposes may copy from the County Auditor's books the assessment of valuation thereon found, and may use the same as the basis for the assessment of taxes for municipal purposes: *Provided*, That nothing herein contained shall prevent the municipal authorities from assessing and collecting taxes upon property not upon the Auditor's books.

Civ. '12, § 435; Civ. '02, § 387; 1896, XXII, 59.

CHAPTER XV.

The Collection of Taxes.

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ARTICLE I.

The County Treasurer—Appointment, Tenure of Office, Compensation, Etc.

(491) § 1. **County Treasurer—How Appointed—Bond.**—The Governor is authorized by, and with the advice and consent of, the Senate, to appoint for each county in the State a County Treasurer, who shall hold office for four years, and until his successor is appointed and qualified, and whose term of office shall commence on the 1st day of July following the general election in the year preceding his appointment or election: *Provided*, The term of office of the Treasurers of the Counties of Bamberg, Berkeley, Horry, Jasper, Lexington, and Williamsburg, shall be for two years and until their successors are appointed and qualified: *And provided, further*, That the Treasurer of the County of Beaufort shall be elected by the qualified electors of said county at the general election for the year 1914 and every four years thereafter by said qualified electors. Before entering upon the duties of his office he must take and subscribe the oath of office

prescribed by the Constitution, and also the oath with respect to dueling. The Governor may require from said officer such bond as he may deem necessary, but the bond of the County Treasurer of Charleston County shall not be less than fifty thousand dollars; the bond of the County Treasurer of the Counties of Richland and Beaufort, respectively, not less than thirty thousand dollars; the County Treasurers of Saluda, Dorchester and McCormick, respectively, ten thousand dollars, and the County Treasurer of Berkeley County twelve thousand dollars; the County Treasurer of Bamberg County fifteen thousand dollars; the County Treasurer of Georgetown County twenty-five thousand dollars, and the County Treasurer of Horry County thirty thousand dollars, and the bond of the County Treasurers of the other counties, respectively, not less than twenty thousand dollars.

Civ. '12, § 440; Civ. '02, § 392; 1897, XXII, 410, 440, 603, 584; 1898, XXII, 744; 1904, XXIV, 426; 1907, XXV, 629, 633; 1908, XXV, 1031; 1912, XXVII, 746; 1913, XXVIII, 47, 146; 1914, XXVIII, 533, 617, 619, 627; 1915, XXVIII, 420, 445, 447, 515, 532; 1916, XXIX, 754, 793, 798, 799, 804; 1917, XXX, 120, 121; 1918, XXX, 798; 1919, XXXI, 75, 127, 132, 164; 1920, XXXI, 1041; 1921, XXXII, 41.

Liability on bond. *Greenville Co. v. Runion*, 9 S. C. 1; *State v. Teague*, 6 S. C. 149; *State v. Baldwin*, 14 S. C. 139; *York Co. v. Watson*, 15 S. C. 9; *Aiken Co. v. Murray*, 35 S. C. 508, 14 S. E. 954.

(492) § 2. Suspension and Removal From Office.—County Treasurer shall be subject to suspension and removal from office by the Governor, upon the same grounds and in the same manner as prescribed in Section 2 of Article XII of Chapter XIV of this Volume in relation to County Auditors, and all the provisions of said Section are hereby made applicable in cases of suspension and removal of County Treasurers.

Civ. '12, § 441; Civ. '02, § 393; G. S. 222; R. S. 318; 1897, XXII, § 207.

(493) § 3. Treasurers of Charleston and Berkeley Counties May Appoint Deputies—Duties and Compensation.—The Treasurer of Charleston County may appoint one deputy and the Treasurer of Berkeley County three deputies, whose duty it shall be to assist in the collection of taxes in said counties, respectively. Each deputy shall receive as compensation for his services the same commissions as are paid for collection of taxes to the County Treasurer, but the total amount paid to such deputy in any current year shall not exceed five hundred dollars. Their duties shall be confined to the collection of simple taxes and shall not include penalties attached thereto. They shall give such bond for the faithful performance of their duties as said Treasurers, respectively, shall require.

Civ. '12, § 442; Civ. '02, § 394; G. S. 265; R. S. 319; 1897, XXII, 1023, § 249; 1882, XVIII, 98, 223.

ARTICLE II.

Powers and Duties of County Treasurers, and General Provisions Concerning the Collection of Taxes.

(494) § 1. When Office to Be Kept Open.—The County Treasurer shall keep his office open for the receipt of taxes during the times fixed from time to time by law.

Civ. '12, § 443; Civ. '02, § 396; 1882, XVII, 1023, § 246.

(495) § 2. County Treasurer May Attend Convenient Places to Collect Tax.—The County Treasurer of the respective counties may attend at certain safe and convenient places for the purpose of collecting taxes. They shall give twenty days' public notice of the days when they will be at the places designated: *Provided*, That the provisions of this Section shall not apply to the Counties of Orangeburg, Clarendon, Edgefield, Florence, Colleton, Pickens, Marlboro, Abbeville, Kershaw, Newberry, Calhoun, Saluda, Fairfield, Lancaster, Hampton, Barnwell, Dillon, Sumter, Spartanburg, Williamsburg, and York.

Civ. '12, § 444; Civ. '02, § 397; 1896, XXII, 61; 1905, XXIV, 833; 1906, XXV, 44; 1912, XXVII, 539.

(496) § 3. Taxes Payable Annually—How Payable.—All taxes shall be due and payable between the 15th day of October and the 31st day of December after their assessment in each and every year; they shall be payable in the following kinds of funds, and no other: Gold and silver coin, United States currency, national bank notes and coupons, which shall become due and payable during the current year on the consolidated bonds known as Brown Bonds, and the bonds of this State known as Blue Bonds, and any other State bonds which may be issued by authority of an Act of the General Assembly the coupons of which are by such Act made receivable for taxes: *Provided, however*, That jury certificates and per diem of State witnesses in the Circuit Court and all county claims which have been approved and certificates issued by the County Board of Commissioners, shall be receivable for county taxes, not including school taxes; and the several County Treasurers under the direction and supervision of the Comptroller General shall collect the same, in the manner prescribed by law, and give receipts therefor to the several parties paying the same, in which the real estate paid on shall be briefly described and the value of the personal property paid on shall be stated, together with the time such taxes are paid, the amount of the same, and the township wherein such property is located. Immediately upon the receipt of the tax duplicate for the year from the County Auditor, the County Treasurer shall cause a notice to be inserted in one county newspaper in his county, stating the rate per centum of the levy for State purposes and the rate per centum for all other purposes on the duplicates for the current fiscal year; and if any special levies have been made on the property of the school or other district not affecting an entire county, the total rate of levies shall also be stated in such notice. Said County Treasurers are forbidden to collect any other tax whatsoever levied for the fiscal year unless expressly authorized to do so, except the taxes authorized by law to meet the interest and to retire the bonds issued by counties and townships in aid of railroads, and bonds voted by townships in aid of railroads where the railroads have been completed through said townships, as taxes voted by towns or counties or assessed upon townships as subscriptions to railroads, and taxes to build fences under statutes authorizing and directing the same; and except also the special school tax authorized to be levied in any school district of the State, and except such special tax or collections as are authorized under any Act or Joint Resolution of the General Assembly; said County Treasurers are hereby prohibited from collecting any tax except such as has been first entered upon the tax duplicate of their respective counties or upon the

order of the Auditors of said counties: *Provided*, That said County Treasurers shall furnish the said County Auditors of their respective counties with the names of the taxpayers who may apply to pay their taxes against whom no taxes shall have been entered on the tax duplicate. Any State or county officer who shall fail to comply with or who shall evade or attempt to evade the provisions of this Section shall be deemed guilty of felony, and, upon conviction thereof, shall be punished by a fine not exceeding five thousand dollars or by imprisonment for a period not exceeding five years, or both, at the discretion of the court.

Civ. '12, § 445; Civ. '02, § 398; G. S. 266; R. S. 324; 1882, XVII, 1023; 1909, XXVII, 74.

(497) § 4. Apportionment of Taxes on Lands Transferred After Return, But Before Time of Payment.—When the title or an interest in real or personal property, or any part thereof, shall have become transferred to or vested in any person not the owner at the time said property was assessed for taxation, before the expiration of the period for the payment of taxes thereon, it shall be the duty of the County Auditor, upon the application of the person acquiring such title or interest subsequent to assessment, and before the period for paying taxes has expired, to apportion the share of taxes due by the original owner upon that portion of or interest in the property acquired subsequent to assessment by the party so applying, and thereupon it shall be the duty of the County Treasurer to receive from the party so applying the proportionate share of taxes upon such part of interest so acquired since assessment as estimated by the Auditor, and give receipt for same, which receipt shall discharge such portion or interest from the taxes so assessed.

Civ. '12, § 446; Civ. '02, § 399; G. S. 267; R. S. 325; 1882, XVII, 1024.

(498) § 5. General Cash Account of County Treasurer — Entries — Account With School Districts.—It shall be the duty of each County Treasurer of the several counties of the State to keep a book of entry containing a "General Cash Account" of the school fund of his county for each fiscal year, showing on the left-hand page the unexpended school fund for the previous year, the total poll tax, the total two mill tax, the total special tax and the total amount of other school funds for the current year, and showing on the right-hand page the date of payment by him, the date of approval by the School Commissioner, the school district's number, the School Trustees' number, the School Commissioner's number, and his number (his number beginning with the figure 1 and running on up successively through the fiscal year), the name of the payee, the name of the person presenting, and the amount of each warrant paid by him during the fiscal year. The said Treasurer shall also keep an account in said book with each school district in his county showing the amount due to the district for the previous year, the poll tax, the two mill tax, the special tax and any other funds due the district for school purposes, and the date of payment by him, the date of approval by the School Commissioner, the school district's number, the School Trustees' number, the School Commissioner's number, and his number (it being the same number as in the "General Cash Account"),

the name of the payee, the name of the person presenting, and the amount of each warrant paid by him during the fiscal year, drawn on the fund of that district.

Civ. '12, § 447; Civ. '02, § 400; 1892, XXI, 80.

(499) § 6. When and How Money Forwarded to State Treasurer—Receipts—Duty Respecting Penalty.—Every County Treasurer shall, on the first and fifteenth days of each month, forward to the State Treasurer all the moneys collected by him for or on account of the State taxes, specifying for and on account of what fund the same were collected, for which an original duplicate receipt shall be issued to him by the State Treasurer, of which the original shall be retained by the County Treasurer and the duplicate shall be forwarded by him to the Comptroller General; and should said County Treasurer fail within ten days after he has received such receipt to send the same to the Comptroller General he shall forfeit and pay a sum not exceeding two hundred dollars, nor less than fifty dollars, to be recovered in any court having jurisdiction thereof, and the Comptroller General, upon information made to him, shall take the necessary measures to cause the same to be recovered.

Civ. '12, § 448; Civ. '02, § 401; G. S. 273; R. S. 327; 1882, XVII, 1026, § 257; 1889, XX, 366.

(500) § 7. Notifies County Commissioners of Funds Collected—Reports Monthly to County Superintendent of Education.—The County Treasurer shall, on the first and fifteenth days of each month, report to the County Board of Commissioners of his county the amount of funds collected for and on account of the county and the character of such funds. He shall, on the fifteenth day of each month, report to the County Superintendent of Education the amount of collections and disbursements made by him for the month on account of poll tax and all other school funds. That the reports required by law to be made by the County Treasurer of Chesterfield County on the first Monday of each month to the County Commissioners shall show the amount of ordinary funds, road funds, special funds and school funds on hand, respectively. That the report shall show the amount of school funds on hand for each district and the amount, if any, unapportioned and the amount of road fund for each township. That it shall be the duty of the County Treasurer of Berkeley to make a monthly report to the County Board of Commissioners of the said county of all moneys received or paid out by him and all moneys on hand, said report to be made on the last day of each and every month in conformity with the report made by the said County Treasurer to the Comptroller General.

Civ. '12, § 449; Civ. '02, § 402; G. S. 273; R. S. 328; 1882, XVII, 1027, § 257; 1912, XXXII, 695; 1918, XXXI, 696.

(501) § 8. Monthly Report to Comptroller General.—He shall, on the first day of each month, report to the Comptroller General, in such manner as he shall direct, a full and complete statement of the previous month, or months, exhibiting the total collection made during the fiscal year, the amount disbursed, and cash on hand for, or on account of any levy or tax collected by him, which report shall be denominated "The County Treasurer's Monthly Report." The Treasurer shall transmit with his said report

the certificate of cashier of bank where funds are deposited, that the amounts shown in his hands by his cash balance are on deposit to his credit as Treasurer, and if funds are not on deposit in a bank, then his own affidavit that the funds are, at time of making said report, in his own hands in cash; also, an affidavit of County Auditor to the same effect.

Civ. '12, § 450; Civ. '02, § 403; G. S. 273; R. S. 330; 1882, XVII, 1027, § 257; 1907, XXV, 486; 1915, XXIX, 239.

(502) § 9. County Treasurer Required to Deposit Certain Funds at Interest.—Whenever there is in the hands of any County Treasurer of this State any sum of money not necessary for current expenses, or which will apparently not be demanded for six months or more, said Treasurer shall deposit the fund or sum of money in some chartered bank, at such rate of interest as may be secured for the best interest of the county. The interest, when collected, shall be added to the fund or funds and paid out as other funds of the same sort are paid.

The Treasurer may require of the bank in which such fund or funds are deposited at interest a depositor's guaranty bond for the protection of the fund or funds, the same to be paid for out of the fund for which such guaranty is provided.

Civ. '12, § 451, 1909, XXVI, 166.

(503) § 10. Annual Report to Superintendent of Education.—He shall make out and forward annually to the Superintendent of Education, on the first day of November, a certified statement showing by school districts the amount of poll and all other school taxes collected by him for the fiscal year ending on the thirty-first day of October next preceding.

Civ. '12, § 453; Civ. '02, § 404; G. S. 1023; R. S. 331; 1878, XVII, 584, § 52.

(504) § 11. Annual Report to Court of General Sessions—Exceptions.—He shall make an annual report to the presiding Judge, at the second term of the Court of General Sessions in his county, which shall be held after the first day of January in each year, of the number, character and amount of claims paid by him on orders of County Commissioners and of County School Commissioners and to whom paid, which report shall be submitted by said Judge to the grand jury for their examination, and shall be filed by the Clerk of said Court and kept in his office for public inspection. He shall cause said report to be published at least two weeks before the sitting of the court, in some newspaper published in the county. The County Treasurers of Fairfield, Florence, Chesterfield, Clarendon, Marion, Williamsburg, Edgefield, Sumter, Colleton, Chester, Orangeburg, Greenville, Darlington, York, Pickens, Beaufort and Aiken Counties shall not be required or allowed, at public expense, to publish annually the itemized statements of their disbursements.

Civ. '12, § 453; Civ. '02, § 405; R. S. 332; 1882, XVII, 892, §§ 4, 6; 1889, XX, 319; 1900, XXIII, 355; 1906, XXV, 45; 1910, XXVI, 632.

Act, 1906, XXV, 45 was held unconstitutional in *State ex rel. Foose v. Barley*, Supervisor, 80 S. C. 127, 61 S. E. 225. Fairfield County is included in above Section under Act 1910, XXVI, 632.

(505) § 12. Delinquent Taxes—Penalty—Execution.—That when the taxes and assessments or any portion thereof charged against any property or party on the duplicate for the current fiscal year, shall not be paid on or

before the 31st day of December, the County Auditor shall proceed to add a penalty of one per cent., on the county duplicate, and the County Treasurer shall collect the same; and if the said taxes and assessments and penalties are not paid on or before the first day of February next thereafter, an additional penalty of one per centum thereon shall be added by the County Auditor on the county duplicate and collected by the County Treasurer; and if said taxes, penalties and assessments are not paid on or before the first day of March next thereafter, an additional penalty of five per centum thereon shall be added by the County Auditor on the county duplicate and collected by the County Treasurer; and if the said taxes, penalties and assessments are not paid on or before the fifteenth day of March next thereafter, the said County Treasurer shall issue his tax execution for the said taxes, assessments and penalties against the property of the defaulting taxpayer, according to law.

Civ. '12, § 454; Civ. '02, § 406; G. S. 276; R. S. 333; 1882, XVII, 1027; 1887, XIX, 862; 1902, XXIII, 972; 1909, XXVI, 76.

Koth v. Pallachucola Club, 79 S. C. 514, 517, 61 S. E. 77.

Penalty not unconstitutional. *Ex parte Lynch*, 16 S. C. 36.

Execution need not specify amount of taxes due each fund. *Dickson v. Burekmyer*, 67 S. C. 539, 46 S. E. 343.

Dillon County v. Lane et al, 114 S. C. 494, 104 S. E. 184.

(506) § 13. Mortgagee May Pay Tax and Include Same in Mortgage Debt.—Any person holding a lien by way of, or an interest in the nature of a mortgage upon any property, the subject of taxation, upon which the mortgagor shall have failed to pay the tax, or upon which there may exist a lien for taxes on any other property of the mortgagor, may, at any time before the sale thereof for delinquent taxes, as hereinafter provided, pay the tax on all the property of the mortgagor, with any costs, penalties or assessments which may have accrued thereon; and thereupon he shall be entitled, as against the mortgagor, his representatives, privies or assigns, to include the amount so paid, and all interest thereafter accruing thereon, in the debt secured by his mortgage.

Civ. '12, § 455; Civ. '02, § 407; G. S. 277; R. S. 334; 1882, XVII, 1028; 1900, XXIII, 352.

Forfeiture for taxes, with right of redemption existing, does not divest lien of mortgage. *Annelly v. DeSaussure*, 12 S. C. 512. Purchase at tax sale by mortgagee or assignee does. *Devereaux v. Taft*, 20 S. C. 555. This section gives the mortgagee a legal remedy where the mortgagor fails to pay the taxes; hence equity will not interfere where the security is sufficient. *Nathan v. Steinmeyer*, 57 S. C. 386, 35 S. E. 733.

(507) § 14. Comptroller General May Remit Penalties in Certain Cases.—In all cases where the penalty for nonpayment of taxes has attached to property held by assignees in bankruptcy and which could not be sold before the expiration of the time fixed by law for the payment of taxes, and in all cases where sales of property for the settlements of estates, for partition, for the foreclosure of mortgages, for the marshaling of assets, or for other purposes, ordered by any court in this State, have not been made in season for the payment of taxes due thereon, the Comptroller General, upon proper evidence thereof, may remit the penalties and costs which by law attach for nonpayment of taxes, and may also grant a stay of the collection of taxes upon such property until such time as the same shall be sold. And in all cases where such property held by assignees in bankruptcy, or property ordered by any court in this State to be sold for any of the pur-

poses above mentioned, cannot be sold in time for the payment of the taxes due or to become due thereon, the Comptroller General, upon proper evidence thereof, may authorize the collection of the taxes without costs and penalties and may stay the collection thereof until such time as the said sales shall be made: *Provided*, The stay of collection of taxes under this Section shall be only upon the written order of the Comptroller General, made in each case in duplicate, the original order to be issued to the County Treasurer and permanently filed in his office and the duplicate order to be filed in the Comptroller General's office, and shall state the title of the case and the order of sale by the court and the particular property upon which the collection of taxes is stayed.

Civ. '12, § 456; Civ. '02, § 408; G. S. 279; R. S. 335; 1898, XXII, 724.

(508) § 15. Property Liable for Distress and Sale for Delinquent Taxes.

—All personal property subject to taxation shall be liable to distress and sale for the payment of taxes, in the manner hereinafter provided, and all real property returned delinquent by the County Treasurer upon which the taxes shall not be paid by distress or otherwise shall be seized and sold as hereinafter provided. The distress and sale of personal property shall not be a condition precedent to seizure and sale of any real property hereunder.

Civ. '12, § 457; Civ. '02, § 409; G. S. 280; R. S. 336; 1887, XIX, 862; 1888, XX, 41; 1889, XX, 334; 1890, XX, 675; 1902, XXIII, 1132; 1909, XXVI, 76.

Distress of personal property is prerequisite to sale of real estate for taxes due in 1876. *Johnson v. Jones*, 72 S. C. 287, 51 S. E. 805.

No exemption against execution for taxes. *Oliver v. White*, 18 S. C. 241.

(509) § 16. Chattel Tax May Be Recovered by Distress or Suit.—If any chattel tax shall be unpaid at the time fixed for the payment thereof by this Chapter, or returned delinquent, as authorized by this Chapter, the County Treasurer may not only distrain property for the payment thereof, but may recover the same, with the penalties thereon, by action at law, proceedings in attachment, or other means authorized by law to be used by private individuals in the collection of debts, which action or other proceedings shall be prosecuted in the name of such Treasurer; and if he shall die or go out of office before the termination of such action or proceeding, or the final collection of the money, or any judgment or order therein, his successor or successors may, from time to time, be substituted as plaintiff therein.

Civ. '12, § 458; Civ. '02, § 410; G. S. 281; R. S. 337; 1882, XVII, 1029.

(510) § 17. Steps to Be Taken When Owner of Chattel Resides in Another County.—If, after the return of any chattel tax by any County Treasurer as delinquent, the County Treasurer shall know or be informed that the party against whom the same is charged resides in some other county in this State, or has property or debts due him therein, it shall be his duty to make out and forward to the Treasurer of such other county a certified statement of the name of the party against whom such taxes are charged, of the value of the property on which such taxes were levied, the amount of the taxes and penalties assessed thereon and that the same are delinquent, to the aggregate of which taxes and penalties he shall add twenty-five per cent. as collection fees, upon the receipt of which certificate it shall be the duty of the Treasurer of such other county to collect such delinquent taxes and penalties, with the twenty-five per cent. collection fees

as aforesaid, for which purpose he shall have all the rights, powers and remedies conferred upon the Treasurer of the county in which such taxes were assessed, and be allowed the same fees for distraint and sale of property as if said taxes had been levied in his own county, and, upon collection made, may retain one-half of said twenty-five per cent. collection fees, and shall transmit the balance collected by him to the Treasurer of the county from whom he received such certified statement by mail. But if the Treasurer to whom any such statement is sent cannot collect the amount therein named, or any part thereof, he shall return the same, so endorsed, with reasons for such noncollection.

Civ. '12, § 459; Civ. '02, § 411; G. S. 282; R. S. 338; 1882, XVII, 1030.

ARTICLE III.

Remedies and Proceedings for Relief of Taxpayers.

(511) § 1. **Collection of Taxes Not Stayed by Process of Court.**—The collection of taxes shall not be stayed or prevented by any injunction, writ or order issued by any court or Judge thereon: *Provided*, That this Section shall only apply to State, county, city, town and school taxes; and taxes voted by townships in aid of railroads where the roads have been completed through said townships.

Civ. '12, § 460; Civ. '02, § 412; G. S. 171; R. S. 339; 1882, XVII, 988, § 156; 1902, XXIII, 972.

Injunction cannot issue to restrain collection of license tax, which should be paid and resort be had to statutory action to recover. *Western Union Tel. Co. v. Winnsboro*, 71 S. C. 231, 59 S. E. 870. Injunction issued to restrain collection of tax for fireman's pension fund. *Etna Fire Ins. Co. v. Jones*, Comptroller-General, 78 S. C. 445, 59 S. E. 148, 13 L. R. A., N. S., 1147, 125 Am. St. Rep. 818. Injunction cannot issue to restrain collection of income tax. *Fleming v. Porter*, 77 S. C. 528, 58 S. E. 480.

Legislature has no power to prevent Court of Equity from enjoining collection of an illegal tax in those cases where it does not provide an adequate legal remedy for the aggrieved taxpayer, *Ware Shoals Mfg. Co. v. Jones*, 78 S. C. 211, 214, limiting in so far *Western Union Tel. Co. v. Winnsboro*, 71 S. C. 231, 234, 59 S. E. 870.

Section 2, providing remedy for taxpayer paying illegal tax to County Treasurer not applying to license tax provided by Act of 1904 to be paid by corporations to Comptroller-General, injunction will lie to prevent collection of said tax. *Ware Shoals Mfg. Co. v. Jones*, 78 S. C. 211, 222, 58 S. E. 811.

(512) § 2. **How to Proceed in Case of Claim That Tax is Illegal.**—In all cases in which any county, State, or other taxes are now or shall be hereafter charged upon the books of any County Treasurer of the State against any person, and such Treasurer shall claim the payment of the taxes so charged, or shall take any step or proceeding to collect the same, the person against whom such taxes are charged, or against whom such step or proceeding shall be taken, shall, if he conceives the same to be unjust or illegal for any cause, pay the said taxes notwithstanding, under protest, in such funds and moneys as the said County Treasurer shall be authorized to receive by the Act of the General Assembly levying the same; and upon such payment being made, the said County Treasurer shall pay the taxes so collected into the State Treasury, giving notice at the time to the Comptroller General that the payment was made under protest; and the person so paying said taxes may at any time within thirty days after making such payment, but not afterwards, bring an action against the said County Treasurer for the recovery thereof in the Court of Common Pleas for the county in which such taxes are payable; and if it be determined in said action that such

taxes were wrongfully or illegally collected, for any reason going to the merits, then the court before whom the case is tried shall certify of record that the same were wrongfully collected and ought to be refunded, and thereupon the Comptroller General shall issue his warrant for the refunding of the taxes so paid, which shall be paid in preference to other claims against the Treasury: *Provided*, That the County Treasurers shall be required to receive jury and witness tickets for attendance upon the Circuit Courts of the State receivable for taxes due the county in which the said services are rendered.

Civ. '12, § 461; Civ. '02, § 413; G. S. 268; R. S. 340; XVII, 988, § 156.

Dickson v. Burekmyer, 67 S. C. 526, 537, 46 S. E. 343; *Folson v. Township of Ninety-Six*, 59 Fed. 67, 68; *New York Life Ins. Co. v. Bradley*, 83 S. C. 418, 420, 65 S. E. 433.
 "License Tax" imposed by town is tax such as comes within these provisions. *Western Union Tel. Western Union Tel. Co. v. Town of Winnsboro*, 71 S. C. 231, 234, 50 S. E. 870.
 Does not apply to license tax provided by Act of 1904 to be paid by corporations to Comptroller-General. *Ware Shoals Mfg. Co. v. Jones*, 78 S. C. 211, 214, 58 S. E. 811, limiting in so far *Western Union Tel. Co. v. Town of Winnsboro*, 73 S. C. 231, 234, 50 S. E. 870.
 The right of action is given only to the person in whose name the taxes are listed, and not to one who afterwards purchases the property on which the lien exists. *DeSoto Gold Mining Co. v. Smith*, 49 S. C. 188, 27 S. E. 1.

Fuller v. Payne, County Treasurer, 96 S. C. 471, 81 S. E. 176.

(513) § 3. No Other Remedy But the One Thus Provided.—There shall be no other remedy in any case of the illegal or wrongful collection of taxes or attempt to collect taxes, or attempt to collect taxes in funds or moneys which the County Treasurer shall be authorized to receive under the Act of the General Assembly levying the same, being other than such as the person charged with said taxes may tender or claim the right to pay, than that herein provided. And no writ of *mandamus* shall be granted or issued from any court, or by the Judge of any court, directing or compelling the reception for taxes of any funds, currency, or bank bills, not authorized to be received for such taxes by the Act of the General Assembly levying the same; and no writ, order, or process of any kind whatsoever, staying or preventing any officer of the State charged with a duty in the collection of taxes from taking any step or proceeding in the collection of any tax, whether such tax is legally due or not, shall in any case be granted by any court, or the Judge of any court; but in all cases whatsoever the person against whom any taxes shall stand charged upon the books of the County Treasurer shall be required to pay the same in such funds and moneys as the said County Treasurer shall be authorized to receive by the Act of the General Assembly levying the said taxes in manner and form as above provided, and thereupon shall have his remedy under the provisions of the next preceding Section.

Civ. '12, § 462; Civ. '02, § 414; G. S. 269; R. S. 341; 1882, XVII, 1025.

DeSaussure v. Gaillard, 127 U. S. 216, 233, 32 L. Ed. 125.
 The Courts cannot interfere with the collection of taxes. *State v. Treasurer*, 4 S. C. 520; *State v. Gaillard*, 11 S. C. 309; *Camblee v. Tribble*, 23 S. C. 76. Otherwise as to assessment. *State v. Cromer*, 35 S. C. 213, 14 S. E. 493; *National Bank v. Boyd*, 35 S. C. 233, 14 S. E. 496; *State v. Covington*, 35 S. C. 245, 14 S. E. 499.

(514) § 4. No Costs or Disbursements Allowed.—In any action brought under the provisions of the said Section, no costs or disbursements shall be taxed or allowed in favor of either party, except for the service of process and procuring the attendance of witnesses.

Civ. '12, § 463; Civ. '02, § 415; G. S. 270; R. S. 342; 1882, XVII, 1025.

(515) § 5. Property Erroneously Returned Delinquent.—If any taxes charged on any real estate be regularly paid, and such real estate be erro-

neously returned delinquent, and leased or sold for such taxes, the lease or sale shall be totally void; or if any taxes shall be illegally assessed and collected, when the same shall become known to the County Auditor, he shall, on demand of the party interested, submit the matter to the Comptroller General; and if the Comptroller General approve thereof, in writing, the amount paid by the purchaser at such void lease or sale, or the amount so illegally collected, shall be repaid to the party paying the same, out of the County Treasury, on the order of the County Auditor; and so much of said taxes as shall have been paid into the State Treasury shall be refunded to the County Treasury, and the County Auditor shall retain the same in his next annual settlement, and charge the State therewith.

Civ. '12, § 464; Civ. '02, § 416; G. S. 278; R. S. 343; 1882, XVII, 1028.

Does not authorize repayment of tax paid on railroad bonds. *Carolina C. G. & C. R. R. Co. v. Tribble*, 25 S. C. 260.

(516) § 6. County Fund Bears Expense of Action Against Treasurer or Auditor for Official Acts.—If any action be prosecuted against the County Auditor or County Treasurer for performing, or attempting to perform, any duty enjoined upon them by the provisions of this Chapter, the result of which action will affect the interests of the county, if decided in favor of the plaintiff in such action, such Auditor or Treasurer shall be allowed and paid out of the County Treasury reasonable counsel fees and other expenses for defending such action, and the amount of any damages and costs adjudged against him, which fees, expenses, damages and costs, shall be apportioned ratably by the County Auditor among all the parties, except the State, interested in the revenue involved in said action; and if the State be interested in the revenue in said action, the County Auditor shall, immediately upon the commencement of said action, inform the Comptroller General of its commencement and of the alleged cause thereof, and the Comptroller General shall submit the same to the Attorney General, who shall defend said action for and on behalf of the State; and if only some local levy made by town or other municipal authority be involved in such suit, such town or other municipal authority shall employ and pay counsel and all damages and costs recovered in such action; and the County Auditor and Treasurer, or both, if both be sued, may, by petition, answer, or motion in court, cause the town or other local municipal authorities interested in the revenue involved in the action, to be made parties thereto (if not already parties), and the court in which such action may be pending shall cause the town or other local municipal authorities to be made parties to such action, and render judgment for any damages and costs which may be found in favor of the plaintiff against said town or other municipal or local authorities, and not against said Auditor or Treasurer.

Civ. '12, § 465; Civ. '02, § 417; G. S. 316; R. S. 344; 1882, XVII, 1041.

In suit for taxes illegally collected, where State is interested it is real defendant. *Gunter v. Atlantic Coast Line R. Co.*, 200 U. S. 273, 287, 50 L. Ed. 477.

(517) § 7. Recovery Against County Treasurer Not to Exceed Value of Property.—In any action or proceeding against any County Treasurer in this State, for the purpose of recovering any property or money alleged to have been erroneously or illegally assessed and collected as taxes, assessments, or penalties, unless the party bringing such action or proceeding

shall make it appear that a notice in writing of the claim on which such suit may be brought was given to said Treasurer in pursuance of Section 2 of this Article, and unless it shall be made to appear that said Treasurer has proceeded contrary to the provisions of this Chapter, the amount recovered in such suit shall not exceed the value of the property or money aforesaid.

Civ. '12, § 466; Civ. '02, § 418; G. S. 317; R. S. 345; 1882, XVII, 1041.

(518) § 8. **Attorney General Shall Defend County Treasurer or Other Officer Sued for Money Collected on Tax.**—It shall be the duty of the Attorney General of the State to defend any suit or proceeding against any County Treasurer, or other officer, who shall be sued for moneys collected or property levied on or sold on account of any tax, when the Comptroller General shall have ordered such collector to proceed in the collection of any such tax, after notice as aforesaid, or suit brought; and any judgment against such Treasurer, or other officer, finally recovered, shall be paid in the manner provided in Section 6 of this Article.

Civ. '12, § 467; Civ. '02, § 419; G. S. 318; R. S. 346; 1882, XVII, 1042.

State is real defendant. *Gunter v. Atlantic Coast Line R. Co.*, 200 U. S. 273, 287, 50 L. Ed. 477.

(519) § 9. **Levy and Collection of Tax to Pay Township Bonds Aiding Railroad Prohibited.**—No Board of Township Commissioners nor County Board of Commissioners, nor any other officer or officers, shall assess or levy, and no County Treasurer nor other officer or officers shall collect, any tax for the payment of township bonds, or the coupons thereof, or judgments entered up thereon, issued in the aid of a railroad: *Provided*, This Section shall not apply to those bonds issued in the aid of railroads that have been completed and finished through such townships as have issued such bonds, nor until such road shall have been accepted by the Railroad Commissioners: *Provided, further*, That the provisions of this Section shall not apply to Newberry County, or any part thereof, nor to bonds issued in aid of the Pickens Railroad Company by certain townships in Pickens County.

Civ. '12, § 468; Civ. '02, § 420; 1899, XXIII, 78.

This section seems to repeal 18 Stat. 366, 19 Stat. 38, 19 Stat. 240, 20 Stat. 12.

For discussion of latter statutes, see following cases: *Rice v. Sheasley*, 71 S. C. 161, 369, 50 S. E. 868; *Massachusetts & S. Const. Co. v. Town of Cherokee*, 42 Fed. 750, 752; *Massachusetts & S. Const. Co. v. Cane Creek Tp.*, 45 Fed. 336, 337; *Hicks v. Cleveland*, 106 Fed. 459, 461; *Padgett v. Post*, 106 Fed. 600, 7 Mun. Corp. Cas. 873; *Gorham v. Broad River Tp.*, 109 Fed. 772; *Folsom v. Township of Ninety-Six*, 59 Fed. 67; *Atlantic Trust Co. of New York v. Town of Darlington*, 63 Fed. 76; *Town of Darlington v. Atlantic Trust Co.*, 68 Fed. 849; *Grannis v. Cherokee Township of York County*, 47 Fed. 427.

Acts 22 St. at Large, p. 534 (see § 292); 23 St. at Large, p. 78, were passed to obstruct payment of bonds issued in aid of Greenville & Port Royal Railroad, and would seem to be in conflict with § 34, Art. 3, S. C. Constitution, which forbids special legislation. *Hicks v. Cleveland*, 106 Fed. 459, 464.

This section is void under U. S. Const., as impairing obligation of contracts as against innocent bondholders who have acquired rights under 19 Stat. 237, 240, and Federal Court will issue mandamus to enforce judgment rendered on such bonds. *Hicks v. Cleveland*, 106 Fed. Rep. 459, 464; *Padgett v. Post*, 106 Fed. Rep. 600, 602, 7 Mun. Corp. Cas. 873. See, also, *Graham v. Folsom*, 200 U. S. 248, 252, 50 L. Ed. 464.

The fact that corporate existence of township which had issued bonds in aid of railroad under 19 Stat. 239, 20 Stat. 12, was destroyed and township itself was included in another county is not ineffectual to impair obligation of contract and court will direct levy and collection of tax to pay judgment recovered on such bonds against township. *Graham v. Folsom*, 200 U. S. 248, 252, 50 L. Ed. 464.

ARTICLE IV.

Enforced Collection of Delinquent Taxes.

(520) § 1. **Treasurer Issues Execution to Sheriff—Form of.**—Immediately upon the expiration of the time allowed by law for the payment of taxes in any year, the County Treasurer of each county shall issue, in the name of the State, a warrant or execution in duplicate against such defaulting taxpayer in his county, signed by him in his official capacity, directed to the Sheriff of his county or his lawful deputy, requiring and commanding him to levy the same by distress and sale of so much of the defaulting taxpayer's estate, real or personal, or both, as may be sufficient to satisfy the taxes, State, school, county and special, of such defaulter, specifying therein the aggregate amount of all his taxes, as well as the amount to each fund; which warrant or execution shall run substantially in these words (filling the blank to suit each case), viz.:.....
 Treasurer for the County of to the
 Sheriff of County, or his lawful deputy:
 Whereas, ... has been duly assessed the sum of
 dollars for defraying the charges of the State, school, county and special,
 for the fiscal year beginning November 1, 19...., as follows, to wit: For
 the State, \$.....; for public schools, \$.....; for county, \$.....; for
 special, ...; which has neglected to pay: These are, therefore,
 in the name of the State, strictly to charge and command you to levy by
 distress and sale of the personal property, and if sufficient personal prop-
 erty cannot be found, then by distress and sale of the land of the said
, the sum of dollars, together with dollars,
 the charges hereof; and for so doing this shall be your sufficient warrant.

Given under my hand and seal this day of, A. D.
 19.....

..... (L. S.)
 Treasurer of County.

Civ. '12, § 469; Civ. '02, § 421; R. S. 347; 1887, XIX, 862.

Koth v. Pallachucola Club, 79 S. C. 514, 517, 61 S. E. 77.

Failure of execution to specify amount of taxes to each fund does not invalidate sale. *Dickson v. Burckmyer*, 67 S. C. 526, 540, 46 S. E. 343.

It matters not whether Sheriff attaches to tax sale deed under this section the original or duplicate execution, and such execution is valid, although the mandate does not contain the name of defaulting payer and amount of taxes. *Dickson v. Burckmyer*, 67 S. C. 526, 539, 46 S. E. 343.

Execution should specify whether for capitation or property tax. *State v. Graham*, 2 Hill 457. Need not specify subject of taxation. *State v. City Council*, 4 Rich. 286. Execution for taxes, in part illegal, not specifying amount illegal, is altogether void. *State v. Hodges*, 14 Rich. 256. Personal property must under certain statutes be exhausted before land can be sold. *Ebaugh v. Mullinax*, 34 S. C. 364, 16 S. E. 613; *Curtis v. Renneker*, 34 S. C. 468, 13 S. E. 664. But under late tax Acts the failure to exhaust the personally does not necessarily defeat the title of the purchaser to the land. *Interstate B. & L. Ass'n v. Waters*, 50 S. C. 459, 27 S. E. 948.

Gallishaw v. Jackson, 99 S. C. 342, 83 S. E. 454.

(521) § 2. **Fees and Charges.**—The Treasurer for every such warrant issued shall have from such defaulter \$1.00; and the Sheriff shall take from such defaulter the following fees in the execution of his office, to wit: For serving each warrant, \$1.00, besides mileage at the rate of 5 cents for each mile actually traveled in executing the warrant; for advertising sale, 25 cents; for making sale and executing deed of conveyance, and putting purchaser in possession, \$3.00; and for all sums levied as aforesaid, five per cent., and the Sheriff is prohibited from demanding or collecting any

greater sum therefor than is hereby allowed; and neither the Sheriff nor County Treasurer shall receive fees upon *nulla bona* returns.

Civ. '12, § 470; Civ. '02, § 422; R. S. 348; 1887, XIX, 862; 1888, XX, 51; 1889, XX, 346.

The Sheriff is not entitled to retain the 5 per cent. commissions paid under protest to release property from an illegal levy. *Cleveland v. McCravy*, 46 S. C. 252, 24 S. E. 175.

(522) § 3. **Seizure, Advertisement and Sale Under Execution for Delinquent Taxes—Redemption—Execution of Title.**—Under and by virtue of said warrant or execution, the Sheriff shall seize and take exclusive possession of so much of the defaulting taxpayer's estate, real or personal, or both, as may be necessary to raise the sum of money named therein, and said charges thereon; and, after due advertisement, sell the same before the court house door in the county, on a regular sales day, and within the usual hours for public sales, for cash, give to the purchaser (upon his complying with the terms of sale) a receipt for the purchase money, but not make title to the purchaser until the expiration of six months from the day of sale, if the property sold be not redeemed as hereinafter provided, and annex said receipt to the duplicate warrant with the endorsement thereon of his action thereunder, and shall, after deducting from proceeds of sale the costs and expenses of said sale, pay over to the County Treasurer the taxes, charges and penalties due and incurred by said defaulting taxpayer; and upon written notice given, or information ascertained from the records, of any mortgage or other lien on said premises so sold for taxes, shall hold the excess, if any, until authorized or directed by proper judicial authority as to mode of disposition, or by the written consent of the defaulting taxpayer that the said excess be paid over to the mortgage or lien creditor, and according to priority if more than one: *Provided*, That the owner or grantee or any mortgage creditor may within six months from the day of such sale redeem such property by paying to the Sheriff the taxes, penalties, costs and expenses of said sale, together with eight per cent. interest on the whole amount of the purchase price of said land so sold, and thereupon the Sheriff shall pay back and refund to the said purchaser the amount paid on his bid, with interest as above stated, and the bid by said purchaser shall be then cancelled and revoked, the owner or grantee remaining in possession of his said land: *Provided, further*, That should any mortgagee redeem said land as above permitted, then the amount so paid by him for taxes, charges, costs and penalties shall be added to the mortgage debt or other lien, with same incidents as to priority and with same rate of interest and collectible in the same way as the original mortgage debt. Upon failure of defaulting taxpayer or other party interested to redeem said land so sold for taxes within six months as stated, then the Sheriff shall make title to the purchaser and put the purchaser in possession of the property sold and conveyed: *Provided, further*, That in case of threatened waste or damage to the premises by the owner or any other party, during the six months allowed for redemption, the purchaser at said tax sale shall have the right to apply to the Court of Common Pleas or a Judge thereof for injunction against such waste and for a receiver to take charge of the property until the end of the six months for redemption unless sooner redeemed: *Provided, further*, That in any case where the Sheriff of any county shall have made a deed under the Act approved the 20th day of February, 1901, and said land has been or shall be redeemed under the provisions of said Act, it shall

be the duty of the Sheriff, upon demand of the owner of said land, to execute to said owner a deed of the land so redeemed, citing the proceedings under which said land was sold, and upon said deed being executed and delivered, the title to said land shall revert in the owner as though said tax sale had never been made: *Provided, further*, When any real estate is sold for taxes in any county it shall be the duty of the Sheriff, before delivering title to such real estate to the purchaser at such sale, to give not less than thirty days' notice to any mortgagee or assignee of any mortgage appearing of record as interested in such real estate of such sale in order that such mortgagee or assignee may have opportunity to redeem the said real estate, as now provided by law for the owner thereof. Such notice shall either be served on such mortgagee or assignee in person or forwarded to his last known postoffice address by registered mail, or when his whereabouts may be unknown it may be had by publication upon petition and order as is required for service of summons by publication in civil actions.

◊ Civ. '12, § 471; Civ. '02, § 423; R. S. 349; 1887, XIX, 863, § 2; 1901, XXIII, 613; 1902, XXIII, 973; 1912, XXVII, 699.

Section Constitutional. *State v. Allen*, 2 McC. 55. Sale invalid, on day other than fixed by law. *Roddy v. Purdy*, 10 S. C. 138; *Dougherty v. Crawford*, 14 S. C. 638. Irregular sale, where no deed is delivered, gives no title. *Garlington v. Copeland*, 32 S. C. 57, 10 S. E. 616. Lands listed as of unknown owner may be sold. *Gilliland v. Baptist Church*, 33 S. C. 164, 11 S. E. 684. No homestead against tax sales. *Shell v. Duncan*, 13 S. C. 547, 10 S. E. 330. But inchoate right of dower remains. *Ib.* Defaulting taxpayer can, by ordinary action, recover surplus proceeds from Sheriff. *State v. Turner*, 32 S. C. 348, 11 S. E. 99.

As to exhausting personality before selling realty. See *Ebaugh v. Mullinax*, 34 S. C. 374, 13 S. E. 613; *Interstate B. & L. Ass'n v. Waters*, 50 S. C. 459, 27 S. E. 948; *Johnson v. Jones*, 72 S. C. 272, 51 S. E. 905.

Mandamus will issue to compel execution of deed by the Sheriff on purchaser's complying with bid. *State ex rel. Harley v. Lancaster*, 46 S. C. 282, 24 S. E. 198. Or to compel delivery of possession. *State ex rel. Gibbs v. Morrison*, 44 S. C. 470, 22 S. E. 605. Rule against Sheriff not the remedy. *Gibbes v. Morrison*, 39 S. C. 360, 17 S. E. 803. Sale of entire tract held not an excessive levy. *Wilson v. Cantrell*, 40 S. C. 114, 18 S. E. 517.

Sheriff must "seize and take exclusive possession" of the property. Sale must be for cash. Purchaser may assign bid, attaching execution to deed. Excessive levy; discretion of Sheriff. *Dickson v. Burckmyer*, 67 S. C. 526, 46 S. E. 343. Levy by officer not legally appointed and qualified, illegal. *Barrineu v. Stevens*, 75 S. C. 252, 55 S. E. 309.

Where land has been levied on and sold for taxes as lands of heirs of A. without mentioning names of each of heirs, tax title is prima facie good to convey interest of heirs of A. in land after his death. Here view strengthened by fact that after decease of A. some of his heirs returned property for benefit of all, paid taxes for a while and then voluntarily stopped paying. *Koth v. Pallachucola Club*, 79 S. C. 514, 517, 61 S. E. 77.

That Sheriff made excessive levy for taxes, unless so excessive as to indicate oppression from design or ignorance, should not disturb title of purchaser in good faith, but such issue is for jury, and fact that land sold for ten times as much as taxes, is not conclusive of question. *Dickson v. Burckmyer*, 67 S. C. 526, 539, 46 S. E. 343.

(523) § 4. Purchase by Auditor for Sinking Fund Commission.—How Titles to Be Made, Etc.—In case there be no bid equal in amount to the taxes named in said warrant or execution, the County Auditor shall buy the land for the Sinking Fund Commission, as the actual purchaser thereof, for the amount of said taxes and penalties, costs and charges; and the Sheriff shall thereupon execute titles to said Sinking Fund Commission, as to any other purchaser, and in the manner above provided, and shall put them or their authorized agent in possession of the premises. The land so sold and purchased and delivered to said Commission shall be treated by them as assets of the State in their charge, and be sold at such times and in such manner as by them shall be deemed most advantageous to the State.

Civ. '12, § 472; Civ. '02, § 424; R. S. 350; 1887, XIX, 863, § 2.

State v. Thompson, 18 S. C. 538; *Owens v. Owens*, 25 S. C. 155; *Koth v. Pallachucola Club*, 79 S. C. 514, 517, 61 S. E. 77.

Mere fact that, under this section, Sheriff, in order to collect a tax of \$1,200, alleged to be due from a railroad receiver, has distrained property worth \$10,000, much of which belongs to third persons, is sufficient to require interference by injunction of court which appointed receiver, regardless of any question as to validity of tax. *Ex parte Chamberlain*, 55 Fed. 704, 705.

Levy and sale of land worth about \$2,500 for taxes and cost amounting to about \$31, such tract of land being easily divided, is illegal, purchaser taking nothing. *Commercial Bank v. Sanford*, 99 Fed. 154, 156.

(524) § 5. **Sale of Use and Occupancy of Land by Municipality for Taxes.**—Whenever any taxes, State, county, school or township, hereafter may accrue upon any land or buildings, or portions thereof, or upon any other property of any municipal corporation by reason of said land, buildings or other property, or portions thereof, not having been used “exclusively for public purposes and not for revenue,” and hereafter may become past due and unpaid, and it becomes necessary to collect the same by distress, then the Sheriff, whether acting under an execution from the County Treasurer or from the Secretary of State as agent of the Commissioners of the Sinking Fund, shall, at public sale, sell not the “fee,” as in other cases, but only the “use” and “occupancy” of such portions of said land, building or property of such municipal corporation as the same accrued upon, to that bidder who will for the shortest term pay the taxes, penalties, costs and charges accrued thereon; and at such sale to protect the interest of the State, if there be no cash bid equal to the taxes, penalties, costs and charges accrued thereon, then the said property, or portion thereof offered for sale, shall be knocked down to the Sinking Fund Commission for a term not exceeding ninety-nine years; and it shall be the duty of the Sheriff to make titles for the term of years required by the bid to the purchaser, and put said purchaser (whether the Sinking Fund Commission or any other person) into possession in like manner as when the fee is by him sold for taxes.

USE FOR PUBLIC PURPOSES NOT TO DEFEAT THE SALE.—The use and occupancy for public purposes at the time of levy or sale of any portion of property levied upon or sold for taxes accrued by reason of same not having been formerly used “exclusively for public purposes and not for revenue” shall not defeat the remedy for collection provided in this Section.

Civ. '12, § 473; Civ. '02, § 425; 1887, XIX, 863, § 2.

As to prior law, see *City of Columbia v. Tindal*, 43 S. C. 547, 22 S. E. 341

(525) § 6. **Sheriff's Deed Prima Facie Evidence of Good Title—Limitation of Action.**—In all cases of sale the Sheriff's deed of conveyance, whether executed to a private person, a corporation or the Sinking Fund Commission, shall be held and taken as *prima facie* evidence of a good title in the holder, and that all proceedings have been regular, and all requirements of the law have been duly complied with. No action for the recovery of land sold by the Sheriff under the provisions of this Article, or for the recovery of the possession thereof, shall be maintained unless brought within two years from the date of said sale.

Civ. '12, § 474; Civ. '02, § 426; R. S. 351; 1887, XIX, 863, § 2.

Koth v. Pallachucola Club, 79 S. C. 514, 517, 61 S. E. 77.

Courts must give tax title full statutory effect. *Cook v. Pennington*, 7 S. C. 387. But claimant must prove title. *Ib.*, 15 S. C. 192. Tax deed *prima facie* evidence. *Ib.*; *Shell v. Duncan*, 31 S. C. 547, 10 S. E. 330. Unless deed shows that sale was invalid. *Cooke v. Pennington*, 15 S. C. 192. But it is not violated by failure to recite performance of prerequisites. *Shell v. Duncan, supra*. Yet it may be defeated by showing lack of prerequisites. *Ib.*; *Poole v. Evans*, 57 S. C. 79, 35 S. E. 436. The burden of proof as to defects is on the party attacking the deed. *Wilson v. Cantrell*, 40 S. C. 114, 18 S. E. 518. Must be construed in connection with the following section. *Bull v. Kirk*, 37 S. C. 395, 16 S. E. 151. Complaint hereunder; limitation is affected by disability of infancy. *Jones v. Boykin*, 70 S. C. 309, 49 S. E. 877. Recording tax title notice. *Hudson v. Schumpert*, 80 S. C. 25, 61 S. C. 104. A tax deed made in 1872 is *prima facie* evidence of title. *Hervard v. Christensen*, 80 S. C. 146, 61 S. E. 399. Limitation of action to set aside tax deed. *Guerard v. Jenkins*, 80 S. C. 223, 61 S. E. 258.

See *Pollitzer v. Beinkempen*, 76 S. C. 517, 57 S. E. 475. Limitation commences to run when purchaser is put in possession. *Gardner v. Reedv*, 62 S. C. 503, 40 S. E. 947. Limitation only applies where execution is issued against real owner. *Smith v. Cox*, 83 S. C. 1, 65 S. E. 222.

Complaint stating cause of action for recovery of land does not state facts, defeating recovery, by alleging that defendant claims under tax deed based on sale for taxes procured by him by alleged facts, which if true would make deed null and void for fraud, or estop defendant from asserting deed. *Jones v. Boykin*, 70 S. C. 309, 49 S. E. 877.

(526) § 7. **Suspension of Sale—When and on What Grounds—Evidence—Waiver.**—In case the taxpayer alleged to be in default after levy of distress as aforesaid shall allege that the taxes have been paid, or are unjustly assessed against him, he can and may have the sale suspended, if before the sale he offers satisfactory evidence to the Sheriff that said taxes have been paid or improperly assessed against him, and within twenty days thereafter take such steps as are provided by law for correction of unjust assessment, or to prove payment, and prosecute the same to a successful result within a reasonable time. And in case such taxpayer offers no such proof, or fails to take the course herein provided, he shall be deemed in law to have waived all exceptions to the omission, errors and irregularities (if any there be) in the assessment of said tax, and in all preliminaries to said sale as prescribed by law, and to have admitted that each and all preliminary steps to said assessment and sale, and said assessment and sale were in accordance with the requirements of law.

Civ. '12, § 475; Civ. '02, § 427; R. S. 352; 1887, XIX, 864; 1888, XX, 52, § 2.

Failure to comply with this section does not bar right to recover land. *Dickson v. Burckmyer*, 67 S. C. 540, 46 S. E. 343; *Bull v. Kirk*, 37 S. C. 395, 36 S. E. 151. Cannot be invoked to show waiver of taxpayer's rights against purchaser. *Gardner v. Reedy*, 62 S. C. 503, 40 S. E. 947. *Gallishaw v. Jackson*, 99 S. C. 342, 83 S. E. 454.

(527) § 8. **Duties of Sheriffs as to Tax Executions—Subject to Control of Comptroller General.**—The Sheriffs in the several counties in the State, in making levies and sales, in making returns, and in paying over money collected under tax warrants and executions placed in their hands by County Treasurers, shall be subject to the direction and under the control of the Comptroller General of the State, as they are now in like manner to plaintiffs in execution; and the Comptroller General is hereby invested with all the rights and privileges of a plaintiff in execution, to invoke and obtain the aid of the court to compel refractory Sheriffs to discharge their duties in the enforcement of tax executions; and it is hereby made the duty of the said Sheriffs, respectively, to make return of all tax executions to the Treasurer of their respective counties within ninety days after the date of issue thereof, designating such as may be *nulla bona* and such as may have been collected by distress or otherwise, and within the same time to pay over to the said Treasurer all taxes and penalties collected by them; and the several County Treasurers shall, at the last term of the Circuit Court in each year for their respective counties, deliver to the foreman of the grand jury a complete list of all tax executions delivered to the Sheriff for collection, and which have not been collected, and the grand jury shall examine the said list, and present the Sheriff for any default or neglect in the performance of his duties relative to the enforcement of such executions. And in case any Sheriff shall make default in paying over within the time aforesaid any moneys collected on said executions, it shall be the duty of the County Treasurer, and he is hereby required, immediately to bring suit against such defaulting Sheriff in any court of competent jurisdiction, in which suit such Sheriff shall be liable to treble the amount for which he has defaulted; and in case of any loss resulting by reason of the failure of the County Treasurer to perform the duties herein set forth, such Treasurer shall be liable therefor.

Civ. '12, § 476; Civ. '02, § 428; R. S. 353; 1899, XXIII, 79.

Dillon County v. Lane et al, 114 S. C. 494, 104 S. E. 184.

(528) § 9. **Duplicate Tax Executions—How Issued.**—When it shall be made to appear to the satisfaction of the presiding Judge of the Court of Common Pleas for any county in this State, by petition or upon due notice to the County Commissioners, that any tax execution heretofore issued, or which may hereafter be issued, by the County Treasurer of county, has been lost, and that the amount due thereon has not been collected, either in whole or in part, to issue an order, directed to the Treasurer of said county, ordering and directing him to issue an *alias* or duplicate execution in the place and stead of the one which has been lost; and upon the receipt of said order, it shall be the duty of said County Treasurer to immediately issue an *alias* or duplicate tax execution as directed in said order.

Said duplicate or *alias* executions shall, by said County Treasurer, be marked “duplicate” or “*alias*” execution, and when so issued and marked, shall have the same force and effect as the original execution could or would have, if the same had not been lost.

Civ. '12, § 477; Civ. '02, § 429; 1899, XXIII, 118.

(529) § 10. **Tax Lien Expires in Ten Years — Provisos — Assessment of Property Not on Books.**—All taxes heretofore or hereafter levied or becoming due under the laws of this State shall be conclusively presumed paid after ten years from the last date said taxes could have been paid without penalty: *Provided*, That this Section shall not apply to taxes for the collection of which the State shall institute judicial proceedings within the time limited above: *Provided, further*, That the State may bring suit in court for back taxes any time within ten years from the date when they should be paid, whether they are on or off the tax books, and may bring suit in court for any taxes which should have been paid before March 31st, 1899, at any time within ten years from the 28th day of February, 1899, whether on or off the tax books; and on collection of such taxes they shall be distributed to the State, counties and school districts to which they would have gone if they had been paid at the time fixed by the Act which levied the same: *Provided, further*, That except as to the conclusive presumption after ten years of payment of taxes by taxpayers as herein provided, this Section shall in no way affect or impair the operation of Sections 13, 14 and 15 of Article I of Chapter VI of this Code: *Provided, further*, That where any taxpayer has omitted or neglected to make a return of his property for taxation or has made a false return thereof for such purpose for or in any year, where the collection of the tax is not barred by the limitation of time herein mentioned, and the County Auditor of the county where said return or returns should have been made, is informed of that fact, he shall forthwith notify said defaulting taxpayer, or if he be dead, his personal or legal representative, or representatives, to appear before him at his office at a time fixed in said notice and shall proceed to assess said property not returned as prescribed in Sections 1, 2, 3, 4, and 5 of Article XIII of Chapter XIV of this Code. Should the party to be served with notice be a nonresident, then said notice shall be served by publication of said notice in some newspaper, and mailing a copy thereof to said party, as prescribed for service of nonresidents by the Code of

Civil Procedure of this State, and said taxes shall be assessed and collected as provided in the Section above referred to.

Civ. '12, § 478; Civ. '02, § 430; 1899, XXIII, 80; 1905, XXIV, 873; 1911, XXVII, 229.

(530) § 11. **Contracts in Evasion of Tax Laws Against Public Policy—Unenforcible—Substituted Contracts.**—All contracts that are entered into with intent to evade payment of taxes or in fraud of the tax laws of this State be, and are hereby, declared against public policy. No court in this State shall lend its aid in the enforcement of such contract whether the same has heretofore been entered into or may hereafter be entered into. The courts of this State shall not lend their aid to enforce any contract entered into as a substitute for or having as its consideration a previous contract of the nature or class of contracts hereinbefore declared against public policy.

Civ. '12, § 479; 1902, XXIII, 970.

ARTICLE V.

Annual Settlements of County Treasurers.

(531) § 1. **Settlement of Auditor With Treasurer—When and How Made.**—Each County Auditor shall attend at his office on or before the first day of May, annually, or at any other time the Comptroller General may direct, to make settlement with the Treasurer of his county and ascertain the amount of taxes, penalties and assessments collected by such Treasurer and the amount with which he is to stand charged on account thereof and on account of each fund for which a levy was made on the duplicate. The Auditor shall take from the duplicate previously put into the hands of the Treasurer for collection, a list of all such taxes, assessments and penalties as such Treasurer has been unable to collect, describing the property as described on the duplicate, and shall note thereon in a marginal column the several reasons assigned by the Treasurer why such taxes or other charges could not be collected, which list shall be denominated the delinquent list, and shall be signed and sworn to by the Treasurer, before said Auditor, who shall record the same in a book to be provided for the purpose and transmit an abstract thereof to the Comptroller General; and in making such list, the delinquencies in each district, city, village and town shall be stated separately. And after deducting the amount of taxes, assessments and penalties so returned delinquent, the Treasurer shall stand charged with the remainder of the taxes, assessments and penalties charged on the duplicate: *Provided, however,* That only the following causes shall be assigned by the Treasurer on said delinquent list for not collecting any tax, penalty or assessment, to wit:

1. Sheriff's return to execution issued, that no sufficient property of the party charged therewith could be found, out of which to make the same.
2. That property was found, but, for want of bidders, was sold and conveyed to the Sinking Fund Commission by the Sheriff, pursuant to law.
3. Execution issued and in the hands of the Sheriff.

4. That such taxes, assessments and penalties were enjoined by a competent court.

Civ. '12, § 480; Civ. '02, § 431; G. S. 249, 272; R. S. 362; 1882, XVII, 1016, 1026; 1887, XIX, 862.

(532) § 2. **Treasurer's Remedy When Charged With Tax Not in Fact Paid.**—If, in making such settlement, the Treasurer shall stand charged with any tax, assessment or penalty, which in fact was not paid prior thereto, he may at any time while remaining in office collect the same by distress and sale of property, as in other cases of delinquent taxes, or by action in his own name, as for money paid for the use of the party or parties charged with or bound to pay said tax, penalty or assessment, and after going out of office he may maintain an action in his own name, as aforesaid, for the collection of such tax, penalty or assessment.

Civ. '12, § 481; Civ. '02, § 432; G. S. 272; R. S. 363; 1882, XVII, 1026, § 256.

(533) § 3. **County Supervisors and Superintendents of Education Notified of Day of Settlement—Proceedings.**—When the County Treasurers of the several counties shall have disbursed all the county and school funds of each fiscal year, and are ready to make their settlements with their respective County Auditors for the county and school taxes charged against them upon the Treasurer's tax duplicate, they shall so notify the County Auditors, whereupon the County Auditors shall notify the County Supervisors and County Superintendents of Education of their respective counties of the day of such settlement; and the said County Supervisors and County Superintendents of Education are hereby required to produce, in the office of the Auditor of their respective counties, the claims allowed and ordered paid by them, and vouch thereby each amount presented by the County Treasurer for a credit in his settlement with the Auditor for the amount of county and school taxes which are charged against him on the Treasurer's duplicate for each year. The County Auditors and Treasurers shall annually have a full and final settlement as to tax executions issued by said Treasurers within twelve months after the expiration of the time allowed by law for the payment of taxes in any year.

Civ. '12, § 482; Civ. '02, § 433; R. S. 364; 1889, XX, 349, § 2; 1893, XXI, 481, § 1; 1896, XXII, 255.

(534) § 4. **Auditor to Notify Foreman of Grand Jury and Comptroller to Attend to Witness Settlement.**—It shall be the duty of the Auditor of each county to notify the foreman of the grand jury thereof and the Comptroller General of the day upon which said settlement is to be made, and the Comptroller General, or some one duly authorized by him, and the foreman of the grand jury of each county are hereby required to be present and witness said settlement.

Civ. '12, § 483; Civ. '02, § 434; G. S. 365; 1889, XX, 349, § 4.

(535) § 5. **Day Fixed for Settlement.**—The day fixed for the settlement provided for in two next preceding Sections shall be on or before the 1st day of May, or as soon thereafter as the Comptroller General may appoint.

Civ. '12, § 484; Civ. '02, § 435; R. S. 366; 1889, XX, 350, § 9; 1893, XXI, 401, § 7.

(536) § 6. **Settlement Sheets Signed in Duplicate—By Whom, and Where Filed.**—When said settlements shall have been completed, the settlement sheets shall be signed by the County Commissioners and County Treasurers, the County Superintendent of Education and County Treasurers, in duplicate and certified by the County Auditor; one copy of which shall be filed in the County Auditor's office and the other mailed to the Comptroller General, to be by him reported to the General Assembly.

Civ. '12, § 485; Civ. '02, § 436; R. S. 367; 1893, XXI, 401, § 5.

(537) § 7. **Comptroller Furnishes Copies of Report to County Officials.**—It shall be the duty of the Comptroller General to mail each year a copy of his report containing such Settlement to the Clerk of the Court, County Commissioners, School Commissioners and County Auditors of each county of the State, to be filed and kept by said officers in their several offices.

Civ. '12, § 486; Civ. '02, § 437; R. S. 368; 1893, XXI, 401, § 6.

(538) § 8. **Irregularities, Etc., Reported to Court of Sessions—By Whom.**—If in the making of said settlement there shall be discovered any irregularities or violations of law by any of said officers, the Comptroller General and the foreman of the grand jury shall report the same to the Court of General Sessions of the county where such irregularities or violations of law shall have been discovered.

Civ. '12, § 487; Civ. '02, § 438; R. S. 369; 1893, XXI, 401, § 8.

(539) § 9. **Comptroller Prescribes System of Bookkeeping and Examines Books.**—The Comptroller General shall prescribe the system of bookkeeping to be used in the offices of County Commissioners, School Commissioners, County Treasurers and County Auditors of the State, so that the same shall be uniform; and in making his visit to witness the settlements herein required he shall examine the books of the said several offices and report the results of his examination to the General Assembly.

Civ. '12, § 488; Civ. '02, § 439; R. S. 370; 1893, XXI, 401, § 7.

TITLE IV.

CHAPTER XVI.

Of the Militia.

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ARTICLE I.**General Provisions.**

(540) § 1. National Defense Act Accepted.—The Act of Congress approved June 3, 1916, entitled “An Act making further and more effectual provisions for the national defense, and for other purposes,” is hereby accepted by the State of South Carolina, and the provisions of said Act are made a part of this Military Code.

Civ. '12, § 489; 1905, XXIV, 792; 1908, XXV, 1103; 1910, XXVI, 610; 1917, XXX, 7.

(541) § 2. Of Whom Militia to Consist.—The Militia of the State of South Carolina shall consist of all able-bodied male citizens of the United States and of this State, and all other able-bodied males who have or shall have declared their intentions to become citizens of the United States and this State, who shall be more than eighteen years of age, and, except as hereinafter provided, not more than forty-five years of age, and said militia shall be divided into three classes, the National Guard, the Naval Militia and the Unorganized Militia.

Civ. '12, § 490; Civ. '02, § 440; R. S. 375; 1905, XXIV, 792; 1917, XXX, 7.

(542) § 3. Who Shall Be Exempt from Militia Duty.—The Vice President of the United States; the officers, judicial and executive, of the Government of the United States and of the several States and Territories; persons in the military or naval service of the United States; custom house clerks; persons employed by the United States in the transmission of the mail; artificers and workmen employed in the armories, arsenals and navy yards of the United States; pilots, marines actually employed in the sea service of any citizen or merchant within the United States, shall be exempt from militia duty without regard to age, and all persons who, because of religious belief, shall claim exemption from the military service, if the conscientious holding of such belief by such person shall be established, under such regulations as the President shall prescribe, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the President shall declare to be noncombatant.

Civ. '12, § 490; Civ. '02, § 440; R. S. 375; 1905, XXIV, 792; 1917, XXX, 7.

(543) § 4. Division of Militia.—The militia of the State shall be divided into two classes, the uniformed and organized militia and the ununiformed and unorganized militia; the uniformed and organized militia consists of the military forces known as the National Guard and the naval forces known as the Naval Militia; the unorganized and ununiformed militia shall consist of all those liable to serve in the militia, but not serving in the National Guard, or in the Naval Militia of the State.

Civ. '12, § 491; 1905, XXIV, 792; 1916, XXIX, 657; 1917, XXX, 7.

(544) § 5. Governor to Be Commander in Chief.—The Governor of the State, by virtue of his office, shall be Commander in Chief of the militia of the State, except of such portions as may at times be in the service of the United States.

Civ. '12, § 492; 1905, XXIV, 792; 1917, XXX, 7.

(545) § 6. Outside Military Force Not to Enter State—Exception.—No armed military force from another State, Territory or District shall be permitted to enter the State for the purpose of doing military duty therein without the permission of the Governor, unless such force is part of the United States Army, or is acting under the authority of the United States.

Civ. '12, § 492; 1905, XXIV, 792; 1917, XXX, 7.

(546) § 7. Governor's Staff—Military Secretary.—The military staff of the Governor shall consist of the Adjutant General of the State, who shall have the rank of Brigadier General; three aides-de-camp, who shall be detailed from the officers of any organized militia and who, while so serving, shall have the rank of Colonel, and as many aides-de-camp with the rank of Lieutenant Colonel as the Governor may deem necessary. All of these aides-de-camp shall be appointed by the Governor, by and with the consent of the Senate, and shall hold office during his pleasure, but their commissions shall expire with the term of office of the Governor appointing them. The Governor may appoint as his Military Secretary any officer of the United States Army detailed for duty with the militia of this State, and such officer shall have the rank of Colonel and the title "Military Secretary to the Governor." Nothing in this Article shall be construed to deprive any officer now on the staff of the Governor of his commission prior to the end of the term for which he was appointed.

Civ. '12, § 493; 1908, XXV, 1103; 1910, XXVI, 610; 1905, XXIV, 792; 1916, XXIX, 658; 1917, XXX, 7.

(547) § 8. Powers of Governor as to Calling Out Militia.—The Governor shall have power, in case of insurrection, invasion, tumult, riot or breach of the peace, or imminent danger thereof, to order into the active service of the State any part of the militia that he may deem proper. When the National Guard of this State, or a part thereof, is called forth under the Constitution and laws of the United States, the Governor shall order out for service the active militia, or such part thereof as may be necessary, and if the number available be insufficient, he shall order out such part of the reserve militia as he may deem necessary. During the absence of organizations of the National Guard in the service of the United States their State designations shall not be given to new organizations.

Civ. '12, § 494; 1905, XXIV, 792; 1917, XXX, 7.

(548) § 9. Unorganized Militia to Be Mustered In—Organization—Equipment and Government.—The portion of the unorganized militia ordered out or accepted into the service, as indicated in Section 8 of this Article, shall be immediately mustered into the service of the State for one year, or such less period as the Governor may direct, and shall be organized into troops, batteries or companies, which may be arranged in squadrons, battalions or regiments, or assigned to organizations of the National Guard already existing. The Governor is authorized to appoint the officers necessary to commence or complete any organization thus created. Such new organization shall be equipped, disciplined and governed according to this Military Code and the military regulations of the State.

Civ. '12, § 495; 1905, XXIV, 792; 1917, XXX, 7.

(549) § 10. **When Governor May Proclaim Martial Law.**—Whenever any portion of the National Guard is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order will thereby be promoted, may by proclamation declare the county or city in which the troops are serving, or any specified portion thereof, to be in a state of insurrection.

Civ. '12, § 496; 1905, XXIV, 792; 1917, XXX, 7.

(550) § 11. **Active Duty of National Guard—Exception—Duty in Case of Civil Disorder—Distribution of Authority in Such Cases.**—The National Guard shall not be subject to active duty other than the specified drills, parades, practice marches, encampments, target practice, etc., except in case of war, or for preventing, repelling or suppressing invasion, insurrection or riot, or of aiding civil officers in the execution of the laws, in which cases the Commander in Chief, or, in his absence, the Adjutant General, shall order out for active service, by draft or otherwise, as many of the National Guard as necessity demands. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders in relation thereto of the civil officer calling it out and render the aid required. The orders of the civil officer may extend to a direction of the general or specific object to be accomplished and the duration of service by the National Guard, but the tactical direction of the troops, the kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil officers are left solely to the officers of the National Guard.

Civ. '12, § 497; 1905, XXIV, 792; 1917, XXX, 7.

(551) § 12. **Rules, Pay, Ration, Etc., of National Guard.**—When the National Guard are ordered out and while they are in active service, as heretofore specified, or are in camps of instruction, they shall be subject to the same rules and articles of war as troops of the United States, and during their term of service be entitled to the same pay, rations and allowance for clothing as are, or may be, established by law for the army of the United States. When called upon as a military organization to aid any civil officer in the execution of the laws or preservation of the peace, each officer shall receive the pay of his rank and each enlisted man of the National Guard shall receive the sum of one dollar and fifty cents per day and actual expenses while so engaged, to be paid by the Governor through the commanding officer of the organization so ordered out. When the National Guard and the Naval Militia are on duty together at the same time the commanding officer of the National Guard shall command the whole force.

Civ. '12, § 498; 1905, XXIV, 792; 1911, XXVII, 147; 1917, XXX, 7.

(552) § 13. **Attendance—Who Shall Be Deemed Deserters.**—Every member of the National Guard ordered out who does not appear at the time and place designated by the Commander in Chief, or his superior officer, or who does not produce a sworn certificate of physical disability from a physician in good standing to so appear, or excuse for unavoidable absence approved by his company, battalion and regimental commander, shall be taken to be a deserter and dealt with as prescribed by the laws of the State.

Civ. '12, § 499; 1905, XXIV, 792; 1917, XXX, 7.

(553) § 14. **Uniform.**—The uniform of the National Guard shall be the same as is now prescribed, or may hereafter be prescribed, for the army of the United States, with such distinctive mark or insignia as may be prescribed by the Secretary of War.

Civ. '12, § 500; 1905, XXIV, 792; 1908, XXV, 1103; 1917, XXX, 7.

(554) § 15. **Returns and Reports to War Department.**—The Adjutant General and the officers of the National Guard shall make such returns and reports to the Secretary of War, or to such officers as he may designate, at such times and in such form as the Secretary of War may from time to time prescribe.

Civ. '12, § 501; 1905, XXIV, 792; 1916, XXIV, 658; 1917, XXX, 7.

(555) § 16. **Militia Council—Duties—Meetings.**—There shall be for the State a Militia Council, consisting of the Adjutant General, and one officer of each regiment, one officer for the Coast Artillery Corps, and one officer from the Naval Militia appointed by the Governor; at least one of the officers so appointed shall be a company commander. The Militia Council shall recommend to the Governor, from time to time, such action as it may deem advisable relating to the Militiary Code, regulations, organizations, equipment, duty, and discipline of the National Guard, and it shall report on such matters as are referred to it by the Governor or the General Assembly of the State. The Militia Council shall audit the accounts of the Adjutant General and the disbursing officer. The Militia Council shall hold sessions in Columbia, at the call of the Governor, the President of the Council, or a majority of the Council, and shall serve without pay, but the expenses of the members in attending these sessions shall be allowed and paid out of the contingent fund of the Adjutant General.

Civ. '12, § 502; 1905, XXIV, 792; 1911, XXVII, 147; 1916, XXIX, 658.

(556) § 17. **Military Board—Compensation, Term and Duties—Regulations Regarding Allotment of Appropriation—Regulations as to Federal and State Property.**—There shall be for the State a Military Board, consisting of the Governor, the Adjutant General and three other commissioned officers of the National Guard, who shall be appointed by the Governor. In the first instance one member shall be appointed for one year, one for two years and one for three years, and thereafter members of the Military Board shall be appointed for three years. It shall be the duty of the Military Board to apportion the annual appropriation for the maintenance of the militia and to determine what organizations or purposes are entitled by law to share in said appropriation. No company, troop, battery, division, detachment or band shall participate in the annual allotment of such appropriation for the maintenance of the militia unless the proper officers of such organization shall have rendered the required reports and returns for the preceding year, and unless the drill reports of such organization show that there was an average attendance of not less than sixty per cent. of its enlisted strength present at the forty-eight drills required by the Federal authorities, and that such organization participated in the required camp of instruction or cruise. It shall be the duty of the Adjutant General to prepare a list of the Government property, Federal and State, that is short in each organization at its annual inspection. The cost of such

property found short in each organization shall be deducted from the annual allotment made by the Military Board to that particular organization, and the amount so deducted shall be expended by the Adjutant General in the purchase of new property of like kind and quality. It shall be the duty of the Adjutant General in such cases to order a Board of Inquiry to inquire into the responsibility for such losses, and whenever it shall appear from the findings of such Board of Inquiry that the losses are due to the fault or negligence of the responsible officer, it shall be the further duty of the Adjutant General to enter or cause to be entered a suit on the bond of such officer. The Adjutant General shall incorporate in his annual report a statement showing the property shortage of each organization, the amount paid by each organization for such property shortage, the disposition made of the funds so collected and any further action that may have been taken by him with reference to fixing the responsibility therefor and recovering the property so found short of its value.

Civ. '12, § 503; 1905, XXIV, 792; 1916, XXIX, 659; 1917, XXX, 7.

(557) § 18. **Inspection—Disbandment.**—There shall be held once in each year an inspection of all the organizations and the military property in their possession and all companies of infantry, cavalry and artillery, having less than seventy-five per cent. of their officers and enlisted men present at inspection, and that the same is in good condition for service shall be disbanded upon approval of the President.

Civ. '12, § 504; 1905, XXIV, 792; 1917, XXX, 7.

(558) § 19. **Procedure as to Disbursement of Allotment.**—As soon as practicable after the annual inspections are completed the Adjutant General shall file with the Comptroller General a certified list of all companies that have passed a satisfactory inspection, together with a certified statement, signed by a majority of the Military Board, showing how the annual appropriation has been apportioned and divided, and the *pro rata* share of each company enlisted thereto, whereupon the Adjutant General will issue warrants upon the Comptroller General in accordance with said certified statements and forward same direct to parties entitled thereto. Such certified statements shall show affirmatively that the respective organizations shown thereon as being entitled to a share of the annual appropriation have complied with all the requirements as to reports, returns, drills and other instructions, practice marches and encampments.

Civ. '12, § 505; 1905, XXIV, 792; 1917, XXX, 7.

(559) § 20. **Period of Enlistment—Enlistment Contract and Oath.**—Hereafter the period of enlistment in the National Guard shall be for six years, the first three years of which shall be in an active organization and the remaining three years in the National Guard Reserve, hereinafter provided for, and the qualifications for enlistment shall be the same as those prescribed for admission to the Regular Army: *Provided*, That in the National Guard the privilege of continuing in active service during the whole of an enlistment period and of reenlisting in said service shall not be denied by reason of anything contained in this Act. Hereafter all men enlisting for service in the National Guard shall sign an enlistment contract and take and subscribe to the oath prescribed in the following

Section of this Act. Enlisted men in the National Guard now serving under enlistment contracts which contain an obligation to defend the Constitution of the United States, and to obey the orders of the President of the United States, shall be recognized as members of the National Guard under the provisions of this Act for the unexpired portion of their present enlistment contracts. When any such enlistment contract does not contain such obligation, the enlisted man shall not be recognized as a member of the National Guard until he shall have signed an enlistment contract and taken and subscribed to the following oath of enlistment, upon signing which credit shall be given for the period already served under the old enlistment contract: "I do hereby acknowledge to have voluntarily enlisted this day of, 19. . . ., as a soldier in the National Guard of the United States and of the State of South Carolina, for the period of three years in service and three years in the reserve, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America, and to the State of South Carolina, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the President of the United States and of the Governor of the State of South Carolina, and of the officers appointed over me according to law, and the rules and articles of war."

Civ. '12, § 506; 1905, XXIV, 792; 1916, XXIX, 660; 1917, XXX, 7. -

(560) § 21. By-Laws of Company.—Violation Thereof.—Any Company of the organized militia may, by a vote of two-thirds of its members, form by-laws, rules and regulations not inconsistent with this Chapter, for the government and improvement of its members in military science and discipline; and such by-laws, rules and regulations shall be binding; but they may be altered, from time to time, as may be found necessary. For violation of by-laws, rules and regulations of associations organized pursuant to this Chapter, enlisted men, in addition to trial by a Military Court, may also be expelled from the organization to which they belong, by a vote of the majority of all its members and upon such action being confirmed in orders by the commanding officers of the regiment, battalion or squadron not part of a regiment, and in case of an organization not part of a regiment, battalion or squadron, by the officer to whose command it is attached, the name of such person shall be stricken from the roll of the organization of which he was a member, his certificate of membership shall be surrendered and cancelled, and he shall cease to be a member thereof, and his time of service in the same shall not be allowed.

Civ. '12, § 507; 1905, XXIV, 792.

(561) § 22. No Interference With Rights Under Charter or Special Acts—Exception.—Nothing in this Chapter shall be construed so as to annul, abridge or interfere with rights or privileges granted by special Acts or by charter passed heedlessly for the benefit of any organization now in existence: *Provided*, That any companies which have been disbanded or may be hereafter disbanded, shall not be entitled to enjoy any military rights granted by charter or Act of incorporation. And all Acts or parts of Acts granting such military rights to companies so disbanded are hereby repealed.

Civ. '12, § 508; 1905, XXIV, 792; 1917, XXX, 7.

(562) § 23. **Rules and Regulations for National Guard.**—The rules and articles of war, and general regulations for the government of the armies of the United States, shall apply to the government of the National Guard of this State.

Civ. '12, § 509; 1905, XXIV, 792; 1917, XXX, 7.

(563) § 24. **Who May Administer Oaths.**—Any commissioned officer shall have authority to administer oaths to military persons when such may be necessary, and the same penalties shall attach to false swearing in such cases as are now provided by law in case of perjury.

Civ. '12, § 510; 1905, XXIV, 792; 1917, XXX, 7.

(564) § 25. **Men Not to Be Arrested in Certain Cases.**—No officer of enlisted man shall be arrested by the civil authorities, except for treason, felony or breach of peace, while going to or returning from or attending upon any military duty, court-martial or court of inquiry which it is his duty to attend.

Civ. '12, § 511; 1905, XXIV, 792; 1917, XXX, 7.

(565) § 26. **"Company" and "Officer" Defined.**—The word company as used in this Chapter shall be understood to include a troop, battery, detachment of the hospital corps, or a band, and the word officer shall be understood to include commissioned officers only.

Civ. '12, § 512; 1905, XXIV, 792; 1916, XXIX, 660; 1917, XXX, 7.

(566) § 27. **Bond for Officers in Charge of Property—Possession of Armory Prerequisite to Mustering In of Company.**—All officers who are now or may hereafter become responsible for arms, uniforms, equipment, supplies or funds, either belonging to the State or furnished by the Government of the United States for use of the National Guard of this State, shall furnish a good and sufficient bond for one thousand dollars, that the said arms, uniforms, equipment, supplies or funds will be properly and duly expended or cared for as required by law, order or regulations, and that all such property and funds will be duly and properly accounted for and transferred to their successors whenever the said officer in any manner be relieved from said responsibility: *Provided*, That all companies now in service of the State shall furnish and maintain an armory suitable for the safe-keeping of arms, uniforms and equipments issued to such companies, and no company shall hereafter be mustered into service unless it shall have secured such armory, or the establishment of such armory be guaranteed. No company shall be equipped until such armory is provided; and any company failing to comply with the provisions of this Section shall be disbanded.

Civ. '12, § 513; 1905, XXIV, 792; 1908, XXV, 1104; 1917, XXX, 7.

(567) § 28. **Naval Militia Act Accepted—Naval Militia of South Carolina.**—The Act of Congress, approved February 16, 1914, entitled "An Act to promote the efficiency of the Naval Militia, and for other purposes," is hereby accepted by the State of South Carolina and the provisions of said Act, in so far as they are applicable to this State, are made a part of this Code. The Naval organizations of this State shall constitute a bat-

talion, to be known as the "Naval Militia of South Carolina," and which shall be subject to the laws governing the National Guard of South Carolina, in so far as they are applicable. The organization, armament and discipline of the Naval Militia of South Carolina shall be such as is now or may hereafter be prescribed by the Secretary of the Navy, and it shall be the duty of the Governor, after consultation with the Adjutant General and Inspector-Instructor of the Naval Militia, to make and publish such orders as may be necessary to conform such Naval Militia of South Carolina to that prescribed by the Secretary of the Navy, and such orders when duly made and published shall have the force and effect of laws. Officers and enlisted men now in the Naval Militia of South Carolina and all those hereafter entering will be required to take the following oath or affirmation: "I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States, and that I will serve them honestly and faithfully against all their enemies whomsoever."

Civ. '12, § 514; 1905, XXIV, 792; 1908, XXV, 1105; 1916, XXIX, 660; 1917, XXX, 7.

ARTICLE II.

The Adjutant General.

(568) § 1. **Adjutant General—Term and Compensation.**—There shall be an Adjutant General elected by the qualified electors of this State, at the same time and in the same manner and for the same term of office as the other State officers. His compensation shall be twenty-five hundred dollars per annum, and his rank that of Brigadier General.

Civ. '12, § 515; 1905, XXIV, 792; 1916, XXIX, 661; 1917, XXX, 8; 1919, XXXI, 4.

(569) § 2. **Bond of Adjutant General.**—The Adjutant General shall give bond to the State in an approved surety company in the sum of ten thousand (\$10,000) dollars, conditioned on the faithful performance of his duty, and the costs and expenses incurred by entering into such bond shall be paid out of the contingent fund of the Adjutant General.

Civ. '12, § 516; 1905, XXIV, 792; 1911, XXVII, 148; 1917, XXX, 7.

(570) § 3. **How Vacancy in Adjutant General's Office Filled.**—If a vacancy occur in the office of the Adjutant General, whether from death, resignation, disqualification or other cause, the Governor has the power to appoint some suitable person, who, on being duly qualified according to law, shall be entitled to enter upon and hold the office for the unexpired term of the former incumbent and shall be subject to all the duties and liabilities incident to the office and receive the compensation provided by law for the Adjutant General during his term of service.

Civ. '12, § 517; 1905, XXIV, 792; 1917, XXX, 7.

(571) § 4. **What Report of Adjutant General to Commander in Chief Shall Contain.**—The Adjutant General shall report annually to the Commander in Chief:

1. A statement of all moneys received or disbursed by him since his last report.

2. The number, condition and organization of the National Guard of the State.

3. Any suggestion which he may deem of importance to the military interests and condition of the State and the perfection of its military organizations.

The said annual report shall be printed and laid before the Legislature for its information. The Commander in Chief may require special reports from the Adjutant General at any time, upon any matter connected with the duties of his office or with military service of the State.

Civ. '12, § 518; 1905, XXIV, 792; 1917, XXX, 7.

(572) § 5. Duties of Adjutant General—To Formulate Plan of Camp of Instruction.—It shall be his duty:

1. To keep on file in his office all rolls, returns and reports made to him and records of all orders, letters or other official papers issued from his office.

2. To authenticate with his official seal all papers issued from his office which by law may require authentication under such seal.

3. To keep an account of all moneys received or disbursed by him.

4. To issue all orders of the Commander in Chief relating to the militia and to keep a record thereof.

5. In order that the National Guard of the State may receive the benefit of the funds provided by Congress, it shall be the duty of the Adjutant General of the State to submit a plan of proposed field or camp service of instruction for the ensuing year, with an estimate of funds required for payment, subsistence and transportation of the portion of the National Guard participating therein, said estimate to furnish the details and to be made out in the form required by instructions from the Secretary of War.

6. He shall make such regulations pertaining to the preparation of reports and returns and to the care and preservation of property for military purposes, whether belonging to the State or the United States, as in his opinion the conditions demand; such regulations to be operative and in force when promulgated in the form of general orders, circulars or letters of instructions.

7. He will perform such duties as pertain to the Adjutant General under the regulations and customs of the United States Army. He will superintend the preparation of all returns and reports required by the United States from the State and will perform all the duties prescribed for him in this Military Code.

8. He shall have the necessary forms prepared, printed and distributed to the commissioned officers of the National Guard. He shall also have the National Guard laws, and the rules and articles of war for the government of the United States Army published and a copy thereof sent to each commissioned officer, which shall be held by him as property of the State and delivered to his successor in office.

Civ. '12, § 519; 1905, XXIV, 792; 1917, XXX, 7.

(573) § 6. Adjutant General to Add Names to Confederate Rolls.—The Adjutant General, or the Clerk of the Historical Commission, are authorized and empowered to add to any of the Confederate Rolls, in his custody, such

names as shall appear by proper proof under oaths to have been omitted therefrom by oversight or otherwise; the proof furnished shall in each case be filed with and become a part of said Rolls.

Civ. '12, § 520; 1905, XXIV, 970; 1905, XXIV, 792.

(574) § 7. Inspector General—Appointment—Salary—Duties.—There shall be an Inspector General, with the rank of Major, who shall be assistant to the Adjutant General, and who shall be appointed and commissioned by the Governor upon the recommendation of the Adjutant General, and whose salary shall be fifteen hundred dollars.

The assistant to the Adjutant General shall aid the Adjutant General by the performance of such duties as may be assigned to him, and shall, in case of absence or inability of the Adjutant General, perform all or such portions of the duties of the Adjutant General as the latter may expressly delegate to him.

Civ. '12, § 521; 1905, XXIV, 792; 1910, XXVI, 610; 1916, XXIX, 661; 1917, XXX, 7.

(575) § 8. Adjutant General May Make Rules and Regulations for National Guard.—The Adjutant General, with the approval of the Commander in Chief, is hereby authorized to make such rules and regulations from time to time as he may deem expedient and when promulgated shall have full force and effect as the National Guard laws of the State. But the rules and regulations in force at the time of the adoption of this Code shall remain in force until new rules and regulations are approved and promulgated.

Civ. '12, § 522; 1905, XXIV, 792; 1917, XXX, 7.

ARTICLE III.

Disbursing and Property Officer.

(576) § 1. Property and Disbursing Officer—Duties—To Receive Federal Allotment—Bond—Compensation—Inspection of His Accounts and Records.—The Governor shall appoint, designate or detail, subject to the approval of the Secretary of War, an officer of the National Guard who shall be regarded as Property and Disbursing Officer for the United States. He shall receipt and account for all funds and property belonging to the United States in possession of the National Guard and shall make returns and reports concerning the same as may be required by the Secretary of War. The Secretary of War is authorized, on the requisition of the Governor, to pay to the Property and Disbursing Officer so much of its allotment out of the annual appropriation for the support of the National Guard as shall, in the judgment of the Secretary of War, be necessary for the purposes enumerated therein. He shall render, through the War Department, such accounts of Federal funds intrusted to him for disbursement as may be required by the Treasury Department. Before entering upon the performance of his duties as Property and Disbursing Officer, he shall be required to give good and sufficient bond to the United States, the amount thereof to be determined by the Secretary of War, for the faithful performance of his duties and for the safe-keeping and proper disposition of

the Federal property and funds entrusted to his care. He shall, after having qualified as Property and Disbursing Officer, receive pay for his services at a rate to be fixed by the Secretary of War, and such compensation shall be a charge against the whole sum annually appropriated for the support of the National Guard: *Provided*, That when traveling in the performance of his official duties, under orders issued by the proper authorities, he shall be reimbursed for his actual necessary traveling expenses, the sum to be made a charge against the allotment of the State: *Provided, further*, That the Secretary of War shall cause an inspection of the accounts and records of the Property and Disbursing Officer to be made by an Inspector General of the Army at least once each year: *And provided, further*, That the Secretary of War is empowered to make all rules and regulations necessary to carry into effect the provisions of this Section.

Civ. '12, § 524; 1905, XXIV, 792; 1917, XXX, 7.

(577) § 2. **Armorer—Salary—Duties—Assistance.**—The Adjutant General shall appoint an Armorer, who shall take charge of the State Armory and keep in order all the arms and ammunition therein, and whose salary shall be five hundred dollars per annum. The Armorer shall be required to work daily upon the public property in the State Arsenal or elsewhere, and shall be authorized to call for and obtain convict labor from the State Penitentiary to work at the said Arsenal whenever necessary, or to employ such labor at the penitentiary in doing work on the State arms and equipment.

The Armorer shall be responsible for the State property in the Arsenal, and shall keep an account of the same and of all receipts and issues.

Civ. '12, § 526; 1905, XXIV, 792; 1917, XXX, 7.

ARTICLE IV.

Organization of National Guard of State.

(578) § 1. **Of Whom National Guard to Consist.**—The National Guard shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years organized, armed and equipped, as hereinafter provided, and of commissioned officers between the ages of twenty-one and sixty-four years.

Civ. '12, § 528; 1905, XXIV, 792; 1916, XXIX, 661; 1917, XXX, 7.

(579) § 2. **Organization of National Guard Same as That of United States Army—No Other Troops to Be Maintained—Provisos—Quota of Enlisted Men—Provisos.**—Except as otherwise specifically provided herein, the organization of the National Guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the regular army, subject in time of peace to such general exceptions as may be authorized by the Secretary of War. And the President may prescribe the particular unit or units, as to the branch or arm of service, to be maintained in order to secure a force which, when combined, shall form complete higher tactical units.

No other troops shall be maintained in time of peace other than is authorized in accordance with the organization prescribed under the Act of Congress of June 3, 1916: *Provided*, That nothing contained in this Chapter shall be construed as limiting the rights of this State in the use of the National Guard within its borders in time of peace: *Provided, further*, That nothing contained in this Chapter shall prevent the organization and maintenance of State police or constabulary.

The number of enlisted men of the National Guard to be organized under this Act of Congress within one year from its passage shall be for this State in the proportion of two hundred such men for each Senator and Representative in Congress from this State, each year thereafter in the proportion of not less than fifty per centum until a total peace strength of not less than eight hundred enlisted men for each Senator and Representative in Congress shall have been reached: *Provided*, That this shall not be construed to prevent this State from organizing the full number of troops required in less time than is specified in this Section, or for maintaining existing organizations if they shall conform to such rules and regulations regarding organization, strength and armament as the President may prescribe.

Civ. '12, § 529; 1905, XXIV, 792; 1916, XXIX, 662; 1917, XXX, 7.

(580) § 3. Organization, Armament and Discipline to Be Same as for United States Army.—The organization, armament and discipline of the National Guard of South Carolina shall be the same as that which is now or may be hereafter prescribed for the Regular and Volunteer Armies of the United States.

Civ. '12, § 530; 1908, XXV, 1105; 1917, XXX, 7.

(581) § 4. Commander in Chief to Promulgate Orders to Conform National Guard in Organization, Etc., to United States Army.—It shall be the duty of the Commander in Chief to make and publish such orders as may be necessary to conform said National Guard of South Carolina in organization, armament and discipline to that prescribed for the armies of the United States; and such orders, when duly made and published, shall have the force and effect of law.

Civ. '12, § 531; 1905, XXIV, 792; 1908, XXV, 1105; 1917, XXX, 7.

ARTICLE V.

Commissioned Officers of the National Guard.

(582) § 1. Commissioned Officers.—All officers shall be commissioned by the Governor, but no one shall be commissioned unless the conditions set forth in the following Sections have been complied with and no one shall be recognized as an officer unless he shall have been duly commissioned and shall have taken the oath of office.

Civ. '12, § 532; 1905, XXIV, 792; 1917, XXX, 7.

(583) § 2. Requirements for Commissioned Officers.—Commissioned officers must be citizens of the United States, between the ages of 21 and 64.

No person who has been expelled or dishonorably discharged from any military or naval organization shall be commissioned as an officer. No person shall be commissioned unless he shall possess the additional qualifications herein prescribed for the particular office to which he is commissioned. A Brigadier General at the time of his appointment must be an officer in active service in the National Guard of this State of the grade of field officer, and for five successive years immediately preceding his appointment he must have been in active service in said National Guard as a commissioned officer. A Colonel of the line, at the time of his appointment, must either be an officer in active service in the National Guard of this State and for three successive years immediately preceding his appointment have been in active service in said National Guard as a commissioned officer, or, if not in active service at the time of his appointment must have had prior service of at least six years in the National Guard of this State or in the military or naval forces of the United States, or in all combined, as a commissioned officer. A Lieutenant Colonel or Major of the line, or a Commander, or a Lieutenant Commander in the Naval Militia, must either be an officer in active service and for two successive years immediately preceding his appointment must have been in active service in the National Guard or Naval Militia of this State as a commissioned officer, or, if not in active service at the time of appointment, must have had prior service of at least six years in the National Guard or Naval Militia of this State, or in the military or naval forces of the United States, or in all combined, as a commissioned officer. Regimental and battalion staff officers must have served one year in the National Guard or Naval Militia of this State before they can be appointed as such. Officers of the staff corps and departments, except medical officers and the Judge Advocate, must be selected from the commissioned officers in active service in the National Guard or Naval Militia of this State, who have been in active service in such National Guard or Naval Militia as commissioned officers for not less than five years. The Judge Advocate must be a counselor at law of the Supreme Court of this State of at least five years' standing. Medical officers of the National Guard must be appointed in the manner prescribed by the War or Navy Departments. A Chaplain must be a regularly ordained minister of some religious denomination.

Civ. '12, § 533; 1905, XXIV, 792; 1916, XXIX, 662.

(584) § 3. Commissioned Officers Now in Service Continued Without New Commission — Oath—Classification.—Commissioned officers of the National Guard now serving under commissions regularly issued shall continue in office, as officers of the National Guard, without the issuance of new commissions: *Provided*, That said officers have taken, or shall take and subscribe to the following oath of office: "I, ..., do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of South Carolina, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and the Governor of the State of South Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well

and faithfully discharge the duties of the office of, in the National Guard of the United States and of the State of South Carolina, upon which I am about to enter. So help me, God."

Persons hereafter commissioned as officers of the National Guard shall not be recognized as such under any of the provisions of this Chapter unless they shall have been selected from the following classes and shall have taken and subscribed to the oath of office prescribed in the preceding paragraph: Officers or enlisted men of the National Guard; officers of the reserve or unassigned list of the National Guard; officers, active or retired, and former officers of the United States Army, Navy and Marine Corps; graduates of the United States Military and Naval Academies and graduates of schools, colleges and universities where military science is taught under the supervision of an officer of the Regular Army, and, for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein.

Civ. '12, § 540; 1905, XXIV, 792; 1917, XXX, 7.

(585) § 4. Examination of Officers.—The provisions of this Chapter shall not apply to any person hereafter appointed an officer of the National Guard unless he shall have successfully passed such tests as to his physical, moral and professional fitness as the President shall prescribe. The examination to determine such qualifications for commission shall be conducted by a Board of three commissioned officers appointed by the Secretary of War from the Regular Army or the National Guard, or both.

Civ. '12, § 534, 535; 1905, XXIV, 792; 1916, XXIX, 663; 1917, XXX, 7.

(586) § 5. How Vacancies Filled.—All vacancies occurring in any grade of commissioned officers in any organization of the military service of the United States and composed of persons drafted from the National Guard, shall be filled by the President, as far as practicable, by the appointment of persons similarly taken from said Guard, and in the manner prescribed by law for filling similar vacancies occurring in the voluntary forces.

All vacancies occurring in any grade of commissioned officers in any organization called into service of the United States under Section 8, Article I of the Constitution of the United States, shall be filled by appointment by the Governor, upon recommendation of the commanding officer of said organization.

1917, XXX, 7.

(587) § 6. How Officers Selected.—The colonels and lieutenant colonels of regiments shall be elected by the field and company officers of their respective regiment. All other field officers shall be elected by the company officers of their respective organizations or units. The captains and lieutenants of troops, batteries or companies shall be elected by the members of these organizations who shall have performed, during the period not more than twelve months immediately preceding the election, at least sixty per cent. of the duty required of them, and who shall not be indebted at the time to the civil association of such troops, battery or company, organized as provided in this Chapter: *Provided*, Staff officers, including officers of the pay, inspection, subsistence and medical departments, hereafter appointed, shall have had previous military experience, and shall hold their

positions until they shall have reached the age of sixty-four years, unless retired prior to that time, by reason of resignation, disability or for cause, to be determined by court-martial legally convened for that purpose, and that vacancies among said officers shall be filled by appointment from the officers of the militia of South Carolina.

Civ. '12, § 536; 1905, XXIV, 792; 1910, XXVI, 611; 1917, XXX, 7; 1920, XXXI, 1116.

(588) § 7. How Brigadier General and Certain Other Officers Selected.—The Brigadier General shall be appointed by the Governor, upon the recommendation of a majority of the field officers of the line of the National Guard. Officers of the staff corps and departments, the extra officers allowed regiments and battalions for staff duty, veterinarians and chaplains, shall be appointed by the Governor, upon the recommendation of the commanding officer on whose staff they are to serve.

Civ. '12, § 537; 1905, XXIV, 792; 1911, XXVII, 148; 1917, XXX, 7.

(589) § 8. Who Shall Issue Orders for Election.—The Governor shall issue the orders for the election of colonels and lieutenant colonels of regiments, for the election of the majors of separate battalions and squadrons, and also for the election of the captains and lieutenants of separate troops, batteries or companies. Commanding officers of regiments shall issue the orders for the election of all officers of their respective regiments. Commanding officers of separate battalions or squadrons shall issue the orders for the election of the company officers of their respective organizations.

Civ. '12, § 538; 1905, XXIV, 792; 1916, XXIX, 664; 1917, XXX, 7.

(590) § 9. Procedure for Election of Officers.—The ballots for the election of the field officers will be forwarded, on the date specified in the order for the election, by mail to the officers ordering the election and at the same time a copy of the said ballot shall be mailed direct to the Adjutant General.

For the election of the company officers three managers of election shall be appointed by the company commander, who shall be duly sworn to perform the duty of managers of said election without partiality, favor or affection.

The said managers shall open the polls at the designated time and place specified in the order for the election and as soon as all the electors have cast their votes, or at the expiration of one hour from the opening of the polls, they shall at once publicly canvass the votes and declare the result of the election. A majority of the votes of all persons present voting at an election shall be necessary for a choice. The returns of said election, duly signed and sealed by the managers, together with the ballots and tally sheets, shall be mailed to the officer ordering the election, who will, five days from the receipt of the returns, announce in General Orders the result of said election and who shall also forward the ballots and tally sheets to the Adjutant General. Any contest or protest as to any election must be made within five days from the day of the election to the Adjutant General, whose decision in such cases, *when approved by the Governor*, shall be final.

Civ. '12, § 539; 1905, XXIV, 792; 1917, XXX, 7.

(591) § 10. Efficiency Board—Duties—How Commissions Vacated—National Guard Reserve—Who Shall Appoint Efficiency Boards—Findings to Be Passed on by Governor.—At any time the moral character, capacity and general fitness for the service of any National Guard Officer may be determined by an Efficiency Board of three commissioned officers, senior in rank to the officer whose fitness for service shall be under investigation, and if the findings of such Board be unfavorable to such officer and be approved by the official authorized to appoint such officer, he shall be discharged. Commissions of officers of the National Guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an Efficiency Board, or pursuant to sentence of a court-martial. Officers of said Guard rendered surplus by the disbandment of their organizations shall be placed in the National Guard Reserve. Officers may, upon their own application, be placed in the said Reserve.

(a) In organizations of the National Guard not in Federal Reserve, the Efficiency Board should be appointed by the Governor.

(b) In organizations of the National Guard in the service of the United States, the Efficiency Board should be appointed by the authority competent to convene a court-martial for the trial of the officer.

(c) In either case, the findings of the Efficiency Board are subject to the approval or disapproval of the Governor.

Civ. '12, § 511; 1905, XXIV, 792; 1917, XXX, 7.

(592) § 11. Removal of Officers—Examinations for Fitness—Surplus Officers to Have Honorable Discharge.—A commissioned officer cannot be removed from office without his consent, except by the Senate, upon the recommendation of the Governor, or the sentence of a general court-martial: *Provided*, That as soon as practicable after the adoption of this Code elections shall be ordered for the election of all elective officers as herein prescribed, and that thereafter no election shall be ordered unless for the purpose of filling an existing vacancy except upon petitions, stating good and sufficient grounds for the necessity for a change, signed by at least a majority of those qualified to vote at the election: *Provided*, That any commissioned officer who has become or who shall become unfit or incompetent, and, therefore, incapable of performing the duties of his office, shall, upon the recommendation of his commanding officer, be ordered before a board of officers convened by the Governor, whose duty it shall be to determine the facts as to the nature and cause of incapacity of such officer and to report their finding in the case to the Governor, stating cause of incapacity, unfitness or incompetency, if such be proved to exist, and if he approves such findings, said officer shall be discharged from the service: *Provided, further*, That the Governor shall honorably discharge such officers as may be rendered surplus by the disbandment, muster out, consolidation or reorganization of their command.

Civ. '12, § 542; 1905, XXIV, 792; 1908, XXV, 1106; 1916, XXIX, 664.

(593) § 12. Compensation of Certain Officers.—Certain commissioned officers on the active list belonging to organizations of the National Guard of this State participating in the apportionment of the annual appropriation for the support of the National Guard, shall receive compensation for

their services, except during periods of service for which they may become lawfully entitled to the same pay as officers of corresponding grade of the Regular Army, as follows, not to include longevity pay: A Captain five hundred dollars per year and the same pay shall be paid to every officer of higher rank than that of Captain; a First Lieutenant two hundred and forty dollars per year, and a Second Lieutenant two hundred dollars per year. Regulations to be prescribed by the Secretary of War shall determine the amount and character of service that must be rendered by officers to entitle them to the whole or specific part of the maximum pay hereinbefore authorized: *Provided*, That all staff officers, aides-de-camp and chaplains shall receive not to exceed one-half of the pay of a Captain, except that Regimental Adjutants and Majors and Captains in command of machine gun companies, ambulance companies, field hospital companies or sanitary troops shall receive the pay hereinbefore authorized for a Captain.

1917, XXX, 7.

(594) § 13. Officers' Reserve Corps—How Constituted—Regulations.—

There shall be an Officers' Reserve Corps for commissioned officers who have served in the active militia. This corps shall include those commissioned officers who are carried on the unassigned list at the date this Act takes effect and such others as may be transferred thereto in accordance with the provisions of this Act. Any officer of the militia on active duty may be transferred by the Governor to the Officers' Reserve Corps at his own request, if approved by the commanding officer of his organization. Any person who has served as a commissioned officer in the active militia or the army, navy or marine corps of the United States and has been honorably discharged therefrom may be commissioned in the Officers' Reserve Corps by the Governor with the highest rank previously held by him. Time spent in the Officers' Reserve Corps shall not be credited to an officer in the computation of seniority, length of service or the privileges and exemptions pertaining thereto. Regulations, retirements and discharges of officers in the Officers' Reserve Corps shall be made in the same manner as provided by this Chapter for officers on active duty. Officers of the active militia who shall be rendered surplus by the abolishing of their office shall be withdrawn from active duty and placed in the Officers' Reserve Corps.

1916, XXIX, 658.

(595) § 14. Custom and Usage of U. S. Army or Navy to Decide Matters Not Herein Provided For.—All matters relating to the organization, discipline and government of the National Guard or Naval Militia not otherwise provided for in this Act or in General Regulations, shall be decided by the custom and usage of the United States Army or United States Navy.

Civ. '12, § 506; 1905, XXIV, 792; 1916, XXIX, 667; 1917, XXIX, 7.

(596) § 15. Retired List.—Any officer of the National Guard who shall have served as such for a continuous period of six years may, upon his own request, be placed upon the retired list and withdrawn from active service and command by the Governor; and any officer who shall have served as such for the continuous period of ten years may, upon his own request, be

placed upon the retired list with rank one grade higher than the rank held by him on date of retirement and shall be withdrawn from actual service and command.

Civ. '12, § 543; 1905, XXIV, 792; 1908, XXV, 1107; 1917, XXX, 7.

(597) § 16. Medical Examination Required.—Every officer, before he shall be commissioned, and every person before he shall enlist or reenlist, shall be examined physically by a medical officer of the National Guard or a Naval Militia, or where the services of the same are not available, by a competent civilian physician. Such examination to be as prescribed by the War or Navy Departments.

Civ. '12, § 547; 1905, XXIV, 792; 1908, XXV, 1107; 1916, XXIX, 665; 1917, XXX, 7.

ARTICLE VI.

Enlisted Men of the National Guard.

(598) § 1. Who May Enlist.—Any man who is a citizen of the United States, or has declared his intention to become a citizen, if more than eighteen and less than forty-five years of age, able-bodied, free from disease, of good character and temperate habits, may be enlisted in the National Guard of the State, under the restrictions of this Article, for a term of not less than two years; except that men may be enlisted as musicians if more than sixteen years of age. No minor shall be enlisted without the written consent of his parent or guardian. A man who has been expelled or dishonorably discharged from any military organization of the State or United States shall not be eligible for enlistment or reenlistment unless he produce the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged, and of the commanding officer who approved such expulsion or issued such dishonorable discharge. Men who have been discharged by reason of disbandment may be enlisted, and shall then receive credit for the period served at the time of such disbandment. A man discharged for physical disability shall, if such disability cease, and he again enlists, or a man discharged upon his own request, shall, if he again enlist, receive credit for the period served prior to such discharge: *Provided*, That in order to make such service continuous, for computing continuous service pay, he shall have again enlisted within three months after his discharge. Bandmasters, Drum Majors, Chief Trumpeters, Veterinary Surgeons, members of the hospital corps and musicians may be enlisted as such.

Civ. '12, § 544; 1905, XXIV, 792.

(599) § 2. Reenlistment.—Any man who has served the period of his original enlistment may be reenlisted for a like term of two years. No man above the age of forty-five years shall be reenlisted except by permission of the commanding officer of the regiment to which the organization is attached, or in case of separate battalions, squadrons or companies, by the commanding officer thereof.

Civ. '12, § 545; 1905, XXIV, 792.

(600) § 3. **Regulations as to Enlistments.**—Every person who enlists or reenlists shall sign and take the oath prescribed in Section (554) of this Code, but no enlistment shall be valid unless it be approved by the commanding officer of the organization to which the troop, battery or company is attached, or of which it forms a part. A person making a false oath as to any statement contained in such enlistment paper shall, upon conviction, be deemed guilty of perjury. Muster-in rolls and enlistment papers shall be made in triplicate, one of which shall be retained at headquarters of the regiment. The original shall be forwarded to the office of the Adjutant and Inspector General within ten days from any muster or enlistment of men, and one copy shall be retained by the company commander.

Civ. '12, § 546; 1908, XXV, 1107; 1905, XXIV, 792.

(601) § 4. **Transfer of Enlisted Men and Noncommissioned Officers.**—Enlisted men may be transferred upon their own application in the same regiment, from one company or troop to another, by the commanding officer of such regiment, battalion or squadron; from one regiment, battalion or squadron not part of a regiment, separate troop, battery or separate company, to another in the brigade by the commanding officer of the brigade. Noncommissioned officers must be returned to the ranks before they can be transferred.

Civ. '12, § 548; 1905, XXIV, 792; 1917, XXIX, 7.

(602) § 5. **Who to Warrant Noncommissioned Officers.**—Commanding officers of regiments, and of battalions and squadrons not part of regiments, shall appoint and warrant the noncommissioned staff officers of their respective regiments, battalions or squadrons, and they shall, in their discretion, warrant the noncommissioned officer of the troop, batteries and companies of their respective regiments, battalions and squadrons from the members thereof, upon the written nomination of the commanding officers of the troops, batteries and companies, respectively. In troops, batteries and companies not part of a regiment, battalion, or squadron, the noncommissioned officers shall be warranted by the commanding officer of the brigade, in his discretion, from the members thereof, upon the written nomination of the commanding officer of the troop, battery, or company.

Civ. '12, § 549; 1905, XXIV, 792; 1917, XXIX, 7.

(603) § 6. **Reduction to Ranks of Noncommissioned Officers.**—The officer warranting a noncommissioned officer shall have power to reduce to the ranks, upon the recommendation of the company commander, for good and sufficient reasons, the noncommissioned officers named in this Section; but such as were enlisted as noncommissioned officers shall be discharged. Noncommissioned officers who shall be dropped vacate their positions.

Civ. '12, § 550; 1905, XXIV, 792; 1917, XXX, 7.

(604) § 7. **Transfer of Enlisted Men—When Furloughed to Reserve—When to Be Deemed Deserters.**—An enlisted man who shall remove his residence to such distance from the armory of his organization as to render it impracticable for him to perform his duties properly, shall be transferred to a unit of the National Guard located at the place of his new residence: *Provided*, That when there is no organization of the National

Guard located at his new residence the soldier shall be furloughed to the National Guard Reserve by order of the Governor, or who, after due diligence cannot be found, shall be dropped from the roll as a deserter, or who shall be convicted of a felony, may be dropped from the roll of his organization by order of the commanding officer of the brigade, regiment, battalion or squadron, not part of a regiment.

Civ. '12, § 551; 1905, XXIV, 792; 1917, XXX, 7.

(605) § 8. Terms of Service of Enlisted Men—Discharge.—All enlisted men of the National Guard shall be held to service until they shall be regularly discharged. No discharge shall be ordered before the expiration of a soldier's period of enlistment, except: :

(a) By order of the President or the Secretary of War.

(b) By sentence of a General Court-martial.

(c) By direction of the Governor on account of physical disability; on account of a sentence of imprisonment by a civil court, whether suspended or not; on account of a *bona fide* permanent change of residence to another State, Territory, or the District of Columbia; or in the case of a soldier about to be furloughed to the National Guard Reserve, whose previous service has not been honest and faithful; or for the purpose of enlisting in the regular army, navy or marine corps.

Civ. '12, § 553; Civ. '12, 552; 1905, XXIV, 792; 1916, XXIX, 665; 1917, XXX, 7.

(606) § 9. National Guard Reserve—Pay.—Subject to such rules and regulations as the President may prescribe, a National Guard Reserve shall be organized in this State, and shall consist of such organization, officers and enlisted men as the President may prescribe, or members thereof may be assigned as reserves to an active organization of the National Guard: *Provided*, That members of said reserve, when engaged in field or coast defense training with the active National Guard, shall receive the same Federal pay and allowances as officers and enlisted men of like grade on the active list of said Guard when likewise engaged: *Provided, further*, That except as otherwise specifically provided in this Act, no commissioned or enlisted reserves shall receive any pay or allowances out of any appropriation made by Congress for National Guard purposes.

When members of the National Guard and the enlisted reserve shall have been brought into the service of the United States in the time of war, there shall be immediately organized, either from enlisted reserve or from the unorganized militia, one reserve battalion for each regiment of infantry and cavalry, or each nine batteries of field artillery or each twelve companies of coast artillery brought into the service of the United States, and such reserve battalion shall constitute the fourth battalion of any such regiment or twelve companies of coast artillery. Reserve battalions shall consist of four companies of such strength as may be prescribed by the President of the United States. When the members of three or more regiments of the National Guard shall have been brought into the service of the United States the reserve battalions of such regiments may be organized into provisional regiments and higher units. If for any reason there shall not be enough voluntary enlistments to keep the reserve battalions at the prescribed strength, a sufficient number of the unorganized militia shall be drafted

into the service of the United States to maintain each of such battalions at the proper strength. As vacancies occur from death or other causes in any organization in the service of the United States and composed of men taken from the National Guard, men shall be transferred from the reserve battalion to the organization in the field, so that such organizations may be maintained at war strength. Officers for the reserve battalion provided for herein shall be drafted from the National Guard Reserve or Coast Artillery companies of the National Guard of the Officers' Reserve Corps. Officers and noncommissioned officers returned to the home stations because of their inability to perform actual field service may be assigned to reserve battalions for duty, and all soldiers invalided home shall be assigned to and carried on the rolls of the reserve battalion until returned to duty or until discharged.

1917, XXX, 7.

(607) § 10. Compensation of Enlisted Men—Drill Attendance Condition Precedent to Drawing Pay—Computation of Compensation—Disbursement.—Each enlisted man on the active list belonging to an organization of the National Guard of this State, participating in the apportionment of the annual appropriation for the support of the National Guard shall receive compensation for his services, except during periods of service for which he may become lawfully entitled to the same pay as an enlisted man of corresponding grade in the Regular Army, at a rate equal to 25 per centum of the initial pay now provided by law for enlisted men of corresponding grade of the Regular Army: *Provided*, That such enlisted man shall receive the compensation herein provided if he shall have attended not less than forty-eight regular drills during any one year, and a proportionate amount for attendance upon a lesser number of such drills, not less than twenty-four; and no such enlisted man shall receive any part of said compensation except as authorized by this proviso and the three provisos next following: *Provided, further*, That the compensation provided herein shall be computed for semiannual periods beginning the first day of January and the first day of July of each year, in proportion to the number of drills attended; and no compensation shall be paid to any enlisted man for the first semiannual period of any year unless he shall have attended during said period at least twenty-four drills, but any lesser number of drills attended during said period shall be reckoned with the drills attended during the second semiannual period in computing the compensation, if any, due him for that year: *Provided, further*, That when any man enters into an enlistment other than an immediate reenlistment, he shall be entitled to proportional compensation for that year if during the remainder of the year he shall attend a number of drills whose ratio to twenty-four is not less than the ratio of the part of the year so served to the whole year; and when any man's enlistment shall expire the compensation, if any, to which he may be entitled shall be determined in like manner: *Provided, further*, That periods of any actual military duty equivalent to the drills herein prescribed (except those periods of service for which members of the National Guard may become lawfully entitled to the same pay as officers and enlisted men of the corresponding grade in the Regular Army) may be accepted as service in lieu of such drills when so provided by the Secretary of War.

All amounts appropriated for the purpose of this and the last preceding Section shall be disbursed and accounted for by the officers and agents of the Quartermaster corps of the army, and all disbursements under the foregoing provisions of this Section shall be made as soon as practicable after the thirty-first day of December and the thirtieth day of June of each year upon pay rolls prepared and authenticated in the manner to be prescribed by the Secretary of War: *Provided*, That stoppages may be made against the compensation payable to any officer or enlisted man hereunder to cover the cost of public property lost or destroyed by and chargeable to such officer or enlisted man.

1917, XXX, 7.

ARTICLE VII.

South Carolina National Guard in the City of Charleston.

(608) § 1. "Board of Officers of South Carolina National Guard in the City of Charleston"—How Composed—Continuation of Corporation and Corporate Privileges—Use and Dedication of Citadel Green.—The corporation heretofore known as the "Board of Field Officers of the Fourth Brigade, South Carolina Militia," and subsequently as the "Board of Field Officers, Fourth Brigade, South Carolina Volunteer Troops," and subsequently thereto as "The Board of Officers of South Carolina Volunteer Troops in the City of Charleston," shall hereafter be known and styled "The Board of Officers of South Carolina National Guard in the City of Charleston;" and shall consist of a colonel or other officer in the City of Charleston commanding the troops hereafter mentioned, and the commanding officers of the following companies now forming a part of the National Guard of the State of South Carolina within the limits of the City of Charleston, to wit: The German Fusileers, Irish Volunteers, Washington Light Infantry, German Artillery, Lafayette Artillery, Sumter Guards and Palmetto Guards, and of such one or more of them as shall continue to exist.

The said corporation so composed shall continue to be and shall be a body politic and corporate, for the purpose of holding all property, both real and personal, now owned or hereafter to be acquired by the said corporation for the benefit of the companies hereinbefore designated.

The said corporation, so composed, shall continue to take, purchase and hold property, both real and personal, for the benefit of the companies hereinbefore designated, and the same to pledge, sell and transfer from time to time on such terms and under such conditions, and subject to such regulations as may be prescribed by said corporation.

That all of the property, real and personal, choses in action and assets of the corporation created by the Act of January 4, 1894, and its predecessors, is hereby vested in the corporation hereby created as the successor of the said several corporations: *Provided, however*, That the property known as Marion Square, otherwise called the Citadel Green, now vested in said corporation as constituted by this Article, shall forever be kept by it as a place for the military exercises of the companies hereinbefore designated: *And provided, further*, That the Corps of Cadets of the State Military College shall have the right to use the said Marion Square, otherwise

called the Citadel Green, as a place for military exercise, and recreation, under such regulations as may be prescribed by the Board of Visitors thereof.

The said corporation, hereby created, shall have a common seal, and shall have the right to sue and be sued in the courts of this State.

The said corporation, hereby constituted, is hereby declared, recognized and confirmed as the successor of the original corporators; and all acts done by them or by any persons heretofore acting as successors of said original corporations in their corporate capacity as field officers of the Fourth Brigade in their several said corporate capacities, are hereby confirmed.

Civ. '12, § 554; 1905, XXIV, 792; 1917, XXX, 7.

(609) § 2. Tax to Be Levied for Above Board—Distribution and Expenditure of Funds.—The County Board of Commissioners of Charleston County are hereby authorized and directed to levy an annual tax of one-eighth of one mill on all the taxable property in the City of Charleston, the same to be collected by the County Treasurer of Charleston County, for the benefit of, and to be paid over to, the Board of Officers of South Carolina National Guard in the City of Charleston. The funds arising from the said levy shall be distributed by the said Board among the companies of the said South Carolina National Guard in the City of Charleston, and the Charleston Light Dragoons in proportion to the average attendance of such drills and parades, as may be designated by the said Board. The moneys thus appropriated shall be expended by said companies only for the purchase of arms, ammunition, equipment and uniforms and for such other expenses as may be necessary for the military efficiency of the said companies; and the company commander shall, on the 15th day of September of each year, make a full report of the said expenditures to the commanding officer of the South Carolina National Guard in the City of Charleston, who shall forward the same to the Adjutant General: *Provided*, That one-tenth of the amount collected by the said levy shall be paid by the Board of the commanding officer of the colored troops in the City of Charleston to be by him distributed to the companies of his command in the City of Charleston.

Civ. '12, § 555; 1905, XXIV, 792; 1916, XXIX, 931; 1917, XXX, 7.

ARTICLE VIII.

Arms, Parades, Drills, Etc.

(610) § 1. Uniform, Armament and Equipment of Units of National Guard—No Military Property to Be Lent.—Each regularly organized unit of the National Guard shall be furnished, through the property and disbursing officer of the United States, with such arms, uniforms and equipments, as are required upon the written requisitions of the commanding officers of such units, respectively, approved by the regimental commander. The arms and equipments so furnished to any organization of the National Guard shall continue to be the property of the United States, to be used for military purposes only, and shall be returned whenever called for by proper authority.

It shall be unlawful, and it is hereby forbidden, for any officer of the National Guard or other person responsible for arms, equipment or other military property to loan the same under any circumstances whatsoever.

Civ. '12, § 556; 1905, XXIV, 792; 1917, XXX, 7.

(611) § 2. Regulations Concerning Care and Use of Military Property.

—Any officer who shall receive, according to the provisions of this Article, any arms, equipment, or other military property shall distribute the same to his command as he may deem proper; taking vouchers therefor. All property so distributed shall remain in the armory of the command and shall not be removed therefrom, except by permission of the commanding officer. Every officer or enlisted man of any company of the National Guard to whom any arms, equipment or other military property shall be so delivered, shall be held personally responsible for its care, safe-keeping and return. He shall use the same for military drills, parades and musters only; and upon receiving a discharge or otherwise leaving the military service, or upon the demand of his commanding officer he shall forthwith surrender and deliver up the said arms and equipment, together with all other military property that may be in his possession, to the said commanding officer, in as good order and condition as the same were at the time he received them, reasonable use and ordinary wear thereof excepted.

Civ. '12, § 557; 1905, XXIV, 792; 1917, XXX, 7.

(612) § 3. Unlawful Disposition and Misuse of Military Property—Penalty—Repossession of Property Wrongfully Held.—Any officer or enlisted man who shall, contrary to the lawful orders of the proper officer, retain in his possession or control any arms, equipments, or other articles of military property belonging to the State of the United States, or who shall wilfully or maliciously destroy or injure such property, or who shall, when not on duty, use or wear such property without permission of his commanding officer, shall be tried therefor by a Magistrate, and, upon conviction, shall be fined not exceeding one hundred (\$100.00) dollars or imprisoned not exceeding thirty (30) days. Whenever such military property shall be found in the custody or possession of other persons without right, any officer shall take possession of the same.

Civ. '12, § 558; 1905, XXIV, 792; 1917, XXX, 7.

(613) § 4. Same—How Money Recovered to Be Used.—Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demands made by a commissioned officer of the National Guard, or in any manner pawn or pledge any arms, uniforms, equipments or other military property, issued under the provisions of this Chapter, and any person who shall wear any uniform or any device, strap, knot or insignia of any design or character used as a designation of grade, rank or office, such as are by law or by general regulations duly promulgated, prescribed for the use of the National Guard or similar thereto, except members of the army and navy of the United States and the National Guard of this or any other State, shall be tried therefor by a Magistrate, and, upon conviction thereof, shall be fined not exceeding one hundred (\$100.00) dollars or imprisoned not exceeding thirty (30) days.

All money recovered by any action or proceeding under this or the preceding Section shall be paid to the Adjutant General, who shall apply the same to the use of the National Guard.

Civ. '12, § 559; 1905, XXIV, 792; 1917, XXX, 7.

(614) § 5. Other Officers in Possession of Military Property Not to Leave Service Until it Has Been Accounted For—Liability in Certain Cases.—Any other officer receiving public property for military use shall be accountable for the article so received by him, and shall not be discharged or allowed to resign from the service until he has returned to the Adjutant General a receipt from his successor in command, or a proper accounting officer for the articles issued to him, in good order of condition, or has shown to the Adjutant General by satisfactory proof, or by action of a Board of Survey, that any article not so accounted for has been properly expended in the service or injured, lost or destroyed without any fault or neglect on his part; or if lost or wilfully injured or destroyed through the misconduct of any person, that reasonable efforts have been made by him to recover or prosecute for the same. In addition, he shall be liable to make good to the State or United States all such property so injured, lost or destroyed by any neglect or default on his part, and for the recovery of which he has made no reasonable effort.

Civ. '12, § 560; 1905, XXIV, 792; 1917, XXX, 7.

(615) § 6. Parade, Drills, Etc.—Regimental, Brigade, and Battalion commanders may order out their respective commands, or any part of them, for parade, drill, review or inspection, at such times and places as they may deem most convenient. The Commander in Chief may order reviews or encampments of such portions of the National Guard at such times and places as he shall deem proper.

Civ. '12, § 561; 1905, XXIV, 792; 1916, XXIX, 668; 1917, XXX, 7.

(616) § 7. How Nonattendance for Duty to Be Dealt With.—No officer or enlisted man shall fail in repairing at the time fixed to the place of parade, drill or other rendezvous appointed by his commanding officer, if not prevented by sickness or some other evident necessity, or shall go from the said place of rendezvous without leave from his commanding officer before he shall be regularly dismissed or relieved, on the penalty of being punished, according to the nature of his offense, by the sentence of a court-martial.

Civ. '12, § 562; 1905, XXIV, 792; 1917, XXX, 7.

(617) § 8. Punishment for Trespass on Camp Ground and for Molestation of Forces—Prevention of Sale of Liquors and Gambling Within Certain Limits.—The commanding officer upon any occasion of duty may place in arrest during the continuance thereof any person who shall trespass upon the camp ground, parade grounds, armory or other place devoted to such duties, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty.

He shall prohibit and prevent the sale or use of all spirituous liquors, wines, ale or beer, the holding of huckster or auction sales, and all gambling

within the limits of the post, camp grounds, place of encampment, parade or drill under his command or within such limits, not exceeding one mile therefrom, as he may prescribe. And he may, in his discretion, abate as common nuisance all such sales.

Civ. '12, § 563; 1905, XXIV, 792; 1916, XXIX, 668; 1917, XXX, 7.

(618) § 9. Corps of Instruction.—The commanding officer of any brigade, regiment, battalion or company shall require the commissioned officers and noncommissioned officers of his command to meet for instruction, exercise and improvement at such times and places as he may appoint; and he shall require them to appear with such arms and accouterments as he may prescribe; said officers shall thereupon be formed into a corps of instruction, without regard to rank, and shall be thoroughly instructed in the manual of arms, the school of the soldier and the company, and in such other theoretical and practical details as the said commanding officer may deem proper.

Civ. '12, § 564; 1905, XXIV, 792; 1916, XXIX, 668; 1917, XXX, 7.

(619) § 10. Soldiers to Have Free Passage and Ferriage in Certain Cases.—Any person belonging to the military forces of this State, going to or returning from any parade, drill or meeting which he may be appointed by law to attend, shall, together with his conveyance and the military property of the State, be allowed to pass free through all toll gates and over all toll bridges and ferries.

Civ. '12, § 565; 1905, XXIV, 792; 1917, XXX, 7.

ARTICLE IX.

Military Courts.

(620) § 1. Court-martial—Procedure.—Except in organizations in the service of the United States, courts-martial in the National Guard shall be of three kinds, namely: General court-martial, special court-martial and summary courts-martial. They shall be constituted like, and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations governing the Army of the United States, and the proceedings of courts-martial of the National Guard shall follow the form and modes of procedure prescribed for said similar courts.

Civ. '12, § 566; 1905, XXIV, 792; 1916, XXIX, 666; 1917, XXX, 7.

(621) § 2. General Courts-martial—Powers.—General Courts-martial of the National Guard not in the service of the United States may be convened by orders of the President, or of the Governor, and such courts shall have the power to impose fines not exceeding two hundred (\$200.00) dollars, to sentence to forfeiture of pay and allowance; to a reprimand; to dismissal or dishonorable discharge from the service; to the reduction of noncommissioned officers to the ranks, or any two or more of such punishments may be combined in the sentence imposed by such courts.

Civ. '12, § 570; 1905, XXIV, 792; 1911, XXVII, 148; 1916, XXIX, 666; 1917, XXX, 7.

(622) § 3. **Special Courts-martial—Powers.**—In the National Guard, not in the service of the United States, the commanding officer of each garrison, fort, post, camp or other place, brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable. Special courts-martial shall have power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States, and such special courts-martial shall have the same powers of punishment as do general courts-martial, except that fines imposed by such courts shall not exceed one hundred (\$100.00) dollars.

Civ. '12, § 571; 1905, XXIV, 792; 1916, XXIX, 666; 1917, XXX, 7.

(623) § 4. **Discretion Vested in Officers to Punish Derelictions of Duty—Accused to Be Informed of Right to Trial.**—Commanding officers will not be required to bring every dereliction of duty before a court for trial, but are authorized to prevent their recurring by admonitions, withholding of privileges, and taking such steps as are necessary to enforce their orders. Company commanders are authorized, subject to the control of the commanding officers, to dispose of cases of dereliction of duty in their command, which would be within the jurisdiction of inferior courts-martial, by requiring extra tours of fatigue, unless the soldier concerned demands a trial. The right to demand a trial must be made known to him.

Civ. '12, § 573; 1916, XXIX, 666.

(624) § 5. **When Officer May Be Court-Martialed.**—An officer who neglects to perform the duties of his office, or to obey the rightful orders of his superiors, or who is guilty of conduct unbecoming an officer and a gentleman, or who violates any of the provisions of this Chapter may be put under arrest by his superior officer and tried by a court-martial.

Civ. '12, § 569; 1905, XXIV, 792; 1917, XXX, 7.

(625) § 6. **Summary Courts—Powers.**—In the National Guard, not in the service of the United States, the commanding officer of each garrison, fort, post or other place, regiment and corps, detached battalion, company or other detachment of the National Guard may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted men of such places or command for breaches of discipline and violation of laws governing such organizations; and said court, when satisfied of the guilt of each soldier, may impose fines not exceeding \$25.00 for any single offense; may sentence noncommissioned officer to reduction to ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for summary courts of the Army of the United States.

Civ. '12, § 574; 1905, XXIV, 792; 1916, XXIX, 667; 1917, XXX, 7.

(626) § 7. **Sentence to Confinement May Be Imposed.**—All courts-martial of the National Guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in

lieu of fines authorized to be imposed: *Provided*, That such sentence of confinement shall not exceed one day for each dollar of fine authorized.

1917, XXX, 7.

(627) § 8. Governor Must Approve Finding of Discharge or Dismissal.—No sentence of dismissal from the service or dishonorable discharge, imposed by a National Guard court-martial, not in the service of the United States, shall be executed until approval by the Governor.

1917, XXX, 7.

(628) § 9. Courts-martial Officers Empowered to Issue Warrants and Try Offenders, Etc.—By Whom Process to Be Executed.—In the National Guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpoenas and subpoenas *duces tecum* to enforce by attachment attendance to witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts.

All process and sentences of said courts shall be executed by such civil officers as may be prescribed by the laws of the State where no provision shall have been made for such action, such process and sentences shall be executed by a United States Marshal or his duly appointed Deputy, and it shall be the duty of any United States Marshal to execute all such process and sentences and make return thereof to the officer issuing or imposing the same.

The Naval Courts in this State shall be such as are proscribed by laws and regulations for the United States Navy.

1917, XXX, 7.

(629) § 10. Compensation of Officers on Court-martial Duty.—Officers detailed to duty on general courts-martial shall be entitled to one dollar and a half per day and actual expenses incurred in attending said court.

1917, XXX, 7.

(630) § 11. Review of Court-martial Proceedings—Filing.—The proceedings and sentence of a court-martial shall, without delay, be transmitted to the officer ordering the court, or to his successor in command, who shall, within fifteen days thereafter, approve, disapprove, commute or remit the sentence and issue his order thereon; and he shall also transmit such proceedings and sentence, with his action thereon, to the Adjutant General, to be filed in his office.

Civ. '12, § 575; 1905, XXIV, 792; 1917, XXX, 7.

(631) § 12. Deck Courts.—The commanding officer of the Naval Battalion may at any time appoint a deck court for the trial of enlisted men of the Naval Militia. This court shall have the same powers and jurisdiction over the Naval Militia as a summary court has over the National Guard.

Civ. '12, § 585; 1905, XXIV, 792; 1911, XXVII, 148; 1917, XXX, 7.

(632) § 13. Marshals May Be Appointed.—The president of any court-martial or court of inquiry may appoint, by warrant, under his official signature, one or more marshals, who shall, when required, execute any process lawfully issued by such president or court, and perform all acts and duties by this Article imposed on, and authorized to be performed by, any Sheriff or Constable.

Civ. '12, § 579; 1905, XXIV, 792; 1917, XXX, 7.

(633) § 14. Scope of Punitive Powers of Courts-martial.—General and special courts-martial and summary courts, in addition to their usual powers, shall have the power to impose punishments upon members of the National Guard convicted by such courts, within the same limits as Magistrates now have by law.

Civ. '12, § 580; 1905, XXIV, 792; 1917, XXX, 7.

(634) § 15. Procedure for Executions and Warrants—Punishment for Failure of Officer to Make Execution.—Every Marshal, Sheriff or Constable to whom any such warrant or execution shall be directed and delivered must execute the same by levying and collecting the fines and penalties and make return thereof to the officer who issued the same within sixty days from the receipt of such execution or warrant, paying over the amount collected to the proper officer, in accordance with the provisions of this Article. Any Marshal, Sheriff or Constable failing or refusing to execute such execution or warrant as herein required, or to make return thereof and pay over fines so collected, or enforce imprisonment imposed by said courts, shall be subject to rule and attachment from the Court of Common Pleas of the county wherein he resides, upon motion of any attorney, or president of a court-martial, or the officer ordering the same, or any other officer whose duty it is to see that such process be duly executed.

Civ. '12, § 581; 1905, XXIV, 792; 1917, XXX, 7.

(635) § 16. Fees for Executing Process, Etc.—For executing process, or performing any service required by the provisions of this Article, Sheriffs and Constables shall be entitled to the same fees as they are allowed by law for similar services in civil or criminal cases. Marshals, to whom an execution or warrant for the collection of fines and penalties may be directed or delivered, as provided in this Article, shall be entitled to the like fees as Sheriffs for similar services.

Civ. '12, § 582; 1905, XXIV, 792; 1917, XXX, 7.

(636) § 17. Disposition of Fines and Penalties.—All fines and penalties collected from any officer or enlisted man of a regiment shall be paid by the officer collecting the same to the commanding officer of the company to which the person so fined belonged, and shall constitute a portion of the military fund for such organization, which shall be disbursed by order of the commanding officer thereof. All fines and penalties collected from any other person shall be paid by the officer collecting the same to the Adjutant General of the State, to be expended for the use of the National Guard of the State.

Civ. '12, § 583; 1905, XXIV, 792; 1917, XXX, 7.

(637) § 18. Exemption from Action at Law When Acting Under Authority.—No action or proceeding shall be prosecuted or maintained against a member of a military court, or officer or person acting under its authority or reviewing its proceedings, on account of the approval or imposition or execution of any sentence, or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, executions, process or mandate of a military court.

Civ. '12, § 567; 1905, XXIV, 792.

(638) § 19. Burden of Proof to Defeat Jurisdiction.—The jurisdiction of the courts and boards established by this Chapter shall be presumed, and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding.

Civ. '12, § 568; 1905, XXIV, 792.

(639) § 20. President of Court-martial or Court of Inquiry.—The president of every court-martial or court of inquiry shall be the member of the court senior in rank, who, besides his duties and privileges as a member, shall be the organ of the court to keep order and conduct its business.

In his absence, the senior officer present shall preside, with all the power of the president. All the members of such court shall, when on duty, be in uniform; and the court may sit without regard to hours, and may adjourn from time to time, as may be necessary for the transaction of business.

Civ. '12, § 576; 1905, XXIV, 792.

(640) § 21. Preservation of Order.—Courts-martial and courts of inquiry are authorized and empowered to preserve order during their sessions; and any person or persons who shall be guilty of disorderly, contemptuous or insolent behavior in, or use any insulting or contemptuous or indecorous language or expressions to or before any such court, in open court, intending to interrupt the proceedings or to impair the respect and authority of such courts, may be committed to the jail of the county in which said courts shall sit, for a time not exceeding twelve hours, by warrant under the hand and seal of the president of such court.

Civ. '12, § 577; 1905, XXIV, 792.

(641) § 22. May Summon Witnesses.—Courts-martial and courts of inquiry shall issue subpoenas for all witnesses whose attendance at such court may, in their opinion, be necessary in behalf of the State, and also, on application, for all witnesses in behalf of any officer charged or accused, or persons returned as delinquents, and may direct the commander of any company to cause such subpoena to be served on any witness by member of his company. Such court shall also have the power to administer the usual oath to witnesses, and to compel witnesses to appear and testify, by attachment, fine and imprisonment; and all Sheriffs, Jailers and Constables must execute any process issued by such courts for any of the aforesaid purposes.

Civ. '12, § 578; 1905, XXIV, 792.

ARTICLE X.**Reserve Militia.**

(642) § 1. **Reserve Militia in Time of War.**—That whenever the South Carolina National Guard shall be called into the service of the United States during any war, thereupon and immediately thereafter the Governor of this State, as Commander in Chief of the armed forces thereof, be, and he is hereby, authorized and empowered to organize an armed land force, for the defense of the State during said war, which shall be known and designated as the South Carolina Reserve Militia, which force shall be available, at the discretion of the Governor, for active military duty whenever an invasion of or an insurrection in the State shall occur or is threatened, or a tumult, riot or mob shall exist.

1918, XXX, 874.

(643) § 2. **Organization.**—The South Carolina Reserve Militia shall consist of not to exceed two regiments of infantry. Each regiment shall consist of the necessary field and staff, commissioned and enlisted personnel, a sanitary detachment and of twelve lettered companies. Provision shall be made by detail for headquarters, supply and machine gun units. The band section of the headquarters company may be organized at the discretion of the Governor. The enlisted personnel of the South Carolina Reserve Militia shall at all times be maintained at a strength of at least sixty enlisted men for each lettered company.

1918, XXX, 874.

(644) § 3. **Powers of Governor.**—The Governor shall have the power, and he is hereby authorized and empowered, to consolidate, disband, organize, or reorganize any regiment, sanitary detachment or company, organized hereunder. He may make and promulgate such rules and regulations for the organization, regulation, government and discipline of the South Carolina Reserve Militia as he may deem necessary, which, when published in orders, shall have the force and effect of statute law, with like effect as if the same has been herein specifically enacted in words at length. The Governor may relieve from duty any officer appointed hereunder, and he may, in his discretion, discharge any officer and enlisted man from the South Carolina Reserve Militia.

1918, XXX, 874.

(645) § 4. **Commissions of Officers.**—The Governor shall appoint and commission all officers of every grade necessary for the regulation, administration and discipline of the South Carolina Reserve Militia; and the term of every commission shall be in his discretion.

1918, XXX, 874.

(646) § 5. **Location of Units.**—The Governor shall determine the location of the several units, and may change the same at his discretion.

1918, XXX, 874.

(647) § 6. **Oath of Officers.**—Each commissioned officer before entering upon the duties of his appointment shall take and subscribe the following

oath: "I, ..., do solemnly swear that I will support and defend the Constitution of the United States, and the Constitution of the State of South Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the Governor of the State of South Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of, in the South Carolina Reserve Militia, upon which I am about to enter."

1918, XXX, 874.

(648) § 7. Test of Officers.—The moral character, capacity and general fitness for service of any officer in the South Carolina Reserve Militia may, at any time, be determined by an Efficiency Board, to be appointed by the Governor, and to consist of three commissioned officers, senior in rank, if possible, to the officer whose fitness for service shall be under investigation. If the finding of such Board be unfavorable to such officer, and be approved by the Governor, he shall be discharged.

1918, XXX, 874.

(649) § 8. Oath Administered by Officers—False Swearing Perjury.—Officers are authorized and empowered to administer oaths and affirmations in all matters pertaining to or concerning the South Carolina Reserve Militia. Any person who shall falsely swear or affirm to any oath or affirmation before any such officer shall be guilty of perjury, and upon trial and conviction thereof shall be sentenced for such offense as now provided by law for the crime of perjury.

1918, XXX, 874.

(650) § 9. Bonds of Certain Officers—Officers appointed or assigned as quartermasters, and as captains of companies shall, severally, give bond in the sum of two thousand dollars. The Adjutant General may require a bond, in such amount as he may deem proper, of any officer who may become responsible, either for public funds or public property, or both. The form of all bonds shall be prescribed and furnished by the Adjutant General.

1918, XXX, 874.

(651) § 10. Retired Officers of National Guard May Be Assigned to Duty.—The Governor may place on duty in the South Carolina Reserve Militia any officer upon the retired list of the South Carolina National Guard who is not over sixty-four years of age, and as of the grade in which he was retired, or with a lesser grade.

1918, XXX, 874.

(652) § 11. Oath of Enlisted Men.—Every man enlisting in the South Carolina Reserve Militia shall sign an enlistment contract, and take and subscribe to the following oath and enlistment: "I, ..., do hereby voluntarily enlist in Co., Regiment, South Carolina Reserve Militia, and I do solemnly swear that I will bear true faith and allegiance to the United States and to the State of South Carolina, and that I will support the Constitution thereof; that I will serve the State of South Carolina faith-

fully in its Reserve Militia for the term of one year, unless sooner discharged, or I cease to be a citizen thereof; that I will obey the orders of the Commander in Chief and such officers as may be placed over me, and the laws governing the State troops of the State of South Carolina."

1918, XXX, 874.

(653) § 12. Discharges.—An enlisted man discharged from service in the South Carolina Reserve Militia shall receive a discharge, in writing, in such form and with such classification as may be prescribed by the Governor.

1918, XXX, 874.

(654) § 13. Duties of Adjutant General.—The Adjutant General of South Carolina shall be the Chief of Staff of the South Carolina Reserve Militia. He shall perform all duties in connection therewith, now prescribed by law in connection with the South Carolina National Guard, and shall perform such other duties as the Governor may direct.

1918, XXX, 874.

(655) § 14. Members Exempt From Arrest While on Duty.—No officer or enlisted man shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from a place where he is ordered to attend for military duty.

1918, XXX, 874.

(656) § 15. Pay on Active Duty.—When the South Carolina Reserve Militia, or any part thereof, is ordered on active duty by the Governor, and pay is authorized for such duty under the order prescribing the performance thereof, the commissioned officers, so ordered, shall be entitled to the same pay as officers of like grade in the Regular Army. Enlisted men, so ordered, shall be entitled to \$1.50 per day.

1918, XXX, 874.

(657) § 16. Pay of Officers on Special Duty.—Officers ordered on special duty, in attendance upon courts-martial or efficiency boards, shall receive transportation in kind, and per diem pay as may be authorized in orders, payable by the Adjutant General in the usual manner.

1918, XXX, 874.

(658) § 17. Embezzlement of Funds, a Misdemeanor.—Any commissioned officer or enlisted man of the South Carolina Reserve Militia who shall misapply, embezzle, or convert to his own use without authority, any moneys received by or entrusted to him for disbursement, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be sentenced as for like offenses under the criminal laws of this State.

1918, XXX, 874.

(659) § 18. Powers of Officers on Active Service.—The commanding officer of any troops in active service may place in arrest any officer or enlisted man who shall disobey the orders of his superior officer, or any person or persons who shall trespass on parade or camp grounds, or in any way or manner interrupt or molest the orderly discharge of duty of those

in active service. He may also prohibit and prevent the sale of spirituous or malt liquors within two miles of such parade ground or encampment. He may abate as a nuisance all hucksters, auction sales, or gambling.

1918, XXX, 874.

(660) § 19. Stores and Expenses.—Subsistence and quartermaster stores and the expense incident to active service, including transportation of troops, shall be contracted for, on direction of the Governor, by the Adjutant General, or any officer designated for that purpose, and shall be paid for in the usual manner.

1918, XXX, 874.

(661) § 20. Uniforms.—The South Carolina Reserve Militia shall be uniformed and equipped at the cost of the State, payable out of appropriations made for that purpose. The uniforms and equipment shall be such as may be prescribed by the Governor.

1918, XXX, 874.

(662) § 21. Military Board—Compensation, Term and Duties—Regulations Regarding Allotment of Appropriation—Regulations as to Federal and State Property.—There shall be for the State a Military Board, consisting of the Governor, the Adjutant General and three commissioned officers of the Reserve Militia, who shall be appointed by the Governor, and hold office during his pleasure. It shall be the duty of the Military Board to apportion the annual appropriation for the maintenance of the Reserve Militia and to determine what organizations are entitled by law to share in said appropriation, and for what purpose. No organization shall participate in the annual allotment of such appropriation for the maintenance of the Reserve Militia, unless the proper officers of such organization shall have rendered the required reports and returns for the preceding year, and unless the drill reports of such organization show that there was an average attendance of not less than sixty per cent. of its enlisted strength present at forty-eight drills a year, which are required. It shall be the duty of the Adjutant General to prepare a list of the Government property, Federal and State, that is short in each organization at its annual inspection. The cost of such property found short in each organization shall be deducted from the annual allotment made by the Military Board to that particular organization, and the amount so deducted shall be expended by the Adjutant General in the purchase of new property of like kind and quantity. It shall be the duty of the Adjutant General in such cases to order a Board of Inquiry to inquire into the responsibility of such losses, and whenever it shall appear from the findings of such Board of Inquiry that the losses are due to the fault or negligence of the responsible officer, it shall be the further duty of the Adjutant General to enter, or cause to be entered, a suit on the bond of such officer. The Adjutant General shall incorporate in his annual report a statement showing the property shortage of each organization, the amount paid to each organization for such property shortage, the disposition made of the funds so collected, and any further action that may have been taken by him with reference to fixing the responsibility therefor and recovering the property so found short, or its value.

1918, XXX, 874.

(663) § 22. **Uniforms of Officers.**—Every commissioned officer shall furnish such portions of his own uniform and equipment as are required to differentiate his uniform from that of an enlisted man.

1918, XXX, 874.

(664) § 23. **Purchase, Etc., of Stores, Etc., a Misdemeanor—Penalty.**—Any person knowingly and wilfully purchasing, or receiving in pawn or pledges, any arm, accouterment, equipment, article of military clothing, tent, or fly; or any quartermaster, medical, engineer, or signal property; or ordnance or ordnance stores, the property of the State of South Carolina, or of the United States in use by the State, shall be deemed guilty of a misdemeanor, and, upon conviction in any court of criminal jurisdiction, shall be sentenced to an imprisonment of not exceeding one year and a fine of not exceeding three hundred dollars.

1918, XXX, 874.

(665) § 24. **Courts-martial.**—Courts-martial shall be of three kinds, namely, general, special and summary. They shall be constituted, and have cognizance of the same subjects and possess like power, except as to punishments, as courts-martial provided for by an Act entitled "An Act to revise the Military Code of South Carolina," approved March 1, 1917, with like force and effect as if each and every provision of the said Act relating to courts-martial and court-martial procedure, had been reenacted herein, in words at length—being all of the Sections of said Act from Section seventy-four to Section ninety, both inclusive.

1918, XXX, 874.

(667) § 1. **Division of State Into Counties—Each County a Body Politic.** this Article are hereby declared to be independent of each other; and in the event any Section or part of a Section hereof shall hereafter be declared unconstitutional, it is the intent and meaning hereof that such Section, or part of a Section, alone should be eliminated herefrom, without affecting any other portion of this Article.

1918, XXX, 874.

TITLE V.

OF COUNTIES.

CHAPTER XVII.

Of Counties and Their Corporate Powers.

(667) § 1. **Division of State Into Counties—Each County a Body Politic.**—The State of South Carolina is divided into forty-six judicial districts, called counties. Each county is a body politic and corporate, for the following purposes: To sue and be sued; to purchase and hold, for the use of the county, lands and personalty within the limits thereof; to make all

contracts, and to do all acts in relation to the property and concerns of the county necessary thereto.

Civ. '12, § 587; Civ. '02, § 529; G. S. 403; R. S. 461; 1868, XIV, 134; 1882, XVII, 682; 1912, XXVII, 807; 1916, XXIX, 717; 1919, XXXI, 5.

May sue on official bond. *Greenville County v. Runion*, 9 S. C. 1; *Chester v. Hemphill*, 29 S. C. 584, 8 S. E. 195; *Aiken County v. Murray*, 35 S. C. 508, 14 S. E. 954. Suit on claim must be before Board of County Commissioners. *Jennings v. Abbeville County*, 24 S. C. 543. When action *ex delicto* may be sued in Court of Common Pleas. *Acker v. Anderson County*, 20 S. C. 495; *Jennings v. Abbeville County*, 24 S. C. 543; *Chick v. Newberry County*, 27 S. C. 419, 3 S. E. 787; *Laney v. Chesterfield County*, 29 S. C. 140, 7 S. E. 56. How name pleaded. *County of Richland v. Miller*, 16 S. C. 241. Judgment against Charleston County does not carry costs, under Funding Act of 1878. *Holmes v. County of Charleston*, 14 S. C. 146. Account audited does not bear interest. *Id.*; *Wheeler v. County of Newberry*, 18 S. C. 135. Contracts must be made by County Commissioners alone. *Ostendorff v. County Commissioners*, 14 S. C. 407; *Edmondston v. County of Aiken*, 14 S. C. 622; *Jennings v. Abbeville County*, 24 S. C. 543. No action against them without contract. *Ostendorff v. County Commissioners*, 14 S. C. 407. Remedy by *mandamus*. *Wheeler v. County of Newberry*, 18 S. C. 135; *Duke v. County of Williamsburg*, 21 S. C. 416; *Hunter v. Mobley*, 26 S. C. 192, 1 S. E. 670. As to County bonds. *State v. R. R.*, 13 S. C. 290; *Duke v. County of Williamsburg*, 21 S. C. 416; *Lancaster v. R. R.*, 28 S. C. 134, 22 Am. & Eng. Corp. Cas. 157, 5 S. E. 338. As to line fence. *County Commissioners v. County Commissioners*, 18 S. C. 598. There is no statute providing for the payment by a county in which a crime is committed of the cost and expenses of the trial thereof in another County to which the venue has been changed. *Kershaw County v. Richland County*, 61 S. C. 75, 39 S. E. 263.

In action on coupons against County of Pickens, holder made as sole defendants to his complaint certain persons "as County Commissioners" of said County. No objection was taken to pleadings, nor any misnomer suggested. Verdict and judgment for plaintiff. Held, that neither Constitution nor statutes declare name by which County shall be sued, and that, although action should have been brought against County by its corporate name, if misdescription objected to, there was no ground for reversing the judgment. *Commissioners v. Banks*, 97 U. S. 374, 24 L. Ed. 1060.

(668) § 2. **Abbeville County—Location and Boundaries.**—Abbeville County is bounded as follows: On the southwest by the Savannah River, by which it is separated from Georgia; on the northwest by Anderson County, from which it is separated by a line (the old Indian boundary) drawn from a marked black gum, on the east bank of the Savannah River, at the foot of Grape Shoals (north 50° east), to a willow oak, marked "A. & P.," on the south side of Saluda River; on the northeast by Laurens County, from which it is separated by the Saluda River, and by Greenwood County; and on the southeast by McCormick County.

Civ. '12, § 588; Civ. '02, § 530; G. S. 404; R. S. 462; IV, 661, § 1; VII, 199, § 2; 252, 284; 1897, XXII, 605; 1898, XXII, 896; 1916, XXIX, 717.

See boundaries of Greenwood County. Post, § (691).

(669) § 3. **Aiken County—Location and Boundaries.**—Aiken County is bounded as follows: On the northwest by Edgefield and Saluda Counties, from which it is divided by a straight line commencing at the mouth of Fox's Creek, where it empties into Savannah River, and running thence to where the south branch of Chinquepin Falls Creek (a tributary of the North Edisto River) intersects the Saluda and Lexington line; on the northeast by Lexington County, from which it is divided by said creek to where it empties into the North Fork of the Edisto River, and by the said North Fork to where the dividing line between Lexington and Orangeburg Counties (running from Big Beaver Creek to the North Fork of the Edisto) touches said river; on the southeast by Orangeburg and Barnwell Counties, from which it is divided by a straight line running by A. J. Weathersbee's old mill, thence the line established by J. Seth Mixon, Deputy Surveyor, to the Savannah River, at a point below the mouth of the Upper Three Runs Creek, said survey having been made under Act of Assembly, approved 14th March, 1874; on the southwest by Georgia, from which it is separated by the Savannah River.

Civ. '12, § 589; Civ. '02, § 531; IV, 661, 664; V, 478, 506; VI, 473; VII, 199, 248, 261, 284; XIV, 695; XV, 649; 1896, XXII, 249.

(670) § 4. **Allendale County—Location and Boundaries—County Seat.**—Allendale County is bounded as follows: Beginning at a point in the Savannah River on the South Carolina and Georgia boundary line opposite Steel Landing and running in a northerly direction to a stake at Steel Landing; thence a straight line north 43 degrees east about 6.12 miles to a stake at or near the intersection of the Barnwell-Robbins public road with a road leading to Millett; thence south 73 degrees east about 5.23 miles to a stake at or near Stinson's Bridge on Lower Three Runs; thence south 70 degrees east about 5.50 miles to a stake at or near Goodson's Mill site; thence east about 4.72 miles to a stake on Well Branch; thence down the run of Well Branch to the Barnwell-Bamberg County line; thence down the Barnwell-Bamberg County line to its intersection with the Barnwell-Hampton County line; thence southwesterly along said Barnwell-Hampton County line to its intersection with the eastern edge of the right of way of the Seaboard Air Line Railway; thence in a southerly direction along said eastern edge of the said railway right of way to a stake eight miles and 200 feet from the Hampton County Court House; thence in a westerly direction to the confluence of Beach Branch with the Coosawhatchie River; thence up the run of said Beach Branch to its intersection with the eastern edge of the right of way of the Southern Railway Company; thence southerly along said eastern edge of said right of way 3.78 miles to a stake; thence south 49½ degrees west 1.68 miles to the junction of the Hudson Ferry Road and the Sisters Ferry Road; thence southerly along the south side of the said Hudson Ferry Road to a stake about one-half mile above Long Creek Bridge; thence in a straight line south 71 degrees west about 1.75 miles to a stake on the east side of the River Road about one-fourth mile north of Long Creek Bridge on said River Road; thence in a straight line south 55 degrees west 10,104 feet to a stake between an ironwood tree and a small branch; thence west 3,306 feet to a stake on the east side of Savannah River; thence continuing west to a point in the Savannah River on the South Carolina-Georgia State line; thence northerly along said South Carolina-Georgia State line to the point of beginning.

1919, XXXI, 5.

(671) § 5. **Anderson County—Location and Boundaries.**—Anderson County is bounded as follows: On the northwest and north by Oconee and Pickens Counties, from which it is divided by a line commencing at the mouth of Cane Creek, on Tugaloo River, and running thence to the point where Eighteen Mile Creek is crossed by the road leading from Pendleton to Hagood's Store, thence to the mouth of George's Creek, on Saluda River; on the northeast and east by Greenville County, from which it is separated by the Saluda River; on the southeast by Abbeville County, from which it is divided by a line drawn from a marked black gum on the east bank of the Savannah River, at the foot of Grape Shoals, to a willow oak, marked "A. and P.," on the south side of Saluda River; on the southwest by the State of Georgia, from which it is separated by the Savannah River.

Civ. '12, § 590; Civ. '02, § 532; G. S. 406; R. S. 464; I, 196; VI, 39, 289, 341; VII, 261.

(672) § 6. **Bamberg County—Location and Boundaries.**—Bamberg County is bounded as follows: Beginning at a point in the middle of the

stream of the Salkehatchie River, where George's Creek enters said river, and running due north up said stream by Rush's Mill to a gum tree one and one-fourth miles above Rush's Mill; thence due north to a point in the middle of the stream of South Edisto River; thence down the middle of the stream of said river to where it enters into the Edisto River; thence down the middle of the latter river to the point where the same is intersected by the old district line, dividing the County of Barnwell from the County of Colleton; thence along said dividing line to the corner of Colleton County; thence S. 3 E. 31.50 chains to a stake on ditch; then S. 24.50 E. 4.50 chains to a stake by ditch; thence S. 64.25 E. six chains to a stake on road; thence S. 17.50 E. 40 chains to a stake; thence S. 72 E. 62 links to a chain; thence S. 8.5 W. 27.59 chains to a stake on road passing between the property of D. N. Linder and H. B. Linder; thence S. 1 W. 18.50 chains to a stake in edge of pond passing through property of H. B. Linder; thence following the run of the branch to a large gum marked XIII; thence S. 82 E. 10 chains to corner stake between James Barnes and Isham Padgett; thence S. 64 E. 24 chains to a stake marked XIII at Branchville-Lodge Road; thence S. 39.25 E. 14 chains to gum marked XIII at edge of small pond; thence S. 34 E. 17.60 to a corner in stream of Little Swamp; thence following down the run of Little Swamp, following it in its devious courses across the Smoak-Bamberg Road and Mauldin Railroad to stake marked XIII in mid stream; thence S. 82½ W. 443.18 chains following old ditch line to stake marked XIII in mid stream of Little Salkehatchie River; thence up the same river, following in its devious courses across the Mauldin Railroad and Lodge Dirt Road to gum in mid stream marked XIII; thence with the meanderings of Little Salkehatchie River to a point on the Bamberg-Colleton line; thence with the old district line, hereinbefore mentioned, to the Big Salkehatchie River; thence in a northwesterly direction with the Big Salkehatchie to the beginning corner.

Civ. '12, § 591; Civ. '02, § 533; 1897, XXII, 580; 1920, XXXI, 773.

(673) § 7. Barnwell County—Location and Boundaries.—Barnwell County is bounded as follows: On the northwest by Aiken County, from which it is divided by a line beginning at the point upon the Savannah River, below the mouth of the Upper Three Runs Creek, as established by the survey of J. Seth Mixon, under Act approved March 14, 1874, and following said line to A. J. Weathersbee's old mill; then to South Edisto River, in the direction of the point on the North Edisto River (mouth of Cedar Branch), where the line between Orangeburg and Lexington Counties, drawn from Big Beaver Creek, touches said river; on the northeast by Orangeburg County, from which it is separated by the South Edisto River as far down as the northeast corner of Bamberg County; on the east by the line separating it from Bamberg County; and on the southeast by Allendale County; and on the southwest by the State of Georgia, from which it is separated by the Savannah River.

Civ. '12, § 592; Civ. '02, § 534; G. S. 407; R. S. 465; IV, 664; VII, 199, 284; XIV, 695; XV, 649; 1897, XXII, 580; 1919, XXXI, 5.

(674) § 8. Beaufort County—Location and Boundaries.—Beaufort County is bounded as follows: On the northeast by Colleton County, from

which it is separated by St. Helena Sound, and by the Combahee and Salkehatchie rivers; on the north by the center of the track of the Savannah and Charleston Railroad, separating it from Hampton County; on the west and southwest by the County of Jasper and the State of Georgia, it being separated from the State of Georgia by the Savannah River, and is further bounded on the south and southeast by the Atlantic Ocean, including in the county all the islands along the coast from the mouth of the Savannah River to St. Helena Sound.

Civ. '12, § 593; Civ. '02, § 535; G. S. 408; R. S. 466; VII, 199, 251, 484; 1878, XVI, 375; 1912, XXVII, 827; 1916, XXIX, 754.

(675) § 9. Berkeley County—Location and Boundaries.—Berkeley County is bounded as follows: Eastwardly, northeastwardly, and north by the Santee River, separating it from the Counties of Georgetown, Williamsburg and Clarendon; north by Orangeburg County; west and northwestwardly by Dorchester County; south and southwestwardly by Charleston County and Dorchester County; and the said County of Berkeley shall include within its limits the whole of the subdivision formerly known as the Parishes of St. John, Berkeley, St. Stephen, St. Thomas and St. Dennis, and parts of the subdivisions formerly known as St. James, Goose Creek, St. James, Santee, and St. Andrews: *Provided*, That the county lines of Berkeley County and of Orangeburg County are hereby so altered as to cut off from said Berkeley County and to transfer and annex to and incorporate within said Orangeburg County all of that certain territory or portion of Berkeley County embraced within the following lines and boundaries, to wit: Beginning at a point located on Four Holes Swamp at the intersection of the boundary lines of Orangeburg, Dorchester and Berkeley Counties, and extending in a southeasterly direction, along Four Holes Swamp, the same being the boundary between Dorchester and Berkeley Counties, to a large cypress which stands at the confluence of Four Holes and Dean Swamps, at the upper part of Turkey Lake; thence up and along the run of Dean Swamp as it meanders to a point where Dean Swamp and Black Creek unite; thence up Black Creek to the point where Big Black Creek and Little Black Creek unite; thence up Little Black Creek to the point where the "new road" crosses said Little Black Creek; thence northerly up the "new road" to the Monck's Corner Public Road, near Mark Richardson's place; thence north ten chains to a pine; thence north 14 degrees east, thirty-eight chains to a stake; thence south 37 degrees 15 minutes east, forty-nine chains to a stake; thence east 9.70 chains to a stake; thence north 39.50 chains to a stake; thence north 87 degrees east, thirty-four chains and ten links; thence north fifty-four and one-half ($54\frac{1}{2}$) chains to a stake; thence north 1 degree 30 minutes west, eighteen chains and sixty links to a stake; thence north 30 degrees west, thirty-one chains to a stake; thence north 8 degrees west, eleven chains to a cypress at the River Road and Rock Creek Bridge; thence northeast along Rock Creek to where Rock Creek empties into the Santee River; thence up the Santee River to the mouth of Eutaw Creek, where the Orangeburg and Berkeley lines connect; thence southwest along the boundary line between Orangeburg and Berkeley Counties to the point of beginning, less the following territory transferred to Charleston County by Act of the General Assembly approved February

28, 1921, to wit: Beginning at the intersection of the present line between Charleston County and Berkeley County, with the main line of the right of way of Atlantic Coast Line Railroad, and running thence Northwardly with the Western line of said right of way to its intersection with the run of Goose Creek; thence with the run of Goose Creek in a Westerly direction to its intersection with the Eastern boundary of Elms Tract, now owned by Goose Creek Land Company; thence Northwesterly along the Eastern boundary of said tract to its intersection with the Southern line of Ladson road; thence Westwardly with the Southern line of said Ladson road to its intersection with the Eastern line of the Blue House road; thence on a bearing South 5 degrees 20 minutes East to the Southeast corner of Dorchester County; thence South and West along the line of said Dorchester County to its intersection with the Charleston County line at the mouth of Saw Pit Creek; thence Eastwardly along the Charleston County line to the point of beginning.

Civ. '12, § 594; Civ. '02, § 536; G. S. 409; R. S. 467; 1893, XXI, 561; 1896, XXII, 309; 1897, XXII, 595; 1921, XXXII, 184.

(676) § 10. **Calhoun County — Location and Boundaries.** — Calhoun County is bounded as follows: Starts in Lexington County on the Congaree River at a point where the land line between lands of C. M. Cremaretie and Vandy Speers strikes said river and running the land line between said parties (Cremaretie is in and Spears out of Calhoun County) crossing the State Road on this same land line, continuing straight line 125 chains to a pine on the Pine Plain Road, thence south $21\frac{1}{2}$, west $16\frac{1}{2}$ chains to pine on same road. Thence south ten, west 71 chains to a stake on Nina Davis' land, then south 23, east on said line (Davis is out and Geiger in) crossing Savana Hunt Creek (Crawley out) at 45 chains to a pine, total distance 103 chains, then south 11 west to a dead pine on Pine Plain Road, distance 3 miles, south 2, east with road, 20 chains, same line 55 chains to Big Sandy Run near the south of Huckabass Mill, continuing to 1 mile, then south $36\frac{1}{2}$ west 35 chains to a pine near Pine Plain Road, south $29\frac{1}{2}$ west said road line, $23\frac{1}{2}$ chains, dead pine, then south 33 west 53 chains to pine and stake on Rast land, then south $9\frac{1}{2}$ west 11 chains pine. South 1, east straight line to Mrs. R. L. Baker's land line, then the said line to a corner near Camp Ground Road, then a straight line to Orangeburg Road near Porterfield Mill, then a direct line to the head of Branham Branch, said branch the line to Beaver Creek, then Orangeburg and Lexington line, southwest to the corner of Caw Caw and Elizabeth Townships, said line southwest to the Joe Amaker old mill on Lime Stone Creek, then north 45 east to Little Lime Stone, then same creek the line north to Poplar on Robertson Plantation Road, then south, 76° east to the Kennerly Road, crossing the Kennerly Road one-half mile south of Moody Godwin's house, continuing the same line crossing the Columbia Road nine miles north of Orangeburg, continuing to the Southern Railway crossing $8\frac{1}{2}$ miles northeast of Orangeburg Court House, continuing from said point on Southern Railway $8\frac{1}{2}$ miles northeast of Orangeburg Court House to a point on Four Hole Creek marked and designated by an Ash Tree X and witnessed by Maple and Gum trees, said line having the following course: S. $49^\circ 00'$ E. and being about 47,550 feet, thence the creek the line to the land of Jacob

Riley, the said land line out to State Road near Fred. Dantzer's, down said road to the land corner of Fred. Dantzer's, then the Dantzer land line to point on Haigler land line, Haigler's land line, the line to public road, Oak X 3 N. near David Smith's residence, said road the line to a branch southwest of T. V. Bair's residence, then up said branch 40 chains to stake X 3 N., then northeast across A. C. L. R. R. to stake 66 feet from center of track, then up the said right of way north $57\frac{1}{2}$ west 120 chains to stake on the Orangeburg Road 66 feet from center of A. C. L. R. R. track, Orangeburg Road the line to the Monck's Corner Road, then north 73 east passing at the north edge of the old Santee Graveyard, continuing to a stake X 3 N., north of C. W. Shumaker's residence, then south 67 east to a stake by road of Capt. George D. Rast's estate land, then north 79° and $45'$ east to an oak on the road near Trinity Graveyard, then north 69 east to a stake on Two Chop Road by Neighborhood Road, intersecting on J. A. Johnson's land, then south Two Chop Road the line to little Poplar Creek. distance 37 chains, then down the said creek the line to McCord's Ferry Road, said road the line south 45 degrees east 209 chains to Hydrick's old mill on Big Poplar Creek, said creek the line to Santee River, up the Santee River to the Congaree River, up the Congaree River to commencement point.

Civ. '12, § 595; 1908, XXV, 1279.

(677) § 11. Charleston County—Location and Boundaries.—Charleston County is bounded as follows: By a line beginning at the mouth of the South Edisto River where it empties into the Atlantic Ocean, and following up said river to the Dawho River; thence by the Dawho River to its intersection with the North Edisto River; thence by the Wadmalaw River and New Cut to Stono River; and thence up Stono River to Rantowle's Creek; thence up Rantowle's Creek to its intersection with the Colleton County line; thence along said line to the eastern bank of Ashley River; thence down said river to the line of Colleton County, on said bank; thence eastward by a direct line to the mouth of Goose Creek on the western bank of Cooper River; thence southwardly along the western bank of Cooper River to the Parish of St. Philip's; thence down the Cooper River to the mouth of Guerin's Creek to Guerin's Bridge; thence by way of the Halfway Creek Wando River; thence up said Wando River to Guerin's Creek; thence up Road across Halfway Creek to Thompson Road and through Thompson Road to the center of Wambo Swamp; thence through the center of said Swamp to the head of Wambo Creek, and through said creek to the South Santee River; thence down the South Santee River to the ocean to the line of the jurisdiction of the State; thence southwardly along the line of the jurisdiction of the State to a point opposite the mouth of South Edisto River; thence in a straight line to the beginning at the mouth of South Edisto River, and in addition thereto the following territory transferred from Berkeley County by Act of the General Assembly, approved February 28th, 1921, to wit: Beginning at the intersection of the present line between Charleston County and Berkeley County with the western line of the right of way of Atlantic Coast Line Railroad, and running thence northwardly with the western line of said right of way to its intersection with the run of Goose Creek, thence with the run of Goose Creek in a westerly direction to its intersection with the eastern boundary of Elms

Tract, now owned by Goose Creek Land Company; thence northwardly along the eastern boundary of said tract to its intersection with the southern line of the Ladson Road; thence westwardly with the southern line of said Ladson Road to its intersection with the eastern line of the Blue House Road; thence on a bearing south five (5) degrees twenty (20) minutes east to the southeast corner of Dorchester County; thence south and west along the line of said Dorchester County to its intersection with the Charleston County line at the mouth of Saw Pit Creek; thence Eastwardly along the Charleston County line to the point of beginning.

Civ. '12, § 596; Civ. '02 § 537; G. S. 410; R. S. 468; 1893, XXI, 561; 1896, XXII, 310; 1921, XXXII, 184.

(678) § 12. Cherokee County—Location and Boundaries.—Cherokee County is bounded as follows: Beginning at the mouth of Brown's Branch and running up branch 76.60 chains to near where G. W. Webster now lives, placing him in new county; thence S. 75, W. 66.23, to rock N. E. corner lot of Paolet Manufacturing Company, at Brown's old mill; thence N. 63, W. 15.70, with line of said company's lot to rock; thence S. 45, N. 5.73, to maple; thence same course 87 links to Paolet River; thence with said river up stream 7.36 to stake on Paolet; thence N. 16 W., leaving H. L. C. Murphy in old county, . . . Hammett in new county, . . . Hammett School House near cross roads in old county, Miss Mary Brown in new county, 509.80 chains to stake one mile east of town of Cowpens; thence N. 24, W. 64 chains to line of Limestone Township; thence west with Limestone Township 80 chains to southwest corner of said township; thence N. 116.80 chains with line of Limestone Township to marked line running N. 24 W.; thence N. 24 W., leaving Joel Petty and Cleveland Gossett in old county, passing through house of J. G. Powell, leaving Andy Norton in Spartanburg County, also house of Mrs. . . . Price, placing . . . Cash's house, Fate Martin in new county, passing through the store room of Finch Martin, but leaving his dwelling house in old county, leaving John Walker and Mrs. Cudd in Spartanburg County, 785.65 chains to stake on North Carolina line; thence with said line crossing Broad River, and continuing to corner of Cherokee Township, in York County; thence south with east boundary of said township to stake; thence west to corner of said township on King's Creek; thence down King's Creek to middle of Broad River; thence down Broad River to center of river opposite Paolet River; thence up Paolet River to opposite Brown's Branch, beginning point, and in addition thereto the following territory transferred from York County by Act of the General Assembly, approved 11th day of February, 1921, to wit: Beginning at a stake in road in State line on top of Mountain at burned grocery, and running thence S. 43 1-2 W. 224 chains to a large pine at Northeast end of Brown Mountain; thence with the Cherokee County line N. 2 1-2 W. 152 chains to B. O., E. A. Patterson's corner in State line; thence S. 86 E. 165 chains with State line to the beginning corner, containing two square miles.

Civ. '12, § 597; Civ. '02, § 538; 1897, XXII, 588; 1921, XXXII, 2.

Under the Act creating this County, the Courts of the Counties formerly embracing this territory lost jurisdiction over persons residing in the new County. *Riddle v. Reese*, 53 S. C. 198, 31 S. E. 222.

(679) § 13. **Chester County—Location and Boundaries.**—Chester County is bounded as follows: On the north by a line beginning at a hickory tree, on the southwest side of the Catawba River, about ten chains above the mouth of Ferrill's Creek, and running (nearly south 80° west) by an old line, called and known by the name of the Line of the New Acquisition, to an ash and black gum, on the bank of Road River, on Robert Elliott's lands; thence down Broad River to the mouth of Sandy River; thence in a direct line to the mouth of Rock Creek, on the Catawba River; thence up to the Catawba River, to the place of beginning.

Civ. '12, § 598; Civ. '02, § 539; G. S. 411; R. S. 469; IV, 662; V, 317; VII, 284.

(680) § 14. **Chesterfield County—Location and Boundaries.**—Chesterfield County is bounded as follows: On the north by the North Carolina line; on the east by Marlboro County, from which it is separated by Great Pee Dee River; on the south by Darlington County, from which it is divided by Cedar Creek, commencing at its mouth, where it enters into the Great Pee Dee, and up said creek to the head of the southernmost branch, and thence by a direct line (south 51° 45' west) to the fork of Lynch's River; on the southwest by Kershaw and Lancaster Counties, from which it is separated by Lynch's River.

Civ. '12, § 599; Civ. '02, § 540; G. S. 412; R. S. 470; IV, 662; VII, 199, 261, 284; XII, 785.

(681) § 15. **Clarendon County—Location and Boundaries.**—Clarendon County is bounded as follows: On the north and northwest by Sumter County, from which it is separated by the following lines: Beginning at a corner on the east side of Santee River and running thence north 76° E. 654 chains to a forked pine corner; thence S. 82° E. 104 chains to a pine corner; thence N. 76° 520 chains to a post on the Vance's Ferry Road; thence N. 77° E. 368 chains and 50 links to a corner on Pocotaligo River; thence N. 34° E. 134 chains and 50 links to a corner; thence N. 55° E. 650 chains and 50 links to a corner in Black River; thence N. 86.5° E. 63 chains to a post on the Salem Road; thence N. 52° E. 200 chains to a black gum corner; thence N. 55° E. 401 chains to a pine corner; thence N. 58.5° E. 135 chains to the eastern side of Dyall's Bay; thence N. 55° E. 15 chains to Mill Bay; thence N. 57.5° E. 94 chains to two sweet gums; thence N. 55° E. 46 chains and 80 links to Wood's Mill; thence by a straight southerly line to Hudson's Mill; thence following the Centennial Road in an easterly direction until it intersects the old dividing line between Clarendon and Williamsburg Counties, said line being the old district line; thence S. 63° and 15' W. 98.19 chains to a point on the Cade Road; thence S. 80° and 35' W. 49.15 chains to the Lynchburg Road; thence S. 46° W. 330.30 chains to a stake; thence S. 19° and 17' E. 159.85 chains to a stake; thence S. 19° and 2' E. 110.37 chains to a cypress on Black River; thence 19° 2' E. 110.37 chains to a cypress on Black River, where said river intersects the old district line hereinbefore mentioned; thence with the old district line in a southwesterly direction until it intersects the Santee River three-fourths of a mile below Gaillard's Island; and on the south and southwest by Santee River, which separates it from Berkeley, Orangeburg and Calhoun Counties, less the following territory transferred to Sumter County by Act of

the General Assembly, approved the 7th day of March, 1921, to wit: Commencing at a point on the Sumter County line, and running thence South 1.42 miles to an oak at the intersection of the public road leading from Paxville to Pinewood with the road leading from Paxville to Broadway siding; thence S. 9 degrees 30 minutes E. 1.52 miles to the centre of Curtis Mill dam; thence S. 1 degree 20 minutes E. 2.36 miles to the intersection of the run of Hungryhall Branch, with the run of DeSchamps Branch; thence with the run of DeSchamps Branch to the intersection of said run with the public road leading from Panola to Calvary Church; thence 78 degrees 2.93 miles to intersection with the line of School District No. 1; thence S. 2 degrees 30 minutes W. 2.49 miles to intersection with the boundary between Big Horn Hickory Elmwood plantation, or the intersection with a projection of said boundary line; then S. 39 degrees 4,000 feet; then N. 47 degrees W. 817 feet; then in a Southwesterly direction to Santee River; then in a Northwesterly direction with the Santee River to a point where the same intersects the Sumter County line; then Eastwardly along the Sumter County line to the beginning point, containing 93.50 square miles.

Civ. '12, § 600; Civ. '02, § 541; G. S. 413; R. S. 471; IV, 662; VII, 199, 261; XII, 416, 611, § 1; 1888, XX, 168; 1889, XX, 507, 517; 1914, XXVIII, 612; 1921, XXXII, 283.

(682) § 16. Colleton County — Location and Boundaries. — Colleton County is bounded as follows: On the northeast by Dorchester County, from which it is separated by the Edisto River down to Parker's Ferry, and by the public road running from said ferry to a public landing, known as Lowden's Landing, on Rantowle's Creek; on the east by Charleston County; on the southeast by Hampton County, from which it is separated by the Salkehatchie River and by Beaufort County, from which it is separated by the Salkehatchie and Combahee Rivers and St. Helena Sound; on the northwest by Bamberg and Orangeburg Counties.

Civ. '12, § 601; Civ. '02, § 542; G. S. 414; R. S. 472; VII, 109, 284; 1897, XXII, 580, 595; 1919, XXXI, 95; 1920, XXXI, 773.

(683) § 17. Darlington County—Location and Boundaries.—Darlington County is bounded as follows: On the southwest by Lynch's River and Lee County, beginning at the mouth of Little Lynch's River; thence down Lynch's River a distance of 3 miles near Kelley's Bridge $\frac{1}{4}$ of a mile south of said bridge; thence north 42 degrees east a distance of 3 miles to Ashland Methodist Church; thence north 22 degrees east crossing the Chesterfield Road between J. E. Woodham and J. W. Gardner 2 62-100 of a mile to Stuckey's gate on the Old State Road; thence down said road $\frac{3}{4}$ of a mile; thence due south 2 62-100 of a mile to Liberty Hill Church, at the head of Sparrow Swamp; thence down Sparrow Swamp to a point in the Marco Mill Pond near B. A. Howls; thence in Cypress Township south 28 degrees east $1\frac{1}{2}$ miles to Long Branch; thence up said branch $\frac{1}{4}$ of a mile; thence south 28 degrees east $1\frac{1}{8}$ miles to Screeches Branch; thence due south 3 miles to the Lamar Township line; thence following said line to Lynch's River; thence down said river to Sander's Bridge; thence by an air line running to the point where the Cheraw and Darlington Railroad crosses High Hill Creek; thence down High Hill Creek to its confluence with Black Creek; thence up Black Creek to Muse's Bridge; thence following the direction of a straight line running from Muse's

Bridge to Cashua Ferry until Back Swamp is reached; thence down Back Swamp to Herring Creek; thence down said creek to its confluence with the Great Pee Dee River; thence up the Great Pee Dee to the mouth of Cedar Creek; thence up Cedar Creek and its southernmost branch to the head of the said branch, and thence by direct line (south $51^{\circ} 45'$ west) to the place of beginning.

Civ. '12, § 602; Civ. '02, § 543; G. S. 415; R. S. 473; IV, 662; VII, 199, 261, 284; XII, 789; 1888, XX, 168; 1889, XX, 507, 517.

(684) § 18. Dillon County—Location and Boundaries.—Dillon County is bounded as follows: Beginning at the mouth of Mill Creek, where it empties into Big Pee Dee River, and in middle of said river at said point; thence up the run of said creek to the bridge on the river road to a stake X 111 N.; thence N. 75 degrees 56 minutes E. 4,395 feet to a stake X III N., at the intersection of Gum Swamp and Cud Swamp; thence up the run of Cud Swamp to the public road leading from L. D. Haselden's to Sellers, to a stake near bridge; thence N. 82 degrees 47 minutes E. 3,061 feet along said road to the town limits of Sellers to a stake; thence N. 10 degrees 26 minutes W. 3,496.5 feet to a stake X; thence N. 87 degrees 43 minutes E. 2,100 feet to a stake X; thence N. 53 degrees 22 minutes E. 1,335 feet to a stake X; thence S. 56 degrees 32 minutes E. 1,107 feet to a stake X; thence N. 82 degrees 30 minutes E. 11,801 feet to a stake; thence N. 69 degrees 40 minutes E. 5,678 feet to an iron stake west side of the Marion and Latta public road near David Watson's; thence N. 88 degrees 30 minutes E. 2,305 feet to an iron stake on the public highway leading from Latta towards Marion, S. C., on the old Bryant place, the said roads being the ones heretofore referred to in the original petition setting forth the boundary lines of the proposed new county; thence S. 89 degrees 10 minutes E. 6,940 feet to a stake X; thence S. 68 degrees 72 minutes E. 4,920 feet to a stake X; thence S. 60 degrees 10 minutes E. 20,545 feet to a stake X, at east side of railroad; thence N. 51 degrees 37 minutes E. 4,242 feet to its intersection with Buck Swamp; thence down the run of Buck Swamp with its various courses and distances to its junction with Little Pee Dee River; thence a straight line N. 48 degrees 40 minutes E. 17,300 feet to a stake X 111 N.; thence a straight line S. 44 degrees 48 minutes E. 18,924 feet to a cypress tree X 3 N. at the junction of Ash Pole Swamp and Lumber River; thence Lumber River the line to the North and South Carolina State line; thence the North and South Carolina State line the line to the point where it intersects the line between Marion and Marlboro Counties; thence the line between Marion and Marlboro Counties the line to the median line of the Great Pee Dee River; thence down the median line of said river to the beginning corner.

Civ. '12, § 603; 1909, XXVI, 863.

(685) § 19. Dorchester County—Location and Boundaries.—Dorchester County is composed of all that territory formerly a portion of Colleton County comprised in the Townships of George, Koger, Carn, Burns, Givhans, Dorchester and that part of Collins Township in said County of Colleton lying north of the public road leading from Parker's Ferry, upon the Edisto River, to a public landing known as Lowndes Landing, upon Rantowles Creek, and all that portion formerly of Berkeley County included

within the following lines, to wit: From the intersection of the county line between Colleton and Berkeley Counties with the run of Four Holes Creek a straight line to a point upon Saw Mill Branch one mile northeast of the South Carolina and Georgia Railroad; thence along said branch to the Colleton County line, and thence back to the starting point along the line of division between Colleton and Berkeley Counties. And is bounded northeast by Berkeley County, from which it is separated by the Four Holes Swamp from the intersection of said swamp with the old district line (drawn from Nelson's Ferry, on the Santee River, to Matthews' Bluff, on Savannah River) to the intersection of the run of said swamp with the old county line between Colleton and Berkeley Counties; and by a straight line running thence to a point upon Saw Mill Branch one mile northeast of the South Carolina and Georgia Railroad, and thence along said branch to the old division line between Colleton and Berkeley Counties; and thence by said old division line to the point where said line intersects the division line between Charleston and Berkeley Counties; on the southeast by Charleston County, from which it is separated by the old division line between Charleston and Colleton Counties to Lowndes' Landing, on Rantowles Creek; south and southwest by Colleton County, from which it is separated by the public road leading from Lowndes' Landing, on Rantowles Creek, to Parker's Ferry, on Edisto River; and thence by the said river to the intersection of said river with the old district line down from Nelson's Ferry, on Matthews' Bluff; and on the northwest by Orangeburg County, from which it is separated by said last mentioned district line.

Civ. '12, § 604; Civ. '02, § 544; 1897, XXII, 595.

(686) § 20. **Edgefield County—Location and Boundaries.**—Edgefield County is bounded as follows: On the north and northwest by Greenwood and Saluda Counties; on the southeast by Aiken County; on the south and southwest by the Savannah River, which separates it from Georgia and McCormick County, which latter county is separated from Edgefield County by a line beginning on the Greenwood-Edgefield County line more particularly described in the boundaries of McCormick County, and running in a westerly direction to a stake about one-fourth of a mile west of the old White place; thence in a straight line S. 13 E. 10,978 feet to a stake; thence S. 77 W. 3,750 feet to a stake; thence S. 13 E. 8,522 feet to a pine; thence S. 35° 45' E. 20,400 feet to Cochran's Bridge, on Turkey Creek; thence S. 26° 30' E. 1,680 feet to a point where a branch crosses a public road; thence S. 59° 30' W. 27,908 feet to the run of Big Stevens' Creek; thence down the run of Big Stevens' Creek to a stake; thence S. 50 W. 22,828 feet to the South Carolina-Georgia line in the Savannah River, and in addition the following territory transferred from McCormick County by Act of the General Assembly, approved 9th of February, 1921, to wit: Beginning on the McCormick and Edgefield County line at Moultrie's Mill Branch on Turkey Creek; thence down the run of Turkey Creek to its intersection with Stephen's Creek; thence down the run of Stephen's Creek to the Edgefield and McCormick County line; thence to Edgefield and McCormick County line N. 59 degrees 45 minutes E. 27,908 feet to a corner at the intersection of a public road with a branch of Beaver Creek; thence with the Edgefield and McCormick County line N. 26 degrees 15

minutes W. 16,800 feet to the beginning, less the following territory transferred to McCormick County by Act of the General Assembly, approved 11th of February, 1921, to wit: All of that certain territory or portion of Edgefield County embraced within the following lines and boundaries, to wit: Beginning at a cottonwood tree on the West bank of Stephen's Creek; thence to Edgefield and McCormick County line of South Carolina and Georgia State line of the Savannah River; thence the South Carolina and Georgia State line on the Savannah River to old Furry's Ferry; thence a straight line N. 24 degrees E. to a stake X 3 N, on the West bank of Stephen's Creek to the beginning point.

Civ. '12, § 605; Civ. '02, § 545; G. S. 416; R. S. 474; IV, 661; VI, 463; VII, 196; XIV, 695; XXII, 248, 604, 896; 1916, XXIX, 717; 1921, XXXII, 6, 34.

For division line from Greenwood and Saluda see boundaries of those Counties in § § (691) and (708).

(687) § 21. Fairfield County — Location and Boundaries. — Fairfield County is bounded as follows: On the north by Chester County, from which it is divided by a line from the mouth of Rocky Creek, on the Catawba River, to the mouth of Sandy River, on Broad River; on the west and southwest by Broad River, by which it is separated from the Counties of Union, Newberry and Lexington; on the south by Richland County, from which it is separated by Little River from its mouth up to a point about one-half mile above the plantation of Mr. Shaffer (one mile above the mouth of Shaffer's Creek), and the line running from thence in a direct course to new corner on the Fairfield-Richland line, where it crosses the median line of Cedar Creek; thence up the median line of Cedar Creek, with its various sources, to Simmons' Creek; thence up the median line of Simmons' Creek to a point marked X 3 N. on the bank of Simmons' Fork, on Cedar Creek; thence N. 72° 10' E. 23,800 feet to a stake on the Ridge-way-Blythewood Road; thence N. 82° 20' E. 41,333 feet to a stake on the dividing line between Fairfield and Kershaw Counties; on the east by the Counties of Kershaw and Lancaster, from which it is separated by a line drawn from the last named point in a northeasterly direction to Wateree River, where Cornell's Creek enters it; thence by the Wateree and Catawba Rivers as high as the mouth of Rocky Creek.

Civ. '12, § 606; Civ. '02, § 546; G. S. 417; R. S. 475; IV, 662; V, 317; VII, 199, 284; 1913, XXVIII, 117.

(688) § 22. Florence County — Location and Boundaries. — Florence County is bounded as follows: By a line beginning at Sanders' Bridge, on Lynch's River, running in an air line to a point where the Cheraw and Darlington Railroad crosses High Hill Creek; thence down High Hill Creek to its confluence with Black Creek; thence up Black Creek to Muse's Bridge; thence following the direction of a straight line running from Muse's Bridge to Cashua's Ferry to Black Swamp; thence down Black Swamp to Herring Creek; thence down said creek to its confluence with the Great Pee Dee River; thence following the Great Pee Dee River down to its intersection with Lynch's River; thence following said river up to a point and above Anderson's Bridge; thence in a straight line westward to the Williamsburg and Clarendon County line, so as to embrace twenty-eight square miles of the territory of Williamsburg County; thence following said Clarendon and Williamsburg County line in a southwesterly direction to its

intersection with what is known as the Centennial Road; thence following said Centennial Road in a westerly direction to Hudson's Mill; thence running in a northerly direction to a point on the Clarendon and Sumter County line at Wood's Mill; thence following the Clarendon and Sumter County line in a northeast direction to Lynch's River; thence following said River up to Sanders' Bridge, the beginning corner. Florence County also embraces the following described sections, cut off from Williamsburg County and incorporated within the County of Florence, as follows, to wit: All that portion of Lee and Lake Townships as appears from plat made by E. J. Smith, Surveyor, dated 28th November, 1903, beginning at a point one mile south of Anderson's Bridge, on Lynch's River, and then running in a westerly direction through portions of Lee and Lake Townships, in the said County of Williamsburg, to the line separating the County of Williamsburg from Mott's Township, in the County of Florence, and also that portion of Williamsburg County annexed to Florence County pursuant to an Act of the General Assembly of South Carolina, approved the 16th day of February, 1912, and appearing as Act No. 456, at page 817 of the Acts of 1912, Vol. XXVII of the Statutes at Large, and described as follows: Commencing at a point where the center of Lynch's Lake Swamp intersects the present Florence County line and following said Florence County line N. 16° 45' E. 26,000 feet to Cathold Landing, and following in an easterly direction the run of the branch crossing Lynch's River, and down the middle of said run to the point where the middle of Lynch's Lake Swamp intersects the middle of the run of Lynch's River; and thence up said middle of Lynch's Lake Swamp to point of beginning, as per map made by R. M. Cantey and Joseph Palmer, Surveyors, in February, 1911, and filed in the office of the Clerk of Court for Florence County, and in addition the following territory transferred from Williamsburg County by Act of the General Assembly, approved March 4th, 1921, to wit: Beginning at a point in the road leading to Lee's Cross Roads, where the same crosses Lynch's Creek, and running S. 12 degrees 30 minutes W. 1,943 feet; thence S. 8 degrees 10 minutes W. 526 feet; thence S. 14 degrees 30 minutes E. 1,119 feet; thence S. 25 degrees 20 minutes E. 730 feet; thence S. 72 degrees 20 minutes E. 43,610 feet to a stake at the road leading from Indian Town to Kingstree; thence N. 26 degrees E. 316 feet; thence along the Kingstree road N. 71 degrees 35 minutes E. 10,094 feet; thence 504 feet along said road to the intersection of Owen's Swamp; thence 527 feet along said road; thence 806 feet along said road; thence Northeast 711 feet; thence Northeast 559 feet; thence E. 506 feet; thence Southeast 1,225 feet to a point in the centre of said road; thence Northeast 3,380 feet along centre of said road; thence 2,315 feet to where it intersects Flanagan's Creek; thence along Muddy Creek to the intersection of Clark's Creek; thence along Clark's Creek to the intersection of Pee Dee River; thence along Pee Dee River to the mouth of Lynch's River; thence along Lynch's to the mouth of Lynch's Lake; thence along Lynch's Lake to the beginning point, containing 45.3 square miles.

Civ. '12, § 607; Civ. '02, § 547; R. S. 476; 1888, XX, 168; 1889, XX, 507, 517; 1904, XXIV, 447; 1912, XXVI, 817; 1921, XXXII, 212.

(689) § 23. Georgetown County—Location and Boundaries.—Georgetown County is bounded as follows: On the north and northeast by Marion and Horry Counties, from which it is separated as follows: From Marion County by the Great Pee Dee River, from Britton's Ferry to its junction with the Little Pee Dee River; from Horry County by the Great Pee Dee River, from its junction with the Little Pee Dee to its junction with Bull Creek; and thence by said creek to Waccamaw River; and thence by said river down to a point about half a mile below Prince's Creek; and thence by a line running (north $86\frac{1}{2}^{\circ}$ east) five miles and sixty-seven chains, to a cedar post on the seashore, planted at low watermark; on the southeast by the Atlantic Ocean, including all the islands between the last mentioned cedar post and the mouth of South Santee River; on the south and southwest by the Counties of Charleston and Berkeley, from which it is separated by the South Santee and Santee Rivers as far up as Leneud's Ferry; on the west and northwest by Williamsburg County, from which it is divided by the main road leading from Leneud's Ferry, on the Santee River, across Potato Ferry (on Black River), to Britton's' Ferry, on the Great Pee Dee.

Civ. '12, § 608; Civ. '02, § 548; G. S. 418; R. S. 477; IV, 662; V, 407, 478; VII, 199, § 2.

(690) § 24. Greenville County—Location and Boundaries.—Greenville County is bounded as follows: On the north by the North Carolina line; on the east and southeast by Spartanburg and Laurens Counties, from which it is divided as follows: From Spartanburg County, by a line commencing on the North Carolina line, at a stone marked "S. C.," on the east side of Blackstock Road, near the Tryon Mountain, and running (south 2° east) twenty-two miles and sixty-four chains, or until it intersects the Enoree River at Abner's Mill; thence down the Enoree River to a point about one mile and three-quarters below Anderson's Bridge (the corner of Greenville and Laurens Counties); from Laurens County, by a line commencing at said point (opposite Zadock's Ford), and running (south 17° west) eleven miles and sixty chains, to a point; thence (south 4° east) three miles and forty-five chains, to a water oak, marked "L. G.," on Reedy River; thence running to the mouth of Line Creek, where it enters the Saluda River; on the west by Anderson and Pickens Counties, from which it is separated by the Saluda River.

Civ. '12, § 609; Civ. '02, § 549; G. S. 419; R. S. 478; VII, 245, 284.

(691) § 25. Greenwood County—Location and Boundaries.—Greenwood County is bounded as follows: That is to say, beginning at the middle line of Saluda River at the northeast corner of Saluda County, thence along the line of Saluda County to its northwest corner on Mountain Creek; thence a straight line to the middle line of Shinburg Bridge on Cuffa Town Creek; thence down the middle line of Cuffa Town Creek to its junction with Hard Labor Creek; thence down the middle line of Stevens' Creek to the mouth of Rocky Creek; thence up the middle line of Rocky Creek to the Abbeville and Edgefield County line; thence north 33 degrees west to mile-post on public road leading from Troy to McCormick near George Lebert's residence; thence north 13 degrees west to a corner post one hundred and fifty feet (150) south of Jordan's old mill on Long Cane Creek; thence

northeast 50 degrees two miles and three-quarters; thence northeast 42 degrees two miles; thence northeast 27 degrees 50 minutes two miles; thence northeast 13 degrees 20 minutes two miles; thence northwest 1 degree two miles; thence northwest 15 degrees 10 minutes two miles; thence northwest 29 degrees 20 minutes two miles; thence northwest 43 degrees 35 minutes two miles; thence northwest 57 degrees 45 minutes one and one-fifth miles, to post four hundred feet (400) north of Douglas' Mill Bridge on Long Cane Creek; thence north 7 degrees west to division line between Long Cane and Cokesbury Township; thence up said division line to its crossing of Long Cane Creek; thence up the middle line of Long Cane Creek to its crossing of the division line between Donald's and Cokesbury Townships; thence along said Cokesbury and Donald's Township division line to the middle line of Saluda River; thence down the middle line of Saluda River to the northeast corner of Saluda County, the point of beginning.

Civ. '12, § 610; Civ. '02, § 550; 1897, XXII, 604; 1898, XXII, 897.

(692) § 26. Hampton County—Location and Boundaries.—Hampton County is bounded as follows: On the northeast by Colleton County, from which it is separated by the Combahee and Salkehatchie Rivers; on the northwest by Allendale County; on the southwest by the Savannah River, which separates it from the State of Georgia, and on the southeast by the Counties of Jasper and Beaufort.

Civ. '12, § 611; Civ. '02, § 551; G. S. 420; R. S. 479; 1878, XVI, 375; 1912, XXVII, 827; 1914, XXVIII, 626; 1916, XXIX, 754; 1919, XXXI, 5.

(693) § 27. Horry County—Location and Boundaries.—Horry County is bounded as follows: On the southeast by the Atlantic Ocean, a line of thirty-one miles; on the northeast by the North Carolina line, beginning at a cedar stake (marked with nine notches) on the seashore of Goat Island, about one and a quarter miles east of the mouth of Little River, and running from thence until it intersects Lumber River (about five and a fourth miles to the east of Newsom's Ferry); on the west and southwest by Marion and Georgetown Counties, from which it is separated as follows: By Lumber River to Little Pee Dee River; thence by Little Pee Dee River to its junction with Great Pee Dee River; thence by Great Pee Dee River to its junction with Bull Creek; thence by said creek to the Waccamaw River, and down this river to a point about half a mile below Prince's Creek; and thence by a line running over to a cedar post on the seashore (north $86\frac{1}{2}^{\circ}$ east) five miles and sixty-seven chains.

Civ. '12, § 612; Civ. '02, § 552; G. S. 421; R. S. 480; IV, 663; V, 407, 544.

(694) § 28. Jasper County—Location and Boundaries.—Jasper County is bounded as follows: Beginning at a point in the Savannah River, where the township line between Lawton and Goethe Townships on one side and Robert and Coosawhatchie on the other, in Hampton County, intersects the South Carolina-Georgia State line; thence the said line between said townships the line to its intersection with Coosawhatchie River; thence down the said run of Coosawhatchie River with its various courses to its junction with Tulefinnie River; thence down the same with its various courses to its teen chains, to a point over Rice Creek, on Peay's plantation, nearly half a Line Railroad Company; thence up said western side of right of way to its

intersection with Pocataligo River; thence down the same with its various courses to its junction with Broad River; thence down the same with its various courses to a pine tree X 3 N, on Belia Point on the south side of Coles Creek; thence a straight line to the median line of Hazzards Back Creek, opposite Boland Hall; thence down said creek to its junction with Eutaw Creek; thence down said creek and through the nearest waterways to a point on Manigaults Neck where the land line dividing the land of Chelsea Club from the Fripp land intersects said creek or waterway; thence the said land line to its intersection with the Fripp Public Road; thence down Jasper County side of the said Fripp Public Road to its intersection with the Hazel Road; thence westerly along the Jasper County side of said Hazel Road to its intersection with a public road at or near Hazel Episcopal Church; thence westerly along the Beaufort County side of said public road to its intersection with the Charleston and Savannah Turnpike; thence the Beaufort County side of the said turnpike to a point opposite its intersection with the southern boundary line of the land of the Okeetee Club; thence across said road to the said boundary line, the line in a westerly direction to a corner where said land line turns in a northeasterly direction; thence on said line in a northeasterly direction, the line three-fourths of a mile; thence a straight line, the line westerly to a point where the said boundary line of said Okeetee Club land intersects the county line of Hampton and Beaufort Counties; thence the said county line, the line in a southwesterly direction to its intersection with the northeasterly boundary of the Savannah and Augusta Public Road; thence in a southeasterly direction the said northeasterly boundary of the Savannah and Augusta Public Road to its intersection with the Charleston and Savannah Public Road; thence down the westerly boundary of the said Savannah and Augusta Public Road with its various courses and distances to a point on said road two (2) miles from the east bank of the Savannah River at Screvens Ferry; thence south sixty (S. 60 W.) degrees west, a straight line, the line to its intersection with the South Carolina-Georgia State line; thence the said South Carolina-Georgia State line with its various courses and distances the line, to the beginning point. The said county is hereby named Jasper, and the county seat thereof is hereby established in the town of Ridgeland.

1912, XXVII, 827; 1914, XXVIII, 626; 1916, XXIX, 754.

White, Supervisor et al, v. Saunders, 114 S. C. 54, 103 S. E. 86.

(695) § 29. **Kershaw County — Location and Boundaries.** — Kershaw County is bounded on the southeast by Lee and Sumter Counties, from which it is divided by a line beginning at Spivey's Ferry, on Lynch's River, and extending along the Lee County line to the point where the line between Lee County and Sumter County meets the line of Kershaw County; thence in a southwest direction along the Sumter County line to the Wateree River; on the southwest by Richland County, from which it is divided by a line beginning at the Wateree River, opposite to the last mentioned point, and running (south 66° west), or by Raglin's Creek, to Speer's Creek; thence up Raglin's Creek to its head; thence by a straight line (north 40¾° west) ten miles seventeen chains; thence (north 56½° west) one mile fourteen chains, to a point over Rice Creek, on Peay's plantation, nearly half a mile above the fork of Twenty-five Mile Creek; on the west by Fairfield

County, from which it is separated by a line drawn from the last mentioned point (north $18\frac{1}{4}^{\circ}$ east) twenty-three miles fourteen chains, or until it intersects the Wateree River, and up the said river half a mile above Peay's Ferry; on the northwest and north by Lancaster County, from which it is divided by the following lines: Beginning at a point on Catawba River one-half mile above Peay's Ferry, thence north 54 E. 9 miles 62 chains to stone corner near Russell Place; thence N. 74 E. 1 mile 37 chains and 50 links to corner at Hammond's Springs 75 feet left; thence N. 48 E. 2 miles 63 chains to stone corner near Hanging Rock Bridge; thence south along the Salisbury Road 4 miles 16 chains to corner near Bethel Church; thence N. 66 E. 14 miles 76 chains 16 links to Lynch's River, separating Chesterfield from Kershaw and Lancaster Counties; on the northeast by Chesterfield and Darlington Counties, from which it is separated by Lynch's River down to the place of beginning, less the following territory transferred to Lee County by Act of the General Assembly, approved March 7th, 1921, to wit: Commencing at that point on the McCullum public road from Bishopville to Camden, west of Marshall's just where the present boundary line between Lee and Kershaw County enters said road; thence a Northerly direction to a point where the lands of Joseph Radcliffe, D. L. Johnson and Richard Cullum corner; thence in a Northeasterly direction to Neil's crossing on Thickhead Swamp; thence in a Northeasterly direction along the boundary line between lands of M. H. Pate and Wesley McCaskill, to neighborhood road leading from the McCullum road by residence of Wesley McCaskill; thence in a Northerly direction along said road to the point where the land of J. S. Tisdale corners with the land of the estate of Bullock; thence in a Northeasterly direction along the boundary line between lands of estate of Bullock and lands of J. S. Tisdale, and between lands of J. J. Self and Wiley Hatfield's lands to neighborhood road, known as Riley's old road; thence with the said road in a Northeasterly direction to the intersection of Lee County and Kershaw County boundary lines; thence with the Lee County line back to the beginning point.

Civ. '12, § 613; Civ. '02, § 553; G. S. 422; R. S. 484; V, 218; VI, 69; VII, 270, 284; IX, 386; 1892, XXI, 296; 1921, XXXII, 239.

(696) § 30. Lancaster County—Location and Boundaries.—Lancaster County is bounded as follows: On the north by the North Carolina line; on the west by the Catawba River and Big Sugar Creek from the point where it enters said river to the intersection of the North Carolina line, which separates it from the Counties of York, Chester, and Fairfield; on the south by Kershaw County, from which it is divided by the line mentioned in the last preceding Section; and on the east by Chesterfield County, from which it is separated by Lynch's River.

Civ. '12, § 614; Civ. '02, § 554; G. S. 423; R. S. 482; 1873, XV, 425; IV, 662; V, 218, 697; VI, 69; VII, 284.

(697) § 31. Laurens County—Location and Boundaries.—Laurens County is bounded as follows: On the southwest by the Saluda River, by which it is separated from Abbeville and Greenwood Counties; on the northwest by Greenville County, from which it is divided by a line commencing at the mouth of Line Creek, where it enters the Saluda River, and

running five miles and forty-five chains to a water oak, marked "L. G.," on the Reedy River; thence (north 4 degrees west) three miles and forty-five chains to a point; thence (north 17 degrees east) eleven miles and sixty chains, to the ford on Enoree River, opposite Zadoek's Ford; on the northeast by the Enoree River, which separates it from Spartanburg and Union Counties; on the southeast by Newberry County, from which it is divided by the old road leading from Odel's Ford, on the Enoree River, to Island Ford, on the Saluda River.

Civ. '12, § 615; Civ. '02, § 555; G. S. 424; R. S. 483; IV, 661; V, 220, 545; 1898, XXII, 897.

(698) § 33. **Lee County—Location and Boundaries.**—Lee County is bounded as follows: Beginning at Field's Bridge, on Lynch's River, and running down said river a distance of thirteen miles, leaving said river back of Irby Truluck's plantation and crossing the Lynchburg and Lake City Road between Bob Welsh and Dr. Miller's places, a course S. 28° W. 3¼ miles striking a new road; thence S. 80° W. 2¾ miles to the Pudding Swamp Road at T. L. Kirkpatrick's; thence S. 65° W. crossing Raceoon Road at Sam Wilson's 5¾ miles to Scottsville; thence from Scottsville S. 76¼° W. ¾ miles to Black River; thence up Black River, in Sumter County, 3¾ miles to Witherspoon Crossing; thence S. 80° W. to Scape O'er Swamp; thence up said swamp 2½ miles to the C. S. & N. R. R. Crossing; thence N. 80° W. to a pine on the old dividing line between Lee and Sumter Counties on the west side of the public road leading from Oswego to DuBose's Cross Roads, and at a distance of 4-10 miles from the center of said public road; and running thence N. 16° 27' W. 1 74-100 miles to a point in the center of said public road leading from Oswego to DuBose's Cross Roads about opposite the dwelling of Mrs. Martin; thence along the center of said public road for a distance of 1 27-100 miles to DuBose's Cross Roads; thence N. 61° 10' W. along the center of the road leading to Herriott's Cross Roads, a distance of 3-10 miles; thence S. 87° 35' W. a distance of 3 23-100 miles to the bridge at the main run of Open Branch on the road leading to Bradford's Springs; thence S. 63° 20' W. a distance of 1 11-100 miles to a point in Stanyarne Burrow's field; thence S. 43° 50' W. to the intersection with the line between Lee and Sumter Counties; thence N. 62° 5 37-100 miles to a point in Bradley's field near the Kershaw County line; thence due north 1 87-100 miles to the Kershaw County line; thence down said line 2 62-100 miles to Reynold's Mill; thence following the Three Notch Road, in Kershaw County, a distance of three miles to Antioch School House; thence N. 50° E. 1¼ miles. Thence due north 1¾ miles to the Camden Road; thence following said road a distance of 4¾ miles to Harrison Hall Mill; thence in an eastern direction 1 87-100 miles to the old Georgetown Road; thence up said road to near the head of Turkey Creek; thence in a northern line to the Camden Road leading from Kelly's Bridge, on Lynch's River, to Camden; thence down said road to the Holland Ditch; thence up said ditch ¾ mile to a corner of plantation of Edmond Tiller; thence N. 63° E. crossing the Mecklenburg Road near the house of Whitfield Gardner, to Lynch's River south of Dr. Norwood's place 3 37-100 miles; thence down said river a distance of three miles near Kelly's Bridge, ¼ mile south of said bridge; thence N. 42° E. three miles to Ashland

Methodist Church; thence N. 22° E. crossing the Chesterfield Road between J. E. Woodham and J. W. Gardner 2 62-100 miles to Stuckey's gate on the old State Road; thence down said road $\frac{3}{4}$ of a mile; thence due south 2 62-100 miles to Liberty Hill Church, at the head of Sparrow Swamp; thence down Sparrow Swamp to a point in the Marco Mill Pond, near B. A. Howls; thence in Cypress Township S. 28° E. $1\frac{1}{2}$ miles to Long Branch; thence up said branch $\frac{1}{4}$ of a mile; thence S. 28° E. $1\frac{1}{8}$ miles to Screeches Branch; thence due south three miles to the Lamar Township line; thence following said line to the beginning corner, and in addition the following territory transferred from Kershaw County by Act of the General Assembly, approved March 7th, 1921, to wit: Commencing at that point on the McCullum public road from Bishopville to Camden, west of Marshall's church, where the present boundary line between Lee and Kershaw counties enters said road, thence a northern direction to the point where the land of Joseph Radcliffe, D. L. Johnson and Richard Outlaw corner; thence in a northeasterly direction to Neil's Crossing on Thick Head Swamp; thence in a northeasterly direction along the boundary line between land of M. H. Pate and Wesley McCaskill to neighborhood road leading from the McCullum road by residence of Wesley McCaskill; thence in a northerly direction along said road to the point where the land of J. S. Tisdale corners with the land of the estate of Bullock; thence in a northeasterly direction along the boundary line between lands of estate of Bullock and land of J. S. Tisdale and between land of J. J. Self and Wiley Hatfield's land to neighborhood road known as the Riley Hall Road; thence with the said road in a northeasterly direction to the intersection of the Lee County and Kershaw County boundary lines; thence with the Lee County line back to the beginning point, containing by survey four and 24-100 square miles.

Civ. '12, § 616; 1902, XXIII, 1194; 1914, XXVIII, 647; 1921, XXXII, 239.

(699) § 34. **Lexington County—Location and Boundaries.**—Lexington County is bounded on the northeast and east by Richland County; on the southeast by Orangeburg and Calhoun Counties, from which it is divided by Beaver Creek; on the southwest by Aiken County, from which it is separated by the north fork of the Edisto River to the mouth of the southern branch of Chinquepin Falls Creek, and then by said creek to a point where it intersects the line drawn from Silver Bluff, on the Savannah River, to the mouth of Rocky Creek, on Saluda River; on the northwest by Saluda County, from which it is separated by a line drawn from Silver Bluff, on Savannah River, to the mouth of Rocky Creek, on the Saluda River; and by Newberry County, from which it is separated by a line beginning at a point in Broad River, on the Fairfield-Lexington County line, about one-fourth of a mile below Peak, and running thence S. 40 degrees W. to a point on the west bank of Broad River; thence S. 40 degrees W. 1,956 feet to an oak; thence S. 46 degrees 40 minutes W. 2,410 feet to a stone on the public road; thence S. 41 degrees W. 1,143 feet to a stake; thence S. 32 degrees 30 minutes W. 9,568 feet to a stake on a branch; thence down the run of the branch to a stake; thence S. 45 degrees W. 575 feet to a stake; thence N. 86 degrees 30 minutes W. 3,782 feet to a pine; thence S. 26 degrees 30 minutes W. 3,650 feet to a stake; thence S. 53 degrees 30 minutes W. 4.990

feet to a point on the Columbia, Newberry and Laurens Railroad; thence S. 73 degrees 30 minutes W. 2,613 feet to a maple in a branch; thence S. 68 degrees 30 minutes W. 2,180 feet to a stake near a negro church; thence N. 77 degrees 30 minutes W. 5,577 feet to a stake just west of the public road, near Little Mountain; thence S. 28 degrees W. 20,850 feet to Camping Creek, near the mouth of Stevens Creek; thence up the run of Camping Creek to the old Newberry-Lexington County line; thence southwesterly with the old Newberry-Lexington County line to Saluda County on Broad River.

Civ. '12, § 617; Civ. '02, § 556; G. S. 125; R. S. 484; IV, 664; V, 478, 506; VI, 463; VII, 248; XIV, 695; 1986, XXII, 249; 1901, XXIII, 662; 1912, XXVII, 821; 1913, XXVIII, 107; 1920, XXXI, 976.

(700) § 35. Marion County—Location and Boundaries.—Marion County is bounded as follows: On the north by Dillon County, on the west by the Great Pee Dee River, thence down the Great Pee Dee River, which divides it from Florence, Williamsburg and Georgetown Counties, to the mouth of the Little Pee Dee River; thence up the Little Pee Dee and Lumber Rivers, separating it on the east from Horry County, to the line of Dillon County on the Little Pee Dee River.

Civ. '12, § 618; Civ. '02, § 557; G. S. 426; R. S. 485; IV, 663; VII, 199, 284, 261; XII, 785, 835; 1888, XX, 168; 1889, XX, 507, 517.

(701) § 36. Marlboro County — Location and Boundaries. — Marlboro County is bounded as follows: On the west by the Great Pee Dee River, which separates it from the Counties of Chesterfield, Darlington and Florence; and on the southeast by Dillon County, from which it is divided by a line drawn from a dead pine on the North Carolina line (south $22\frac{1}{2}^{\circ}$ west) twenty-four and three-fourths miles until it intersects the Great Pee Dee River.

Civ. '12, § 619; Civ. '02, § 558; G. S. 427; R. S. 486; IV, 662; VII, 199, 284.

(702) § 37. McCormick County—Location and Boundaries.—McCormick County is bounded as follows: Beginning at a point on the South Carolina-Georgia line in the Savannah River, opposite the mouth of Coffer Creek; thence a straight line, N. 45 degrees E. 26,728 feet to the fork of roads at Riley's; thence the public road, in an easterly direction to Island Bridge over Little River; thence continuing 6,978 feet to the fork of road; thence turning to the east, following the right hand road to the south of Little River, known as White's Creek; thence a straight line S. 85 degrees 30 minutes E. 23,800 feet to a point in the road near Clatworthy's Cross Roads; thence a straight line N. 78 degrees 15 minutes E. 15,700 to a point on the Greenwood-Abbeville County line near Jordan's Mill; thence the said Greenwood-Abbeville County line, in a southerly direction to its intersection with the C. & W. C. Railway, about one mile south of Troy; thence a straight line north 58 degrees east 5,000 feet to a stake, south of the incorporated limits of Troy; thence a straight line N. 46 degrees E. 19,659 feet to a stake on the Abbeville-Edgefield Public Road; thence the said Abbeville-Edgefield Public Road in a southerly direction to a road opposite the Jabe Stone place; thence N. 44 degrees 30 minutes E. 7,200 to a stake; thence a straight line S. 83 degrees E. 13,361 feet to a stake near or at Calli-

son's old mill on Cuffytown Creek; thence up the run of said creek to the Callison-Kirksey Township line; thence the said township line in an easterly direction to the Martintown Road; thence the said Martintown Road in a southeasterly direction to the Greenwood-Edgefield County line; thence the said Greenwood-Edgefield County line in a westerly direction to a stake about one-quarter of a mile west of the old White place; thence a straight line south 12 degrees E. 10,978 feet to a stake; thence a straight line S. 77 degrees W. 3,750 feet to a stake; thence a straight line S. 13 degrees E. 8,522 feet to a pine; thence a straight line S. 35 degrees 45 minutes E. 20,400 feet to Cochran Bridge on Turkey Creek; thence a straight line S. 26 degrees 30 minutes E. 16,800 feet to a point where a branch crosses a public road; thence a straight line S. 59 degrees 30 minutes W. 27,908 feet to the run of Big Stevens Creek; thence down the run of Big Stevens Creek to a stake; thence a straight line S. 50 degrees W. 22,828 feet to the South Carolina-Georgia State line in the Savannah River; thence the said South Carolina-Georgia State line in a northwesterly direction to the beginning point. The said county is hereby named McCormick, and the county seat thereof is hereby established in the town of McCormick, and in addition the following territory transferred from Edgefield County by Act of the General Assembly, approved February 11th, 1921, to wit: Beginning at a cottonwood tree on the west bank of Stevens Creek; thence the Edgefield and McCormick county line to the South Carolina and Georgia State line in the Savannah River; thence the South Carolina and Georgia State line in the Savannah River to old Furry's Ferry; thence a straight line north twenty-four degrees east to a stake X3N on the west bank of Stevens Creek; thence up the west bank of Stevens Creek to the beginning point, and less the following territory transferred to Edgefield County by Act of the General Assembly, approved the 9th of February, 1921, to wit: Beginning on the McCormick and Edgefield county line at Moultrie's Mill bridge, on Turkey Creek; thence down the run of Turkey Creek to its intersection with Stevens Creek; thence down the run of Stevens Creek to the Edgefield and McCormick county line; thence the Edgefield and McCormick county line north 59 degrees 45 minutes east 27,908 feet to a corner at the intersection of a public road with a branch of Beaver Creek; thence the Edgefield and McCormick County line north 26 degrees 15 minutes west 16,800 feet to the beginning point.

1916, XXIX, 717; 1921, XXXII, 6, 34.

(703) § 38. **Newberry County—Location and Boundaries.**—Newberry County is bounded as follows: On the northwest by Laurens County, from which it is separated by a line beginning at Island Ford, on Saluda River, and running thence along the old road to O'Dell's Ford, on Enoree River. On the north by a line commencing at O'Dell's Ford, on Enoree River, and running thence down Enoree River to Anderson's Ford; thence along the road to Hill's Ferry, on Tiger River; thence down the same to the mouth; thence down Broad River to a point on the Fairfield-Lexington County line about one-fourth of a mile below Peak, and running thence S. 40° W. to a point on the west bank of Broad River; thence S. 40° W. 1,956 feet to an oak; thence S. 46° 40' W. 2,410 feet to a stone in the public road; thence S.

41° W. 1,143 feet to a stake; thence S. 32° 30' W. 95.68 feet to a stake on a branch; thence down the run of the branch to a stake; thence S. 55° W. 575 feet to a stake; thence N. 86° 30' W. 3,782 feet to a pine; thence S. 26° 30' W. 3,650 feet to a stake; thence S. 53° 30' W. 4,940 feet to a point on the Columbia, Newberry and Laurens Railroad; thence S. 73° 30' W. 2,613 feet to a maple in a branch; thence S. 68° 30' W. 2,180 feet to a stake near a negro church; thence N. 77° 30' W. 5,577 feet to a stake, just west of the public road near Little Mountain; thence S. 28° W. 2,850 feet to Camping Creek, near the mouth of Stevens' Creek; thence up the run of Camping Creek to the old Newberry-Lexington County line; thence with the old Lexington-Newberry County line to the Saluda River; and is bounded on the southwest by the Saluda River, which separates it from Saluda and Greenwood Counties.

Civ. '12, § 620; Civ. '02, § 559; G. S. 428; R. S. 487; IV, 661; VII, 199, 248, 262, 284; 1901, XXIII, 662; 1920, XXXI, 976.

(704) § 39. Oconee County—Location and Boundaries.—Oconee County is bounded as follows: On the north by the North Carolina line; on the east by Pickens County, from which it is separated by a line beginning in the middle of Seneca River, where Ravenel's Bridge is located on said river, and running thence S. 85° E. 12 chains to a corner; thence S. 47° E. 10.21 chains to a corner; thence S. 27° E. 5 chains to a corner; thence S. 75° E. 3.30 chains to a corner; thence N. 69.5° E. 12.37 chains to a corner; thence S. 88° E. 30.88 chains to a corner; thence S. 59° E. 12.15 chains to a corner; thence S. 29° E. 13.67 chains to a corner; thence S. 83.5° E. 7.31 chains to corner; thence N. 82° E. 10.16 chains to corner; thence N. 98° E. 2,840 chains to corner; thence N. 81° E. 9.73 chains to a corner; thence S. 78° E. 16.16 chains to a corner; thence S. 54° E. 5.57 chains to a corner; thence S. 30° E. 0.19 chains to a corner; thence S. 51° E. 35.45 chains to corner; thence S. 57° E. 23.93 chains to corner; thence S. 68.5° E. 7.91 chains to corner; thence S. 50° E. 8.22 chains to corner; thence S. 56° E. 11.90 chains to corner; thence S. 32° E. 3.39 chains to corner; thence S. 47.5° E. 10.15 chains to corner; thence S. 47.5° E. 11.59 chains to corner; thence S. 66° E. 3 chains to a corner on the line of Anderson County. It is bounded on the south by Anderson County, from which it is separated by a line, commencing at the mouth of Cane Creek, on Tugaloo River, and running thence along the line which originally separated Anderson and Pickens Districts to its point of intersection with the public road leading from Ravenel's Bridge to Pendleton Village; on the west and northwest by the State of Georgia, from which it is separated by the Tugaloo and Chatooga Rivers.

Civ. '12, § 621; Civ. '02, § 560; G. S. 429; R. S. 448; 1875, XV, 1014; I, 196; VI, 39, 289, 341; Const., Art. II, § 3; 1917, XXX, 164.

(705) § 40. Orangeburg County—Location and Boundaries.—Orangeburg County is bounded as follows: On the north and northeast by Calhoun and Clarendon Counties, from which it is separated by the Santee River and the line of Calhoun County; on the southwest by Berkeley and Colleton Counties, from which it is divided by a line drawn (south 52° west) from Nelson's Ferry, on the Santee River, to Matthews' Bluff, on the Savannah River; on the southwest by Barnwell and Bamberg Counties, from which it is

separated by the South Edisto River; on the northwest by Aiken and Lexington Counties, from which it is divided by a direct line drawn from A. J. Weathersbee's old mill, on the line between Barnwell and Aiken Counties, to the point where the Cedar Pond Branch empties into the North Fork of the Edisto, and by another direct line, drawn from said point where the Cedar Pond Branch empties into the North Fork of the Edisto, to the head waters of the main branch of Beaver Creek; thence down said creek to the line of Calhoun County; thence along said line to the Santee River: *Provided*, That the county lines of Berkeley County and of Orangeburg County are hereby so altered as to cut off from said Berkeley County and to transfer and annex to and incorporate within said Orangeburg County all of that certain territory or portion of Berkeley County embraced within the following lines and boundaries, to wit: Beginning at a point located on Four Holes Swamp at the intersection of the boundary lines of Orangeburg, Dorchester and Berkeley Counties, and extending in a southeasterly direction, along Four Holes Swamp, the same being the boundary between Dorchester and Berkeley Counties to a large cypress which stands at the confluence of Four Holes and Dean Swamps, at the upper part of Turkey Lake; thence up and along the run of Dean Swamp as it meanders to a point where Dean Swamp and Black Creek unite; thence up Black Creek to the point where Big Black Creek and Little Black Creek unite; thence up Little Black Creek to the point where the "new road" crosses said Little Black Creek; thence northerly up the "new road" to the Monek's Corner Public Road, near Mark Richardson's place; thence north ten chains to a pine; thence north 14° east, thirty-eight chains to a stake; thence south 37° 15 minutes east, forty-nine chains to stake; thence east 9.70 chains to a stake; thence north 39.50 chains to a stake; thence north 87° east, thirty-four chains and ten links; thence north fifty-four and one-half ($54\frac{1}{2}$) chains to a stake; thence north 1° 30 minutes west, eighteen chains and sixty links to a stake; thence north 30° west, thirty-one chains to a stake; thence north 8° west, eleven chains to a cypress at the river road and Rock Creek Bridge; thence northeast along Rock Creek to where Rock Creek empties into the Santee River; thence up the Santee River to the mouth of Eutaw Creek, where the Orangeburg and Berkeley lines connect; thence southwest along the boundary line between Orangeburg and Berkeley Counties to the point of beginning.

Civ. '12, § 622; Civ. '02, § 561; G. S. 430; R. S. 489; V, 407; VII, 199, 261, 284; XIV, 695.

(706) § 41. Pickens County—Location and Boundaries.—Pickens County is bounded as follows: On the north by the North Carolina line; on the east by Greenville County, from which it is separated by the Saluda River; on the south by Anderson County, from which it is separated by a line beginning at the mouth of Cane Creek, on the Tugaloo River, and then running to a point where Eighteen Mile Creek is crossed by the road leading from Pendleton to Hagood's Store, and thence to the mouth of George's Creek, on the Saluda River; on the west by Oconee County by a line more particularly described in Section 39 setting forth the boundary line between Oconee and Pickens Counties.

Civ. '12, § 631; Civ. '02, § 570; G. S. 438; R. S. 497; 1868, XIV, 134, § 36. 284; 1875, XV, 1014; 1917, XXX, 164.

(707) § 42. **Richland County—Location and Boundaries.**—Richland County is bounded on the north by Fairfield County, from which it is separated by new boundary lines set forth and specifically described in the location and boundary of Fairfield County; on the east by Kershaw County and Sumter County, from which it is separated by the Wateree River; on the south by Calhoun County; on the west by Lexington County, from which it is separated by a line beginning on the Congaree River where the Counties of Lexington and Richland meet on the southern division thereof, and running thence with the said Congaree River to where the confluence of the Broad and Saluda Rivers unite to form the Congaree, and following the thread of the said Saluda River about two and one-half miles to a pine tree marked X 3 N.; thence in a northwesterly direction upon the circumference of a circle having Lexington Court House as its center, with a radius of eight miles and a deflection of 1 degree and 21 minutes for every one thousand feet, 31,800 feet to a stake on the eastern boundary line of the town of Irmo; thence along the said boundary line of the town of Irmo 1,040 feet to the northeast corner of said town; thence west along the northern boundary of said town of Irmo 2,260 feet to a stake located thereon; thence along the circumference of the circle first described 11,360 feet to a stake; thence north 42 degrees 30 minutes W. 878 feet; thence west 5,000 feet to a stake; thence S. 85 W. 5,000 feet to stake; thence S. 80 W. 5,541 feet to stake; thence N. 37 degrees 28 minutes W. 10,618 feet to stake; thence S. 85 W. 750 feet to a pine; thence N. 34 degrees 45 minutes W. 10,491 feet to a stake; thence N. 22 E. 914 feet to a stake; thence N. 37 degrees 5 minutes W. 1,313 feet to a stake; thence N. 13 degrees 45 minutes E. 2,597 feet to a stake; thence N. 56 degrees 35 minutes E. 3,920 feet to a point on Rocky Ford on Wateree Creek; thence N., N. E. and E. along the said Wateree Creek to where it empties into Broad River.

Civ. '12, § 624; Civ. '02, § 563; G. S. 432; R. S. 491; IV, 662; VII, 290; V, 219, 317; 1913, XXVIII, 107, 117.

(708) § 43. **Saluda County—Location and Boundaries.**—Saluda County is bounded by a line beginning at the center of Big Saluda River at a point opposite the corner of Edgefield and Lexington Counties; thence the old Edgefield and Lexington line to the corner of Lexington and Aiken Counties; thence the old Edgefield and Aiken line to a point three miles north of where the public road crosses said line near Lybrand's old mill; thence a straight line to ten-mile post on public highway leading from Edgefield to Columbia, near the residence of J. W. L. Bartley; thence a straight line to the junction of the public road leading from Pleasant Cross with the Long Cane Road near William Lott's; thence by the Long Cane Road to Matt Mathis' Cross Roads; thence a straight line to Owdom's Postoffice; thence a straight line to Little Red Hill School House near Dr. Landrum's old place; thence a straight line to a point on the northwestern line of Pine Grove Township, one mile north of Double Bridges; thence along the northwestern boundary of Pine Grove Township to the point on the old Charleston and Cambridge Road, where it crosses Halfway Swamp Creek; thence down the middle of Halfway Swamp Creek to a point in the middle of Saluda River opposite the mouth of said creek; thence down the middle of Big Saluda River to the initial point.

Civ. '12, § 625; Civ. '02, § 564; 1896, XXII, 249.

(709) § 44. **Spartanburg County—Location and Boundaries.**—Spartanburg County is bounded as follows: On the north by the North Carolina line; on the west by Greenville County, from which it is divided by a line commencing on the North Carolina line at a stone marked "S. C.," on the east side of Blackstock's Road, near the Tryon Mountain, and running (south 2° east) twenty-two miles and sixty-four chains, or until it intersects the Enoree River at Abner's Mill on said river; thence down the Enoree River to a point about one mile and three-quarters below Andersons Bridge (the corner of Greenville and Laurens Counties); on the southwest by the Enoree River, down to a dead Spanish oak below Head's Ford, and a little above the mouth of a small creek which divides it from Laurens County; on the southeast by Union County, from which it is divided by the following lines: Beginning at the dead Spanish oak on the north side of Enoree River, and running (north 12° east) three miles and twenty-six chains; thence (north 17° east) two miles and twenty-eight chains; thence (north 61½° east) eleven miles and fifteen chains, crossing Tyger River, to Fair Forest Creek; thence (north 33° 45' east) six miles and thirty-seven chains to Pacolet River, a little below Gist's Mill; thence along the western boundary of Cherokee County to the North Carolina State line.

Civ. '12, § 626; Civ. '02, § 565; G. S. 433; R. S. 492; IV, 661; VII, 284; 1897, XXII, 589.

(710) § 45. **Sumter County—Location and Boundaries.**—Sumter County is bounded as follows: On the north by Kershaw, Lee and Florence Counties; on the east by Florence County; on the south by Clarendon County, from which it is separated by the northwestern line of Clarendon County mentioned in Section 15; on the west by the Santee River, which separates it from Richland County; on the northwest by Kershaw County, from which it is separated by a line running up Raglin's Gut to Big Swift Creek and in addition the following territory transferred from Clarendon County by Act of the General Assembly, approved March 7th, 1921, to wit: Commencing at a point on the Sumter County line and running due south 1.42 miles to an oak at the intersection of the public road leading from Paxville to Pinewood with the road leading from Paxville to Broadways siding; then south 9 degrees 30 minutes east 1.52 miles to the center of the Curtis Mill dam; then south 1 degree 20 minutes east 2.36 miles to the intersection of the run of Hungryhall Branch with the run of Deschamps Branch; then following the run of Deschamps Branch to the intersection of said run with the public road leading from Panola to Calvary Church; then south 78 degrees 2.93 miles to intersection with the line of School District No. 1; then south 2 degrees 30 minutes west 2.49 miles to intersection with the boundary between Big Home, Hickory Hill and Elmwood plantation; or to intersection with a projection of said boundary line; then south 39 degrees west 4,000 feet, then north 47 degrees west 817 feet; then in a southwest direction to Santee River; then in a northwest direction up the Santee River to a point where the same intersecting the Sumter County line, then eastwardly along the Sumter line to the beginning point. The metes and bounds and location and lines are more accurately set forth on plat bearing date July 16, 1920, made by Theodore C. Hamby, William Weston and Lindley Arthur, filed in the office of the Secretary of State. The territory to be taken from Clarendon County to be

added to and to be incorporated into Sumter County contains, by actual survey, 93.50 square miles.

Civ. '12, § 627; Civ. '02, § 566; G. S. 434; R. S. 493; XII, 416; VII, 284; XX, 517; 1914, XXVIII, 647; 1921, XXXII, 283.

(711) § 46. Union County—Location and Boundaries.—Union County is bounded as follows: On the north by the Pacolet River, which separates it from Cherokee County; on the east by Broad River, which separates it from York, Chester and Fairfield Counties; on the northwest by Spartanburg County, from which it is divided by a line, beginning at the corner of Cherokee and Union Counties with Spartanburg County on the Pacolet River, and running thence (south $33\frac{3}{4}^{\circ}$ west) to the intersection of Fair Forest Creek; thence (south $64\frac{1}{2}^{\circ}$ west) across the Tyger River to Hackett's Creek; thence (south 17° west) two miles twenty-eight chains, to the Cross Keys Road; thence (south 12° west) to a dead Spanish oak on the north bank of the Enoree River, a little above Musgrove's Ford, opposite Gordon's Mill; on the southwest by Laurens and Newberry Counties, from which it is divided by the Enoree River, down to Avery's Ford; thence by the road to Crenshaw's Ford, on the Tyger River; thence down said river to its junction with the Broad River, which forms its southeast boundary.

Civ. '12, § 628; Civ. '02, § 567; G. S. 435; R. S. 404; IV, 662; VII, 284; XXII, 588.

(712) § 47. Williamsburg County—Location and Boundaries.—Williamsburg County is bounded as follows: On the southwest by Berkeley County, from which it is separated by the Santee River; on the northwest by Clarendon and Florence Counties; on the east and southeast by Marion County, from which it is separated by the Great Pee Dee River, and by Georgetown County, from which it is separated by a line commencing on the Great Pee Dee River, the dividing line between Williamsburg, Marion and Georgetown Counties, and running to the road leading from Britton's and Bradley's Ferry, on said Great Pee Dee River, to Leneud's Ferry, on Santee River, the said road being the boundary line on the southeast separating it from Georgetown County, less the following territory transferred to Florence County by Act of the General Assembly, approved the 4th of March, 1921, to wit: Beginning at a point in the road leading to Lees Cross Road, where same crosses Lynches Lake and running S. 12 degrees 30 minutes W. 1943 feet, thence S. 8 degrees 10 minutes W. 526 feet, thence S. 14 degrees 30 minutes E. 1119 feet, thence S. 25 degrees 20 minutes E. 730 feet, thence S. 72 degrees 20 minutes E. 43610 feet to a stake at the road leading from Indiantown to Kingstree, thence N. 26 degrees, E. 316 feet, thence along the Kingstree road N. 71 degrees 35 minutes E. 10094 feet, thence 504 feet along said road to the intersection of Owens Swamp, thence 527 feet along said road, thence 806 feet along said road, thence N. E. 711 feet, thence N. E. 559 feet, thence E. 506 feet, thence S. E. 1225 feet to a point in the center of said road, thence N. E. 3380 feet along center of said road, thence 2315 feet to where it intersects Flannigan's Creek, thence along Muddy Creek to the intersection of Clark's Creek, thence along Clark's Creek to the intersection of Pee Dee River, thence along Pee Dee River to the mouth of Lynches River, thence along Lynches River

to the mouth of Lynches Lake, thence along Lynches Lake to the beginning point, containing 45.3 square miles as per map made by J. W. Coggs and T. E. Wilson, civil engineers, April 18, 1920, and filed in the Governor's office and in the office of the Clerk of Court of Florence County. For a more accurate description reference to said plat is hereby craved.

Civ. '12, § 629; Civ. '02, § 568; IV, 663; V, 407; VII, 199, 261; 1888, XX, 168; 1889, XX, 507, 517; 1912, XXVII, 817; 1914, XXVIII, 612; 1921, XXXII, 212.

(713) § 48. York County—Location and Boundaries.—York County is bounded as follows: On the north by the North Carolina line; on the west by the eastern line of Cherokee County, mentioned in Section 12; on the south by Chester County, from which it is divided by a line beginning at a hickory tree, on the southwest side of the Catawba River, about ten chains above the mouth of Ferrill's Creek, and running (nearly south 88° west) by an old line called and known by the name of the Line of the New Acquisition, to an ash and black gum on the bank of Broad River, on Robert Elliott's land; on the east by the County of Lancaster and the North Carolina line, less the following territory transferred to Cherokee County by Act of the General Assembly, approved February 11, 1921, to wit: Beginning at a stake in road in State line on top of mountain at Burned Grocery and running thence S. 43½ W. 224.00 chains to a large pine at N. E. end of Brown's Mountain; thence with the Cherokee County line N. 2½ W. 152.00 to B. O., E. A. Patterson's corner in State line; thence S. 86 E. 165.00 chains, with State line to beginning corner containing two (2) square miles. The metes and bounds and location and lines are more accurately set forth on plat of the same bearing the name of A. P. Falls, surveyor, filed in the office of the Governor. That the territory taken from York County to be added to and to be incorporated into Cherokee County contains by actual survey two square miles, said territory to be attached to and become a part of Cherokee township of said county.

Civ. '12, § 630; Civ. '02, § 569; G. S. 437; R. S. 496; I, 132; IV, 662; V, 318; VII, 284; XV, 425; 1921, XXXII, 23.

(714) § 49. Property of County.—Real and personal estate heretofore conveyed by any form of conveyance to the inhabitants of a county or district, to a committee, or commissioners, or other persons, or existing in a county or district for the use and benefit of a county or district, shall be deemed to be the property of such county; and such conveyance shall have the same force and effect as if made to such county by its corporate name.

Civ. '12, § 631; Civ. '02, § 570; G. S. 438; R. S. 497; 1868, XIV, 134, § 36.

(715) § 50. Public Officers Having Care of Public Buildings May Insure the Same.—The public officers having by law the care and custody of town, village, city, or county buildings, are authorized to insure the same at the expense and for the benefit of the town, village, city, or county owning the same.

Civ. '12, § 632; Civ. '02, § 571; G. S. 439; R. S. 498; 1868, XIV, 134, 32.

(716) § 51. County Property Exempt From Levy and Sale.—All county poor farms, poor houses, and hospitals, court houses, jails, and all other

public property of every kind or description actually used as such, are forever exempt from attachment, levy, and sale, on account of any judgment, lien, or claim whatsoever against the county to which they or any of them belong.

Civ. '12, § 633; Civ. '02, § 572; G. S. 440; R. S. 499; 1874, XV, 686.

(717) § 52. New Counties—Petition For.—Whenever two or more sections of an old county or counties desire to be incorporated into a new county there shall be filed with the Governor a petition signed by one-third of the qualified electors residing within the area of each section of the old county proposed to be cut off to form a new county, setting forth the boundaries of the proposed new county, the proposed name, the number of inhabitants, the area, the taxable property as shown by the last tax returns, and that the proposed lines for the new county do not run nearer than eight miles of any court house building then established.

Civ. '12, § 634; Civ. '02, § 574; 1896, XXII, 64, § 1.

The provisions of Sections (717), (724), (725), (726), (727), being the Act of 1896, XXII, 64, considered and construed in *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677.

(718) § 53. Petitioners to Deposit Money to Pay Costs of New Counties.—Whenever a petition is filed for the formation of a new county, the petitioners shall deposit with the Clerks of Court of any county affected thereby an amount of money sufficient to cover expenses of survey and plats, and of the commissioners and of the election held for the purpose to determine the formation of a new county, and in case the result of the election be unfavorable to the formation, the deposit so required and designated shall become a part of the funds of the county from which such new county was proposed to be formed or from which such annexation to another was proposed.

SPECIAL TAX LEVIED IN ANNEXED TERRITORY—AUDITOR TO LEVY TAX IN NEW COUNTY.—In case such new county is formed or annexation is consummated the county so newly created shall pay all the costs and expenses of its creation; and if one portion of one county is annexed to another, the county to which it is annexed shall levy a special tax upon all property in such annexed district to cover the cost of survey and transfer, or so much thereof as the County Board of Commissioners of the county to which annexation or addition is made, shall deem just and proper, and they may levy upon the property within the original lines of their county such tax as in their judgment shall seem just and fair to augment the amount raised by taxation within the annexed district to reimburse and refund those who made the deposit, as provided in this Section, for the costs of annexation, and in no wise shall any county which has been cut for the formation of a new county, or to add to the territory of another county, be liable for any of the costs or expenses incurred in cutting the same, or in the formation thereof. The Auditor of the newly created county, after such county has been organized and its officers elected, shall levy a tax upon all the taxable property in his county sufficient to cover the costs and expenses of its creation.

Civ. '12, § 635; 1911, XXVII, 155.

Bank of McCormick v. McCormick County et al. 114 S. C. 469; 103 S. E. 787.

(719) § 54. Governor's Duty When Petition for New County Is Filed to Refer to Commission.—Whenever petition is presented to and filed with the Governor for the creation of any new county, he shall, before ordering any election thereon, refer the petition back to a Commission which he shall appoint, as provided in Section 56 hereof, for investigation by the said Commission as to whether the requirements of the Constitution as to area, distance, wealth, population, etc., have been complied with.

Civ. '12, § 636; 1905, XXIV, 915, § 1.

This and the following three sections considered in *Lamar v. Croft*, 73 S. C. 407, 53 S. E. 540; *State ex rel. Reese v. Ansel, Governor*, 78 S. C. 331, 58 S. E. 993; *Brown v. Ansel, Governor*, 82 S. C. 141, 63 S. E. 449.

(720) § 55. Ill Shaped Counties Not to Be Established.—That hereafter the General Assembly of this State shall not establish any new county, the greatest length of which shall be more than four times as long as the least central width thereof, or which will leave the county or counties from which the territory is taken of a length more than four times as long as the least central width thereof: *Provided, further*, The Governor shall not order an election in such area described.

CENTRAL WIDTH DEFINED.—That the term "central width" shall be construed to mean any width of such proposed new county not entirely within eight miles of the ends thereof.

1912, XXVII, 841.

Massey et al v. Glenn et al, 106 S. C. 53, 90 S. E. 321.

(721) § 56. Commission on Petition for New Counties.—The said Commission shall consist of one person of discretion from each of the old counties, who is opposed to the new county, if there be any opposition, and an equal number of citizens who favor the formation of the new county, to be taken from within the territory of the proposed new county. The representation of the proposed new county, and the old county or counties from which the new county is proposed to be formed, must be equal in number on this Commission.

Civ. '12, § 637; 1905, XXIV, 915, § 2.

(722) § 57. Duty of Commissioners.—Upon receiving such petition and any annexed exhibits, the said Commission shall appoint and contract with two competent surveyors, who shall not be residents of any county to be cut by the line of the proposed new county, and these two surveyors shall name and call in a third similarly qualified to settle any points of difference between them, that these shall ascertain and settle all necessary questions as to area, both of the proposed new county and of the old counties, after being diminished by the new, and as to the distances of the lines of the proposed new county from any existing court house; they shall also make survey of the proposed new lines and plainly mark the same, so as to clearly define the population and wealth taken and left, and so as to guide as to who can vote by reason of residence, if the election be finally ordered, and they shall make full return and report of their finding, with plots of their work, to the said Commission, who shall annex the same to the petition; these surveyors shall be paid by warrant of the said Commission on the Treasurer of each old county involved for the *pro rata* of the survey made

within the territory of each, and to this end the surveyors shall render an itemized bill of their work for each county to be cut by the new lines.

Civ. '12, § 638; 1904, XXIV, 915, § 3.

(723) § 58. Commission to Investigate Facts.—The said Commission, after the return by the surveyors has been filed with them, shall thoroughly investigate as to population and wealth proposed to be taken and left by the new county, and to that end shall have power to send for persons, papers and books giving statistics, and shall have the authority to administer oaths and take testimony, and to employ a stenographer, if deemed by them necessary; that they shall make full report to the Governor, by their finding as to the wealth and population embraced within the limits of the proposed new county, and as to the wealth and population to be left in each old county to be cut by the new, and shall annex their report with proper exhibits and with any evidence on which same is based to the petition, and forthwith upon the completion of their investigation and report, return the petition and such finding and showing as hereinbefore provided for, to the Governor for his information.

Civ. '12, § 639; 1905, XXIV, 915, § 4.

(724) § 59. Election for New County—How Ordered.—Within twenty days after receipt of the report of the Commission the Governor shall order an election in the territory proposed to be cut off for the new county, to be held within sixty days from the date of the order. At such election the electors shall vote "yes" or "no" upon the question of creating, and upon the name and county seat of such proposed new county.

Civ. '12, § 640; Civ. '02, § 575; 1896, XXII, 64, § 2.

Robinson et al v. McCown et al, 104 S. C. 285; 88 S. E. 807.

(725) § 60. Election for New County—How Conducted.—For the purposes of such election the Commissioners of Election for each old county proposed to be cut shall appoint three Managers for each voting place in the area of the old county proposed to be cut off, not more than two of whom shall be in favor of the proposed new county or against it, and shall deliver to them the books of registration for those voting places, which the registration officers shall turn over to the Commissioners on demand. Such election shall be conducted in the same manner as general elections in this State, and all persons entitled to vote under the Constitution and laws of this State at general elections shall be entitled to vote at such election.

Civ. '12, § 641; Civ. '02, § 576; 1896, XXII, 64, § 3.

As to polling precincts. State ex rel. Parler v. State Board of Canvassers, 79 S. C. 414, 60 S. E. 967.

As to protection of right of electors residing in territory proposed to be cut from old into new County, whose polling precincts are without proposed new County, see State v. State Board of Canvassers, 79 S. C. 414, 418, 60 S. E. 967.

Conduct of elections. Parler v. Fogle, 78 S. C. 570, 574, 59 S. E. 707.

(726) § 61. Duties of Commissioners of Election for New County to Canvass Returns, Etc.—The Commissioners of Election for each old county proposed to be cut shall canvass the returns of the Managers of each precinct in their county at which such election has been held, as such returns in general elections in this State are canvassed, and shall certify the result thereof in tabulated statement of the vote at each precinct to the Secretary of State, who shall transmit a tabulated statement of the vote at each pre-

inct of an old county proposed to be cut off to both branches of the General Assembly at its next session. The said Commissioners of Election, respectively, shall have the power, and it is hereby made their duty as judicial officers, to decide all cases under protest or contest that may arise, subject to appeal to the Board of State Canvassers. The decision of said Commissioners of Election shall be final and conclusive evidence of the result of the election, unless appealed from within five days, in which case a decision of the Board of State Canvassers shall be final and conclusive evidence of the election on all questions of fact.

Civ. '12, § 642; Civ. '02, § 577; 1899, XXIII, 77.

Under §§ (725) and (726) the result of the election must be determined by the same methods as in general elections. *Segars v. Parrott*, 54 S. C. 1, 31 S. E. 677.

Decisions of State Board of Canvassers. *Parler v. State Board of Canvassers*, 79 S. C. 414, 60 S. E. 967.

Action of Commissioners of Election having power to declare result of election on formation of new County is binding on Legislature as well as others. *Fraser v. James*, 65 S. C. 78, 85, 43 S. E. 292.

Decision of State Board of Canvassers, on appeal, is not conclusive on question of law. *Parler v. Fogle*, 78 S. C. 570, 576, 59 S. E. 707.

(727) § 62. Duty of General Assembly to Create New County.—The General Assembly at its next session shall create new county if two-thirds of the qualified electors voting at such election shall vote in favor of the establishment of such new county, and if all the constitutional requirements for the formation of new counties have been complied with, of all of which such General Assembly must judge.

Civ. '12, § 643; Civ. '02, § 578; 1899, XXIII, 77.

See *Segars v. Parrott*, *supra*. Dispensary law in force in old County continues in force in territory taken into new county. *Amerker v. Taylor*, 81 S. C. 163, 62 S. E. 7.

(728) § 63. Election for New Counties—Time Between Elections.—No election shall be ordered for the creation or establishment of any new county which shall embrace one-half or more of the area of any proposed new county in which an election for its creation was defeated within four years preceding the date of the filing of the petition for such new county.

Civ. '12, § 644; 1908, XXV, 1080.

(729) § 64. How Court House May Be Moved.—Whenever the citizens of any county desire to move the court house they shall file a petition to that effect stating the point to which the court house is proposed to be removed, signed by one-third of the qualified electors of such county, with the Governor, who shall within twenty days after the filing order an election in said county to be held within sixty days, at which election the electors shall vote for or against removal. The Commissioners of Election for such county shall appoint Managers of each precinct in the county and furnish them with the necessary boxes and registration books, which the officers of registration are hereby authorized to furnish the Commissioners. Such election shall be conducted as general elections in this State, and all electors qualified to vote at general elections shall be entitled to vote thereat. The Commissioners of Election of such county shall receive the returns of the Managers and tabulate the vote and declare the result. If two-thirds of the qualified voters voting in such election vote in favor of such removal, the County Board of Commissioners shall take the necessary steps to remove the court house and public records of such county to the place designated: *Provided*, That in the location of any court house by removal within this

State it shall be unlawful to locate said court house within eight miles of any county line, all laws to the contrary notwithstanding.

Civ. '12, § 645; Civ. '02, § 579; 1899, XXIII, 77; 1919, XXXI, 40.

(730) § 65. How County Lines May Be Changed—Proviso as to Voting Places.—Whenever the citizens of any section of one county desire to be incorporated within the limits of an adjoining county, they shall file a petition to the Governor to that effect, stating the area proposed to be cut off, from what county, and to what county added, and the two counties as proposed to be changed would still meet all the constitutional requirements, signed by one-third of the qualified electors residing in the area sought to be cut off. Upon the filing of said petition the same procedure shall be had as in the formation of new counties as provided in Sections 52, 54, 56, 57, 58, 59, 60, 61 and 62 of this Chapter: *Provided*, When there is no established polling place or voting places in the area proposed to be cut off, whether for a new county or for annexation to adjoining county, the petitioners shall name a voting place or places in their petition, and in such case the Governor shall in his order of election designate the place or places named in the petition as the voting place or places and Managers of Election shall be appointed therefor, and all electors otherwise qualified shall be allowed to vote at such voting place named in said order as is most convenient as legally as if their registration certificates called for that place by name.

Civ. '12, § 646; Civ. '02, § 580; 1899, XXIII, 77; 1920, XXXI, 729.

Mandamus to compel Governor to order an election refused. *Brown v. Ansel*, Governor, 82 S. C. 141, 63 S. E. 441.

(731) § 66. Commission to Be Appointed by Governor for Annexations.—Whenever a petition according to law has been presented to the Governor for changing the boundary line or lines between two counties, whereby a portion of the territory of one county would be annexed to another, the Governor shall within thirty days thereafter appoint a commission of four discreet persons, two from the territory proposed to be annexed and two from the territory of the county or counties affected, two of whom, if such are to be found, shall be opponents and two advocates of the proposed change of line.

1911, XXVII, 43.

Such Commission shall have authority to contract for the survey and location of the proposed change of line and for such purpose to employ three competent disinterested surveyors, nonresidents of the counties affected, two to be selected by the Commission, and the third by these two, and said surveyors shall clearly mark such line upon the land with due regard to all legal provisions and limitations, and certify plats of same.

DUTIES OF COMMISSION—CHANGE OF COUNTY LINES.—Said Commission shall carefully investigate all facts relating to the area, population and assessed property values of the territory severed and that remaining, the proximity of the line of any court house, the proper amount of indebtedness of the county losing area to be assessed by the county gaining the same, and shall report in writing to the Governor upon all such and other relevant matters as the Governor may direct for his information; and said Commission shall also report to the Governor an itemized statement of the expense of such survey and plats.

Certified plats of such line shall be filed with the Secretary of State and the respective Clerks of Court of each county affected thereby, and a deposit of an amount of money sufficient to cover expenses of survey and plats, and other necessary expenses, including advertising, shall be made with the Treasurer of the county whose territory is reduced, by those petitioning for the change of line, and no election upon the question shall be ordered by the Governor until all such provisions are complied with.

COMPENSATION OF COMMISSION ON COUNTY LINES.—The Commissioners so appointed by the Governor shall each be entitled as compensation for services to five (\$5.00) dollars per day for not exceeding five days, and necessary traveling expenses, to be voted and paid as expenses of survey.

Upon filing of that report and certified plats as herein required, said Commissioners may draw their warrant upon the County Treasurer with whom deposit has been made as herein required, for payment of the expenses of survey, which warrant shall be payable only out of such fund.

ELECTIONS ON CHANGE OF COUNTY LINES.—Upon the defeat of any proposed change of the boundary line of a county at any election thereon, no election upon the same or any modified change of such boundary line shall be held within four years thereafter.

Civ. '12, § 647; 1911, XXVII, 44.

(732) § 67. How Two Counties May Consolidate.—Whenever the citizens of two or more counties desire to consolidate them into one they shall file a petition with the Governor to that effect, signed by one-third of the qualified electors residing in the counties, and upon the filing of such petition the same proceedings shall be had as in the formation of new counties provided for in Sections 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 of this Chapter. At the election ordered upon said petition the electors shall vote for or against consolidation, the name of new county and the location of the county seat.

Civ. '12, § 648; Civ. '02, § 581.

TITLE VI.

OF STATE AND COUNTY OFFICERS.

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CHAPTER XVIII.

General Provisions Relating to Public Officers.

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ARTICLE I.

Official Oaths and Bonds.

(733) § 1. Public Officers Defined—Oath.—It shall be unlawful for any person to assume the duties of any public office until he has taken the oath provided by the Constitution, and been regularly commissioned by the Governor. The term "public officers" shall be construed to mean all officers of the State that have heretofore been commissioned, and Trustees of the various colleges of the State, members of various State Boards, and other persons whose duties are defined by law.

Civ. '12, § 649; 1910, XXIII, 754.

Construed to mean "other persons whose public duties are defined by law." *Sanders v. Belue*, 78 S. C. 171, 175, 58 S. E. 762. This Act was omitted from the Code of 1902.

(734) § 2. Additional Oaths for Sheriffs and Others.—In addition to the oath of office now required by Article III, Section 26, of the Constitution, each Sheriff, Deputy Sheriff, Coroner, and their deputies, and every Magistrate and all Constables, shall, before they be qualified to act in their and each of their respective offices, in addition to their respective oaths of office, severally take also the following additional oath: "I, A. B., do solemnly swear (or affirm, as the case may be) that in the execution of the office to which I have been elected (or appointed) I will, to the best of my ability, enforce the penalties prescribed by law against gaming and the keeping of gaming tables, and will not fail to bring to justice all violations of the same that may come within my view or knowledge. So help me, God."

Civ. '12, § 650; G. S. 1730; R. S. 503; 1816, VI, 27, § 3.

All officers charged with the preservation of the peace shall also take, before entering upon the duties of their office, the following additional oath, to be administered in like manner as the said oath prescribed by Article III, Section 26, of the Constitution: "I will, to the extent of my ability, enforce the penalties prescribed by law against duelling, and will not fail to bring to justice all persons offending against the said law that may come within my view or knowledge."

Civ. '12, § 650; Civ. '02, § 582; G. S. 441; R. S. 591; 1880, XVII, 502; 1894, XXI, 716.

State v. Messervey, 86 S. C. 503, 507, 68 S. E. 766.

(735) § 3. Additional Oath Required of County Officers in Respect to Sharing Profits.—Each county officer elected or appointed shall, before entering upon the duties of his office, in addition to the other oaths required by law, including the oath with regard to duelling, take the following oath: "I, A. B., swear (or affirm, as the case may be) that I am under no promise, in honor or law, to share the profits of the office to which I have been elected (or appointed, as the case may be), and I will not, directly or indirectly, sell or dispose of said office or the profits thereof; but I will resign, or continue to discharge the duties thereof during the period fixed by law, if I so long live. So help me, God."

Civ. '12, § 651; Civ. '02, § 583; G. S. 442; R. S. 502; 1829, VI, 384, § 4; XVII, 502.

(736) § 4. Form of Bond to Be Given by all Public Officers.—The bond given by any person elected or appointed to any office for which bond is required shall be of the form following:

“STATE OF SOUTH CAROLINA.

“Know all men by these presents, that we (here insert the names of the person and his sureties) are held and firmly bound unto the State of South Carolina, in the penal sum of (insert the amount required by law) dollars, to the payment of which, well and truly to be made, we bind ourselves, and each and every of us, our heirs, executors and administrators, firmly by these presents. Sealed with our seal, and dated this (insert the day) day of (insert the month) Anno Domini one thousand eight hundred and (insert the year) and in the (insert the year) year of the Independence of the United States of America.

“Whereas, The above bound (insert the name of the person appointed or elected) hath been appointed (or elected, as the case may be) to the office of (insert the office).

“Now, the condition of the above obligation is such that if the above bound (insert the name of the person appointed or elected) shall well and truly perform the duties of said office, as now or hereafter required by law, during the whole period he may continue in said office, then the above obligation to be void and of none effect or else to remain in full force and virtue.

“Sealed and delivered in the presence of:

“....., (L. S.)

“(Here place name of witness.)”

Civ. '12, § 652; Civ. '02, § 584; G. S. 443; R. S. 504; 1829, VI, 383, § 1.

Execution of. Commissioners v. Yongue, 1 Brev. 22; Commissioners v. Muse, 3 Brev. 150; Comptroller v. Waring, 3 Dess. 57. Liability on, for failure of duty. Commissioners v. Moore, 2 Brev. 51; Treasurer v. Mayrant, 2 Brev. 228; Treasurers v. Moore, 1 N. & McC. 214; Treasurer v. Bates, 2 Bail. 363; Treasurer v. Burch, 2 Hill 519; McCauley v. Heriot, Riley Eq. 19; Williamson v. King, McM. Eq. 41; Treasurers v. Oswald, 2 McM. 145; Treasurers v. Clowney, 2 McM. 510; Treasurer v. DeSausure, 2 Speers. 180; Lowndes v. Pinckney, 1 Rich. Eq. 155; McKenna v. Seerest, 4 Strob. Eq. 160; Reynolds v. Timmons, 7 S. C. 486; Greenville County v. Runion, 9 S. C. 1; State v. Baldwin, 14 S. C. 155; Tinsley v. Kirby, 17 S. C. 8; State v. Moses, 18 S. C. 372; Id., 20 S. C. 470; State v. Lake, 30 S. C. 43, 8 S. E. 322; Strain v. Rabb, 30 S. C. 342, 9 S. E. 271; State ex rel. Elliott v. Jeter, 59 S. C. 483, 38 S. E. 124. Period covered by. Commissioners v. Greenwood, 1 DeS. 450; Commissioners v. Boquet, 1 DeS. 599; Treasury v. Mayrant, 2 Brev. 228; Carolina Society v. Johnson, 1 McC. 41; Treasurer v. Lang, 2 Bail. 430; Treasurer v. Harris, 1 Hill 282; Vaughn v. Evans, 1 Hill Ch. 414; So. Ca. v. Smith, 2 Hill 589; Posey v. Ramey, 4 Strob. 20; Street v. Laurens, 5 Rich. Eq. 227; State v. Moses, 20 S. C. 470. Action on. Commissioners v. McKie, 1 N. & McC. 575; Commissioners v. Newby, 1 McC. 184; Treasurer v. Wiggins, 1 McC. 568; Treasurer v. Bates, 2 Bail. 362; Id., 1 Hill 409; Williams v. King, McM. Eq. 41; Treasurers v. Oswald, 2 McM. 145; Treasurers v. Rivers, 2 McM. 207; Treasurers v. Buckner, 2 McM. 323; Mitchell v. Laurens, 7 Rich. 109; State v. Toomer, 6 Rich. 216; Greenville County v. Runion, 9 S. C. 1; State v. Cason, 11 S. C. 392; Aiken County v. Murray, 35 S. C. 508, 14 S. E. 954. Stat. Limitations. Williams v. King, McM. Eq. 41; Treasurers v. McPherson, 2 McM. 69; Reynolds v. Timmons, 7 S. C. 486; State v. Lake, 30 S. C. 43, 8 S. E. 322; Strain v. Rabb, 30 S. C. 342, 9 S. E. 271. Judgment on. Treasurer v. Moore, 1 N. & McC. 214; Treasurer v. Ross, 4 McC. 273; Treasurer v. Burch, 2 Hill 519; Treasurer v. Munday, 3 Hill 167; Treasurer v. Buckner, 2 McM. 323; Norton v. Mulligan, 4 Strob. 355; Mitchell v. Laurens, 7 Rich. 109; State v. Moses, 18 S. C. 373. Costs. Leslie v. Taggart, 2 McM. 71; State v. Wiley, 2 Strob. 113; Rowell v. Mulligan, 2 Strob. 379; Id., 4 Strob. 349; Strain v. Rabb, 30 S. C. 342, 9 S. E. 271. Generally. Dunlap v. Bynum, 4 Dess. 646; Treasurers v. Stevens, 2 McC. 107; Treasurers v. Ross, 4 McC. 273; Treasurers v. Burch, 2 Hill 519; McBee v. Hoke, 2 Speers 138; State v. Warner, 7 Rich. 225. Bolen v. National Surety Co., 108 S. C. 403; 94 S. E. 1049; State v. Fidelity & Deposit Co. of Maryland et al, 114 S. C. 511; 104 S. E. 182.

(737) § 5. Comptroller General to Have Blank Forms of Bonds Printed and Distributed to Counties.—It shall be the duty of the Comptroller General to ascertain the number of officers in this State from whom bonds are required, and to cause an equal number of said bonds to be printed annually, at the expense of the State, having thereon the blank forms for the

proper officers to approve securities, and for probate; and to distribute to each county, annually, a number of said bonds equal to the number of officers from whom bonds are required in said county, respectively.

Civ. '12, § 655; Civ. '02, § 587; G. S. 444; R. S. 505; VI, 384, § 2.

(738) § 6. Clerks to Receive Blanks and Give to Officers.—It shall be the duty of each Clerk to receive the bonds for his county, and to deliver one to each person elected or appointed to any such office, whenever called for.

Civ. '12, § 656; Civ. '02, § 588; G. S. 445; R. S. 506.

(739) § 7. Number of Sureties.—The limit to the number of sureties allowed upon an official bond shall in no case be more than twenty. Each surety may state in writing the amount of the liability assumed by him, beyond which amount he shall not be held. The aggregate of the amounts assumed by all the sureties shall not be less than the penalty of the bond. In case of loss or default, the sureties will be entitled, as between each other, to contribution in the proportion of their liability. The sureties on bonds of all county officers must be citizens of the county in which their principal resides; and in the case of the Sheriff, Coroner, Clerk of the Circuit Court, Judge of Probate, and County Treasurer, their number shall not exceed twelve or be less than two.

Civ. '12, § 657; Civ. '02, § 589; G. S. 452; R. S. 507; 1866, XIII, 469; XIV, 19.

(740) § 8. By Whom Bonds Must Be Examined and Approved.—The official bond of each officer of the Executive Department must be submitted to the Governor for his approval. The official bonds of all county officers must be examined and approved or disapproved by the County Board of Commissioners, except their own bonds, which must be examined and approved or disapproved by the Clerk of the Court or the Attorney General. In all cases in which the County Board of Commissioners refuse to approve the bond of any county officer, such officers may refer the same to the Attorney General, and if approved by him, after hearing evidence, they shall be accepted by the County Board of Commissioners.

Civ. '12, § 658; Civ. '02, § 590; G. S. 453, 466, 611; R. S. 508; 1872, 106; 1868, XIV, 70; 1875, XV, 986, § 3; 1893, XXI, 481.

State v. Yates, 3 Hill 230.

(741) § 9. Who to Approve Form and Execution of—Where Deposited.—The bonds of all public officers of the State shall, before they are accepted or recorded, be examined by the Attorney General or by one of the Solicitors, who must certify in writing upon the bond that he approves the form and execution thereof; when so examined, approved and certified, the bonds of State, District or Circuit officers shall be filed with the Secretary of State, and shall be recorded by him, without charge, in suitable books kept by him for the purpose; and when so recorded shall be filed as aforesaid with the State Treasurer: *Provided*, That the bond of the State Treasurer shall be filed with the Governor.

Civ. '12, § 659; Civ. '02, § 591; G. S. 446; R. S. 509; 1877, XVI, 301; 1901, XXIII, 750.

(742) § 10. Bonds of County Officers to Be Recorded.—Every county officer elected or appointed, who is required to give bond for the faithful performance of the duties of his office, shall, within thirty days after notifi-

election of his election or appointment, have his said bond recorded in the office of the Register of Mesne Conveyance for the county in which such officer resides, and the Register shall keep a separate book, properly indexed, for the purpose of recording such bonds, which book shall be provided by the County Commissioners; and he shall be entitled to exact a fee from the public officer of one dollar for recording his bond: *Provided*, That no such bond shall be recorded until first approved as to surety by the proper officials as prescribed by law and as to execution and form by the Attorney General or such other official as may be designated for this purpose. Such bonds when recorded shall be immediately transmitted to the Secretary of State, who shall file the bonds with the State Treasurer.

Civ. '12, § 660; Civ. '02, § 592; G. S. 449; R. S. 510; 1866, XIII, 382; 1901, XXIII, 749; 1920, XXXI, 785.

(743) § 11. Annual Examination of—By Whom—Proceedings Taken.

—All such official bonds shall be annually examined by a Board to consist of the Secretary of State, Comptroller General and Treasurer of the State, except their own bonds, which shall be annually examined by the Governor. If any surety on any such official bond should die, or depart permanently from the State, or if the said Board, or the Governor, respectively, should, at the time of the examination, or at any other time, be of opinion that either of the said sureties is not worth as much clear of debt as his proportion of the obligation to which his name is affixed, the said Board or the Governor, as the case may be, shall cause the said public officer whose surety has departed this life or removed from the State, or is objected to for insufficiency of estate, to be notified of such exception; and the said officer shall, within thirty days after the service of such notification, procure other surety satisfactory to the said Board or the Governor, as the case may be, for such as have departed the State or died, but so as not to cancel or at all impair the original bond, or produce satisfactory evidence to the said Board or the Governor, as the case may be, that the surety objected to as owning insufficient property, as aforesaid, is worth as much as his proportion of the said obligation, clear of debt; or else the said officer shall procure such additional and sufficient surety or sureties as the said Board or the Governor, respectively, shall approve of; and in default of compliance with either of the said requisitions within the said thirty days, the office of the said defaulting officer shall be regarded as vacant.

Civ. '12, § 661; Civ. '02, § 593; G. S. 447; R. S. 511; 1886, XIII, 381; 1820, VI, 147, § 2.

(744) § 12. County Commissioners to Examine and Report Annually Upon Sufficiency of County Officers' Bonds.

—It shall be the duty of the County Commissioners in each and every county in the State to make an annual examination into the sufficiency of all the county officers' bonds within their respective counties, and within ten days thereafter report to the Comptroller General, to be laid before the State Board for its action according to law, any that may, in their judgment, be insufficient.

Civ. '12, § 662; Civ. '02, § 594; R. S. 512; 1876, XVI, 699.

(745) § 13. Bonds of Public Officers May Be Sued on, and Certified Copy Used in Evidence.—The bond of any public officer in this State may at all times be sued on by the public, any corporation, or private person,

aggrieved by any misconduct of any such public officer; for which purpose the officer or officers, for the time being, with whom such bond may be filed, or recorded upon application at his or their office, shall deliver to any person applying therefor and paying the fees for doing the same an exact and certified copy of the bond of such public officer there deposited, or recorded; which copy so certified shall be good and sufficient evidence in all suits to be instituted in any court of this State.

Civ. '12, § 663; Civ. '02, § 595; G. S. 450; R. S. 513; amd. 1901, XXIII, 750.

Treasurer v. Witsell, 1 Speer 220; *Wieters v. May*, 71 S. C. 9, 13, 50 S. E. 547; *Hagood v. Blythe*, 37 Fed. 249, 251.

If State constable, while attempting to execute some duty under dispensary law, abuses or exceeds his authority, or executes it in unlawful manner to injury of another, his official bond is liable. *Weiters v. May*, 71 S. C. 9, 13, 50 S. E. 547.

State v. Bowen et al, 312 S. C. 165; 98 S. E. 864; *State v. Fidelity & Deposit Co. of Maryland et al*, 114 S. C. 511; 104 S. E. 182.

(746) § 14. Distribution of Moneys Derived from Sale, Etc.—Whenever any officer of this State, charged with the care, collection, or disbursement of public funds, is required to give bond to the State, and a recovery is had upon said bond, or any moneys are seized, levied upon, or attached in his hands, or turned over or surrendered by such officer to the State Treasurer, upon his commitment to jail, under warrant from the State Treasurer, the moneys so recovered, seized, levied upon, attached, or surrendered, or turned over, shall be distributed between the State, county, school, or other specific funds, in proportion to the several amounts due by the said officer to the State, county, school, or other specific funds, at the time of such recovery, seizure, attachment, levy, or surrender. The provisions of this Section shall only apply to suits, seizures, attachments, or levies by or surrenders to public officers, and not to suits upon the bonds of such officers brought by private individuals.

Civ. '12, § 664; Civ. '02, § 596; G. S. 451; R. S. 514.

(747) § 15. Surety May Demand Relief—New Bond—Release of Prior Sureties.—When any of the sureties of any officer elected or appointed to any office shall, in writing, notify the proper officer, whose duty it is to approve the bond of such officer, that they desire to be relieved from their suretyship, it shall be the duty of the officer authorized by law to approve the same to require said officer to execute a new bond with surety, which, when approved, shall be as valid as the bond given on the original election or appointment of such officer; and the sureties upon the prior bond shall be released from responsibility for all acts or defaults of such officer which may be done or committed subsequent to the approval of such new bond.

Civ. '12, § 665; Civ. '02, § 597; R. S. 515; 1887, XIX, 783.

Bolen v. National Surety Co., 108 S. C. 403; 94 S. E. 1049.

(748) § 16. Duty of Officer Regarding New Bond—Proceedings—Office Declared Vacant—Vacancy Filled.—When any officer shall be required to execute a new bond, with surety, as provided for in Section 15, he shall proceed forthwith to execute such new bond, and submit the same for approval to the officer authorized by law to approve the same, and if he shall fail or neglect to so execute and submit such new bond, or fail or neglect to execute and submit a bond satisfactory to the officer authorized to approve the same within thirty days after having been required so to do, the said officer,

as the case may be, shall forthwith report to the Governor of the State that such officer has been duly required, under the provisions of Section 15, to furnish a new bond, and that such officer has failed so to do, and, upon being so informed; and upon receiving a certified copy of all the papers relative to the case, it shall be the duty of the Governor, by public proclamation, forthwith to declare the office held by such defaulting officer vacant, and such office so made vacant shall be filled in the manner now provided by law.

Civ. '12, § 666; Civ. '02, § 598; R. S. 516; 1887, XIX, 783.

This remedy exclusive. Ex parte Charles. 48 S. C. 279, 26 S. E. 605.

(749) § 17. Bond of Surety Company Authorized—Payable to State.—Any county or State officer, Trustee, Executor, Administrator, Guardian or other person or persons, who is now or may hereafter be required to give bond conditioned for the faithful performance of his legal duties, with sureties, may, in lieu thereof, secure and furnish a bond of indemnity, or policy of assurance or insurance, for the amount now or hereafter required by law for such officer or person, written by a company duly incorporated and empowered by law to execute bonds or policies of suretyship and of grantee against loss by reason of defalcation, infidelity, misfeasance or malfeasance on the part of the assured: *Provided*, That such bond or undertaking be approved by the head of department, officer, board or body, executive, legislative or judicial, required to approve or accept the same. But no officer or person having the approval of any bond shall exact that it shall be furnished by a Guaranty Company or by any particular Guaranty Company: *Provided, further*, That said Company, unless it be incorporated under the laws of this State, comply with the law regulating Foreign Insurance Companies. The said bond or policy shall be made payable, in case of loss, to the State: *Provided, however*, That before any county official, hereafter elected or appointed to any county office in this State, who is required by law to give bond, shall enter into the discharge of the duties of his office, he shall secure bond in some reliable surety company authorized to do business in the State of South Carolina: *Provided*, That if any official be refused bond by any of said surety companies, after proper application, a personal bond shall be accepted when approved as now provided by law: *Provided*, Magistrates, Constables and Rural County Policemen may give personal bonds.

COST.—Where the official of any county secures bond from a surety company the cost of said bond shall be paid by the County Commissioners of said county out of the ordinary county funds: *Provided*, That no State officer shall be an officer of any company issuing bonds for any of the county or State officers.

Civ. '12, § 667; Civ. '02, § 599; R. S. 517; 1892, XXI, 76; 1894, XX, 757; 1896, XXII, 28; 1912, XXVII, 703.

See article on Administration of Intestate's estates for provision as to bonds in surety companies. Surety or indemnity company bond authorized in civil action or special proceeding, in lieu of undertaking with sureties. See Code Civil Procedure.

Where subscribing witness to bond for removal makes oath that she saw corporate seal of company affixed and that she saw M., attorney in fact of said company, sign the same, there is presumption that execution was duly authorized. Mutual Life Ins. Co. v. Langley, 145 Fed 415, 418

(750) § 18. Right of Foreign Companies to Issue Bonds.—Any foreign company empowered by its home charter to issue bonds or policies or surety-

ship may, by the consent and approval of the Governor, Comptroller General and Secretary of State, issue said bonds in this State: *Provided*, That they comply with the law now of force in this State regulating foreign insurance companies, all of which law which is now of force is hereby made applicable to companies issuing bonds or policies of suretyship.

Civ. '12, § 668; Civ. '02, § 600; R. S: 518; 1894, XXI, 757.

Mutual Life Ins. Co. v. Langley, 145 Fed. 415, 418.

(751) § 19. Certain Clerks to Give Bond.—All persons who now hold, or who shall hereafter be appointed to, any of the following positions in the Departments of the State Government, or who shall be appointed by any of said Departments as Accountants to investigate and report the condition of any State or county officer, shall take oath of office in the usual form and the Constitutional oath, and give good and sufficient bond in the usual form of official bonds as prescribed by statute; such bonds to be approved and filed as the bonds of other State officers, the bonds to be in and for the penal sums below stated: Each Clerk in office of Secretary of State, four thousand dollars; each Clerk in the office of Comptroller General, five thousand dollars; each Clerk in the State Treasurer's office, ten thousand dollars; Clerk of the State Superintendent of Education, twenty-five hundred dollars; Assistant Attorney General, twenty-five hundred dollars; each Clerk and Agent of Sinking Fund Commission, three thousand dollars: *Provided*, No bond shall be required of any Stenographer or Typewriter in any of said Departments, except in the office of State Treasurer, in which case a bond of twenty-five hundred dollars shall be given; Accountant, five thousand dollars. Each of the persons required by this Section to give bond may procure a bond from a Surety Company, and in such case the premium or annual payment therefor shall be paid by the State Treasurer, on the warrant of the Comptroller General.

Civ. '12, § 669; 1906, XXV, 25.

ARTICLE II.

Sale of Public Offices.

(752) § 1. The Buying and Selling of Offices Forbidden—Penalty.—If any person or persons bargain for the purchase or sale of, or sell, any office, or deputation thereof, or any part of the same, or receive any money, fee, reward or any other profit, directly or indirectly, or take any promise, agreement, covenant, bond, or any assurance for the payment of any money, fee, reward or other profit, directly or indirectly, for any office or the deputation thereof, or any part of the same, or to the intent that any person should have, exercise or enjoy any office or the deputation thereof, or any part of the same, which office, or any part thereof, shall in any wise touch or concern the administration or execution of justice, or the receipt, control of payment of any public treasure, money, rent, revenue, account, auditorship, or surveying of any public lands, or which shall touch or concern any clerkship to be occupied in any court of record, wherein justice is ministered; every such person or persons shall not only lose and forfeit all right and interest in or to the said office or deputation thereof, or any part of

the same, but shall immediately, upon the payment of said fee, money, or reward, or upon any such promise, covenant, bond or agreement, had or made for the payment of such fee, sum of money or reward, be adjudged a disabled person in the law, to all intents and purposes, to have, occupy or enjoy the said office or deputation, or any part thereof; for which any such person or persons shall so give or enjoy, or make any promise, covenant, bond or other assurance to give or pay, any sum of money, fee, or reward.

Civ. '12, § 670; Civ. '02, § 601; G. S. 454; R. S. 520; 1736, III, 468, § 1.

(753) § 2. Sales, Etc., of Offices Void.—Every bargain, sale, promise, bond, agreement, covenant, and assurance, as before specified, shall be void to and against him and them by whom any such bargain, sale, bond, promise, covenant, or assurance shall be had or made.

Civ. '12, § 671; Civ. '02, § 602; G. S. 555; R. S. 521; III, § 2.

(754) § 3. Official Acts Performed After Offense But Before Removal, Valid.—If any person or persons shall offend in anything contrary to the tenor and effect of the two preceding Sections of this Chapter, yet, notwithstanding, all judgments given, and all other act and acts executed or done by such person or persons so offending, by authority or color of the office or deputation which ought to be forfeited, or not occupied, or not enjoyed by the person so offending, after the said offense so by such person committed or done, and before such person so offending for the same offense be removed from the exercise, administration, and occupation of the said office or deputation, shall be and remain good and sufficient in law, to all intents, constructions, and purposes.

Civ. '12, § 672; Civ. '02, § 603; G. S. 556; R. S. 522; III, § 2.

(755) § 4. Nepotism Forbidden.—It shall be unlawful for any person at the head of any department of this Government to appoint to any office or position of trust or emolument under his control or management any person related or connected with him by consanguinity or affinity within the sixth degree.

Civ. '12, § 673; Civ. '02, § 604; 1896, XXII, 123.

ARTICLE III.

Miscellaneous Provisions.

(756) § 1. Officers or Representatives Must Turn Over Moneys to Successors—Time for—Penalty.—It shall be the duty of every Sheriff, Judge of Probate, Clerk of the Court of Common Pleas, County Treasurer and any other State or county officer entrusted with funds by virtue of his office, upon his retiring from office to turn over to his successor all moneys received by him as such officer, and remaining in his hands as such officer, within thirty days from the time when the successor shall have entered upon the duties of his office, in the same manner as he is required by law to turn over the furniture, books and papers; and the successor shall receive and be responsible for the moneys so turned over to him, in the same manner as he is liable for other moneys received by him officially. Upon the death of any such officer, his personal representative or representatives shall pay over

to the successor of such deceased officer all moneys which such deceased officer had in his hands officially at the time of his death within two months after he, she or they have assumed the administration of such estate; and upon his or their neglect or failure to do so, without good cause, the estate of such deceased officer and the sureties on his official bond shall be liable to pay to such successor the amount due, with interest at the rate of five per cent. per month thereon, after the expiration of such term of two months, to be recovered by action brought by such successor for the benefit of the parties entitled to receive such money.

Civ. '12, § 674; Civ. '02, § 605; G. S. 457; R. S. 523; 1874, XV, 674; 1885, XIX, 158; 1904, XXIV, 375.

Master included in this section. *Peake v. Young*, 40 S. C. 41, 18 S. E. 237.

(757) § 2. Unlawful for Disbursing Officers to Exceed or Transfer Appropriations—Proviso.—It shall be unlawful for any officer, clerk, or other person charged with disbursements of funds appropriated by the Legislature of South Carolina, either county funds or State funds, to exceed the amounts and purposes stated in said appropriation, or to change or shift appropriations from one item to another: *Provided*, That transfers may be authorized by the General Assembly in any County Supply Act or the annual Appropriation Act for the State.

1921, XXXII, 117.

(758) § 3. Violation of Preceding Section Misfeasance—Suspension by Governor—Penalty Upon Conviction. Any officer, clerk or other person violating the provisions of Section 1 of this Act shall be deemed guilty of malfeasance in office, and the Governor may, upon his attention being brought to same, at once suspend said officer and shall investigate the conduct of same, and, if found guilty, he shall be suspended by the Governor, and in addition to such suspension, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned within the discretion of the Court.

1921, XXXII, 117.

(759) § 4. Time of Commencement of Term of County Officers.—The time for the commencing of the terms of office of the various county officers shall be the first Tuesday in January next after their election: *Provided*, Nothing herein contained shall apply to those officers who are appointed by the Governor: *Provided*, That this Section shall not apply to elections held for an unexpired term of office.

Civ. '12, § 675; 1907, XXV, 541.

Master included in provisions of this section. *Peake v. Young*, 40 S. C. 41, 18 S. E. 237.

(760) § 5. Must Enter Into No Contract in Excess of Sum Limited.—It shall be unlawful for any public officer, State or county, authorized by law to so contract, to enter into or contract, for any purpose whatsoever, in a sum in excess of the tax levied, or the amount appropriated for the accomplishment of such purpose.

Civ. '12, § 676; Civ. '02, § 606; G. S. 458; R. S. 523; XV, 692.

The trustees of Winthrop College cannot contract beyond funds in hand or appropriated or which they expect to receive from donations or bequests, and Court could decree conditional specific performance of contract with such funds. *Long v. Dunlap*, 87 S. C. 8, 16, 68 S. E. 801.

Action of County Board of Commissioners in approving claim against County is adjudication of fact that contract out of which claim arose was not in excess of tax levy for that purpose. *People's Bank of Greenville v. Goodwin*, 81 S. C. 419, 425, 62 S. E. 1100.

(761) § 6. Public Funds Not to Be Diverted.—It shall be unlawful for any public officer, State or county, to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of any indebtedness contracted or incurred for any previous fiscal year.

Civ. '12, § 677; Civ. '02, § 607; G. S. 459; R. S. 524; XV, 692.

(762) § 7. Public Officers Absenting Themselves from State Without Leave of Governor.—No State or county officer, except members of the General Assembly and the Governor, shall be absent from the State during his term of office for more than thirty days in any one year without special permission, to be granted by the Governor of the State.

Any such officer violating the provisions hereof shall forfeit to the State, upon conviction, the amount of the salaries and perquisites of his office for the year in which said absence occurs.

Civ. '12, § 678; Civ. '02, § 608; G. S. 461; R. S. 526; XVI, 245.

(763) § 8. Certificates of Indebtedness Cannot Be Issued—Checks Drawn Only Against Funds.—It shall be unlawful for any State or county officer to issue any certificate of indebtedness. This provision shall not apply to the issuing of tickets to jurors or witnesses for attendance on the Circuit Courts.

Nor shall it be lawful for any State officer to draw a warrant or check for any public debt except upon money then actually to his credit on that account in the hands of some bank or public officer.

Civ. '12, § 679; Civ. '02, § 609; G. S. 462; R. S. 527; XVI, 364.

A school certificate drawn in one fiscal year on funds of an ensuing year is void as a certificate of indebtedness. *Bank v. Shealey*, 62 S. C. 337, 40 S. E. 674; *State ex rel. People's Bank of Greenville v. Goodwin*, 81 S. C. 421, 62 S. E. 1100.

This section prohibits County Supervisors, Commissioners, etc., from applying funds arising from taxes for current year to payment of indebtedness contracted in any previous fiscal year. *State ex rel. People's Bank of Greenville v. Goodwin*, 81 S. C. 419, 421, 62 S. E. 1100.

(764) § 9. When Public Officer Entitled to Draw His Salary.—No executive, judicial, or other officer, elected or appointed to any office in the State, shall be entitled to receive any pay or emoluments of office until he shall have been duly commissioned and qualified, and shall have given bond when so required to do by law.

Civ. '12, § 680; Civ. '02, § 610; G. S. 582; R. S. 529; 1901, XXIII, 750, § 5.

McCoy v. Curtis, 14 S. C. 367.

(765) § 10. Books of Accounts—Copy Filed With Supervisor—Entered in Book—Total Receipt.—Each county officer shall be required to purchase and keep in his office, open to public inspection during office hours, a book in which shall be kept an itemized account of all moneys received by or due him, whether received by him or due to him as salary, fees or costs, or in any other manner, as pay for him for his services by virtue of his office: *Provided*, That nothing herein contained shall be construed to require any officer to demand the payment of his fees and costs in advance. At the close of each fiscal year, when so required by the Senator from such county, or a majority of the members of the Representatives from said county, each county officer shall transmit an itemized copy of said account, under oath, to the office of County Supervisor, or with the County Commissioners, in any county where there is no County Supervisor, and shall transmit a copy thereof to the Senator and each member of the

House of Representatives from said county on or before the 10th day of January next ensuing. The County Supervisor, in addition to other books kept in his office, shall keep a separate book in which he shall enter upon his book the total amount of each account so furnished, opposite the name of the officer furnishing the said account and file the account in his office, as other county records are kept: *Provided*, The provisions of this Act shall not apply to the County of Edgefield.

Civ. '12, § 681; Civ. '02, §§ 611, 612; 1897, XXII, 458; 1898, XXII, 742; 1902, XXIII, 1162; 1909, XXVI, 32; 1916, XXIX, 762; 1920, XXXI, 1148; 1921, XXXII, 179.

CHAPTER XIX.

The Executive Department and Officers Connected Therewith.

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ARTICLE I.

General Provisions.

(766) § 1. **What Officers Constitute the Executive Department.**—The Executive Department of this State is hereby declared to consist of the following officers, that is to say: The Governor and Lieutenant Governor, the Secretary of State, the Treasurer of the State of South Carolina, the Attorney General and Solicitors, Adjutant General, Comptroller General, State Superintendent of Education, Commissioner of Agriculture, Commerce and Industries, and the Insurance Commissioner.

Civ. '12, § 682; Civ. '02, § 613; G. S. 464; R. S. 530; 1865, XIII, 350, § 1.

Title to Governor's office. Ex parte Norris, 8 S. C. 495.

State ex rel. Gasque v. Singleton, 100 S. C. 465, 84 S. E. 989.

(767) § 2. Vacancies in Executive Department—How Filled.—In case any vacancy shall occur in the office of Secretary of State, Treasurer, Comptroller General, Attorney General, Adjutant General, or State Superintendent of Education, by death, resignation, or otherwise, such vacancy shall be filled by election by the General Assembly, a majority of the votes cast being necessary to a choice. If such vacancy occur during the recess of the General Assembly, the Governor shall fill the vacancy by appointment, until an election by the General Assembly at the session next ensuing such vacancy.

Civ. '12, § 683; Civ. '02, § 614; G. S. 465; R. S. 531; 1875, XV, 935.

State ex rel. Gasque v. Singleton, 100 S. C. 465, 84 S. E. 989.

(768) § 3. Books and Stationery.—Each officer of the Executive Department shall, annually, on or before the first day of October, furnish to the Comptroller General a list and description of such books and stationery, and the amount of postage stamps necessary for the use of his office during the current fiscal year.

Civ. '12, § 684; Civ. '02, § 615; G. S. 467; R. S. 532; 1878, XVI, 413.

(769) § 4. State Moneys to Be Paid Into Treasury Quarterly.—All moneys collected from any source by the Comptroller General, Secretary of State, the Sinking Fund Commission or other State officer, as now or hereafter required by law, shall be paid into the State Treasury at least once in every quarter.

Civ. '12, § 685; Civ. '02, § 616; 1894, XXI, 813.

ARTICLE II.

The Governor and Lieutenant Governor.

(770) § 5. Time Fixed for Installation of Governor.—The Governor shall be installed on the third Tuesday of January following his election: *Provided*, That in case the Governor is unable to be installed on the day therein provided, he shall be installed as soon thereafter as he is able.

Civ. '12, § 686; 1911, XXVII, 142.

(771) § 6. Vacancy in Office of—When President of Senate to Act As.—In case of the removal, death, resignation or inability of both the Governor and Lieutenant Governor, the President of the Senate *pro tempore* shall perform the duties and exercise the powers of Governor until such disability shall have been removed, or until the next general election, when a Governor shall be elected by the electors duly qualified, as is prescribed by Section 2 of Article IV of the Constitution.

Civ. '12, § 687; Civ. '02, § 617; G. S. 469; R. S. 533; 1868, XIV, 101, § 1.

(772) § 7. When Speaker of House to Act As.—In case of the disability, from whatever cause, of the Governor, Lieutenant Governor, and the President of the Senate *pro tempore*, the Speaker of the House of Representatives shall perform the duties and exercise the powers of Governor, in like manner and upon like conditions as are prescribed by the preceding Section.

Civ. '12, § 688; Civ. '02, § 618; G. S. 470; R. S. 534; 1868, XIV, 102, § 2.

(773) § 8. **When General Assembly Elects to Fill Office.**—In case of the disability, from whatever cause, of all the officers enumerated in the two preceding Sections, the General Assembly, if the same shall be in session, by a joint vote, shall elect a person, duly qualified, to fill the office of Governor, in like manner, and upon the like conditions, as are prescribed by Section 6 of this Article.

Civ. '12, § 689; Civ. '02, § 619; G. S. 471; R. S. 535; 1868, XIV, 102, § 3.

(774) § 9. **Term of Person So Elected.**—Whenever a Governor shall be elected, as provided in the last Section, he shall immediately enter upon the discharge of the duties of his office, and shall continue to discharge the same during the residue of the term.

Civ. '12, § 690; Civ. '02, § 620; G. S. 472; R. S. 536; 1868, XIV, 102, § 4.

(775) § 10. **Executive Chamber, Records, Etc.—Salary.**—The Governor shall be furnished with a suitable office, to be called the Executive Chamber, in which all petitions, memorials, letters, and all other official papers and documents addressed to or received by him shall be methodically arranged and kept, with proper indexes therefor. He shall keep a record in proper books of all his messages to the General Assembly, of all applications for pardon made to him, of all such pardons as may have been granted by him, and of all communications to the General Assembly relating thereto; of all bills presented to him in obedience to the provisions of the Constitution, and of all objections he may make to any of them; of all official communications, proclamations and orders issuing from his office; and of all other matters which he may think it important to preserve. He shall receive an annual salary of five thousand dollars.

Civ. '12, § 691; Civ. '02, § 621; G. S. 473; R. S. 537; 1865, XIII, 350, § 2; 1893, XXI, 416; 1919, XXXI, 4.

Pardoning power. *State v. Fuller*, 1 McC. 178; *State v. Addington*, 2 Bail, 516; *State v. Barns*, 32 S. C. 14, 10 S. E. 611.

(776) § 11. **Governor's Private Secretary—Duties of.**—The Governor shall be allowed a Private Secretary, to be appointed by him, who shall receive an annual salary of thirteen hundred and fifty dollars, and whose duty it shall be, under the direction of the Governor, to keep an accurate record, under proper dates, of all transactions, opinions and other official matters and acts occurring during his period of office, which said record shall, under certain restrictions, be open to the inspection of the members of the General Assembly. He shall also perform such clerical and other duties as may be required of him by the Governor, in connection with the duties of the office of Governor.

Civ. '12, § 692; Civ. '02, § 622; G. S. 474; R. S. 538; 1865, XIII, 350, § 2; 1868, XIV, 11; 1869, XIV, 246; 1893, XXI, 416.

(777) § 12. **Of What Boards the Governor is Ex Officio a Member.**—The Governor *ex officio* is a member of:

The Sinking Fund Commission.

The Board of Directors of the State Penitentiary.

The Board of Trustees of the South Carolina University.

The Board of Visitors of the State Military College.

The Board of Trustees of the South Carolina Industrial and Winthrop Normal College.

The Board of Trustees of the Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina.

The State Board of Education, of which he is also Chairman.

The Board of Phosphate Commissioners, of which he is also Chairman.

Civ. '12, § 693; Civ. '02, § 623; G. S. 475; R. S. 539; 1870, XIV, 388; 1883, XVIII, 381; 1877, XVI, 265; 1890, XX, 687, 688; 1843, XI, 263; 1882, XVIII, 67; 1890, XX, 691; 1896, XXIII, 154, 174.

State ex rel Rawlinson v. Ansel, 76 S. C. 406, 57 S. E. 185, 11 Am. & Eng. Ann. Cas. 613.

(778) § 13. Officers Appointed by Governor by and With Advice and Consent of Senate.—The Governor, by and with the advice and consent of the Senate, shall appoint the following officers:

County Auditors.

County Treasurers.

Magistrates.

Masters.

Seven members of the State Board of Education.

Supervisors of Registration.

Circuit Solicitors, when there is a vacancy in such office by reason of death, resignation, ceasing to reside in the Circuit, or otherwise.

Any vacancies which may happen in any of the said offices during the recess of the Senate may be filled by the Governor, who shall report the appointment to the Senate at its next session, and if the Senate do not advise and consent thereto at such session, the office shall be vacant.

Chief Game Warden, on the recommendation of the Audubon Society of South Carolina.

Public Service Commission.

The Tax Commission.

Civ. '12, § 694; Civ. '02, § 624; G. S. 476, 477; R. S. 540; 1868, XIV, 66; 1870, XIV, 376; 1871, XIV, 690; 1878, XVI, 571, 609, 766; 1882, XVII, 1111; 1876, XVI, 1890, XX, 697; 1901, XXIII, 701; 1896, XXI, 154.

State ex rel. Gasque v. Singleton, 100 S. C. 465, 84 S. E. 989.

(779) § 14. Officers Appointed by Governor.—The following officers shall be appointed by the Governor:

1. Any vacancy in an office of the Executive Department, occurring during a recess of the General Assembly. The term of such appointment to be until the vacancy be filled by a general election, or by the General Assembly, in the mode provided by law.

Civ. '02, § 625; G. S. 477; R. S. 541; 1875, XV, 935.

As to Adjutant and Inspector General see § (540).

2. Any vacancy in a county office, by reason of death, resignation, refusal, or neglect to qualify, of the person elected or appointed thereto, expiration of the term of office, or any other cause. The person so appointed to hold his office, in all cases in which the office is elective, until the next general election and until his successor shall qualify; and in cases of offices which are originally filled by appointment and not by election, until the adjourn-

ment of the session of the General Assembly next after such vacancy has occurred. The Governor may remove for cause any person so appointed by him to fill such vacancy.

1878, XVI, 716.

Four Commissioners for the South Carolina Institute for the Education of the Deaf, Dumb, and Blind.

1878, XVI, 707.

Resignation from office; when complete. *State ex rel. Jernigan v. Stickley*, 80 S. C. 70, 61 S. E. 211, 128 Am. St. Rep. 855, 15 Am. & Eng. Ann. Cas. 136.

Nine Regents of the State Hospital for the Insane, one of whom shall be appointed from each Congressional District, and the remainder shall be residents of Richland County.

1877, XVI, 249.

Seven members of the State Board of Health, to be recommended by the State Medical Association.

1878, XVI, 729.

Seven members of the Board of Harbor Commissioners, Charleston Harbor, upon the recommendation of the Senator and members of the House of Representatives from Charleston County, or a majority of them, at least two of whom shall be seafaring men, and at least one of such seafaring men shall be a full branch pilot of the port of Charleston; and all of whom shall be residents of the City of Charleston.

1900, XXIII, 417.

Members to fill any vacancy in the Board of Directors of the State Penitentiary occurring during the recess of the General Assembly.

1877, XVI, 263.

Proxies to represent the shares of the State in the Cheraw and Coalfields Railroad Company and in the Cheraw and Salisbury Railroad Company.

1878, XVI, 656.

The Chief Constable of the State, whensoever in his judgment any public emergency shall require it, or when necessary to the due execution of legal process.

1818, XVI, 723; 1903, XXIV, 19.

One or more Commissioners for the Catawba Indians.

1840, XI, 147.

One Quarantine Officer for St. Helena entrance, and one for Port Royal entrance, at the Port of Beaufort, on the nomination of the Township Board of Health of Beaufort Township.

1891, XX, 1252.

One Quarantine Officer for the Port of Charleston on the nomination of the Board of Health of the City of Charleston.

1884, XVIII, 691.

One Quarantine Officer for the Port of Georgetown upon the recommendation of the State Board of Health.

1884, XVIII, 691.

As many Notaries Public throughout the State as the public good shall require.

1871, XIV, 538; 1911, XXVII, 139.

Commissioners of Deeds in the several States and Territories of the Union, and in the District of Columbia.

1834, VI, 504; 1906, XXV, 126.

Board of Pardons.

1906, XXV, 14.

Commission to Establish an Infirmary for Confederate Veterans.

1908, XXV, 1074.

Historical Commission.

1905, XXIV, 907.

Board of Fisheries.

1906, XXV, 85.

A State Bank Examiner.

1911, XXVI, 5.

A Board of Commissioners for the Promotion of Uniformity of Legislation in the United States.

Civ. '12, § 695; 1909, XXVI, 127.

State ex rel. Gasque v. Singleton, 100 S. C. 465, 84 S. E. 989; *Gibbes v. Richardson*, 107 S. C. 191, 92 S. E. 333.

(780) § 15. Governor's Authority in Respect to Asiatic Cholera.—Full power and authority is given to the Governor to make, by proclamation, such regulations as in his opinion may be necessary to prevent the entrance of Asiatic cholera into this State, and the spreading thereof in this State.

Civ. '12, § 696; Civ. '02, § 626; G. S. 480; R. S. 543; 1865, XIII, 307.

(781) § 16. Governor May Suspend Sentence or Parole Prisoner.—In any case that may be deemed proper by the Governor, he may suspend sentence or parole any prisoner upon such terms or conditions as he may deem just in the exercise of executive clemency.

Civ. '12, § 697; 1909, XXVI, 121.

(782) § 17. Compensation of Lieutenant Governor.—The Lieutenant Governor shall receive a salary of seven hundred and fifty dollars.

Civ. '12, § 698; Civ. '02, § 627; G. S. 481; R. S. 544; 1865, XIII, 350, § 5; 1868, XIV, 135, § 1; 1871, XIV, 531; Con., Art. III, §§ 2, 5, 6, 7, 8, 9, 13, 20; XVI, 246; 1893, XXI, 416; 1919, XXXI, 4.

ARTICLE III.

The Secretary of State.

(783) § 1. Salary.—The Secretary of State shall receive an annual salary of twenty-five hundred dollars, and the fees or perquisites of the office shall be paid into the Treasury of the State. The Clerk of the Secretary of State shall receive an annual salary of thirteen hundred and fifty dollars.

Civ. '12, § 699; Civ. '02, § 628; G. S. 482; R. S. 545; 1868, XIV, 382, § 1; Con., Art. IV, § 24; Art. V, § 24; 1877, XVI, 246; 1893, XXI, 416; 1919, XXXI, 4.

BOND.—The Secretary of State, before entering upon the duties of his office, shall execute a bond, with two or more good sureties, in the penal sum of ten thousand dollars, for the faithful discharge of the duties of his office.

G. S. 483; R. S. 546.

OFFICE RECORDS AND PAPERS—PAPERS OF EXECUTIVE CHAMBER.—The Secretary of State shall, during the absence of the Governor from Columbia, be placed in charge of the records and papers in the Executive Chamber. He shall keep in Columbia all the books, records, and papers belonging thereto. He shall hold his office in the State House, in Columbia.

Civ. '12, § 699; G. S. 484; R. S. 547; 1865, XIII, 350, § 4; 1786, IV, 751, § 4.

(784) § 2. Office Hours.—He shall keep his office open from nine o'clock in the morning until three o'clock in the afternoon, every day in the year, Sundays and public holidays excepted.

Civ. '12, § 700; Civ. '02, § 629; G. S. 485; R. S. 548; 1791, V, 161, § 4.

(785) § 3. Penalty for False Certificate as to Records.—If any Secretary of State, or his deputy, shall certify, under his hand, that no sale, conveyance, or mortgage of any particular goods or chattels, by any particular person is registered in his office, when, at the same time, there is such record, such Secretary or his deputy shall forfeit and pay to such person who made inquiry, and who is damaged by reason of such false certificate by him made, as aforesaid, all his damages and costs of suit which he shall sustain by reason of any second mortgage.

Civ. '12, § 701; Civ. '02, § 630; G. S. 486; R. S. 549; 1698, II, 138, § 5.

(786) § 4. Records of Superintendent of Public Works.—The records books, and papers belonging to the office of the late Superintendent of Public Works, are part of the record of said office, and the Secretary of State is authorized and required, upon the application of any person interested therein, to give certified copies of any deed, grant or other paper belonging to the said office, which said copies may be used in evidence in any court in this State, in like manner as office copies of other records are now used, and he is authorized to charge therefor the same fees as are now allowed by law for the like service.

Civ. '12, § 702; Civ. '02, § 631; G. S. 487; R. S. 550; 1856, XII, 520, §§ 1, 2.

(787) § 5. Reports of Overseers of Poor.—The Secretary of State shall on or before the fourth Tuesday in November of each year, make out an abstract of the return made to him by the Overseers of the Poor of each city and county in the State, together with such explanatory remarks as he deems proper, and, through the Governor of the State, transmit the same to the Legislature.

Civ. '12, § 703; Civ. '02, § 632; G. S. 488; R. S. 551; 1870, XIV, 372, § 14.

As to his charge over State property, see ante, § (95), public property.

(788) § 6. Ex Officio Keeper of State House—Sergeant at Arms of Senate and House in Charge of Respective Chambers.—The Secretary of State is *ex officio* Keeper of the State House and Grounds and is charged with the care of the entire property belonging to the State therein, and may make

such repairs and improvements from time to time as may be necessary. He shall contract for and furnish all fuel and gas necessary for the offices of the Executive Department and for the General Assembly; and shall keep an account monthly of the gasometers and electric meters in the State House, and audit all accounts for furnishing gas for the use of the State House: *Provided*, The Sergeant at Arms of the Senate, and the Sergeant at Arms of the House of Representatives, shall take exclusive care and charge of the Senate Chamber and Hall of House of Representatives and Committee rooms, respectively, and be held responsible for their keeping and the keeping and protection of the furniture and furnishing belonging to them, packing such as may need packing, and occasionally inspect and care for the same during the recess of the General Assembly, and shall receive as compensation therefor the same mileage and per diem for each day actually engaged as he receives during the sessions of the Legislature: *Provided*, He shall not be paid for more than six days during any one year.

Civ. '12, § 704; Civ. '02, § 633; G. S. 490; R. S. 553; 1870, XIV, 598, 413; 1903, XXIV, 633.

(789) § 7. Deeds, Etc., of Railroads to be Recorded—Good from Date of Record.—All deeds of conveyance of railroad beds, tracks, and rights of way, cars, locomotive engines, rolling stock and other railway equipment, all leases and mortgages or other conditional sale of, and all other instruments in writing relating to, such property in this State delivered or executed on or after the first day of January, 1894, shall be valid, so as to effect from the time of such delivery or execution the rights of subsequent creditors or purchasers for valuable consideration without notice, only when filed in duplicate, within forty days from the execution and delivery thereof in the office of the Secretary of State: *Provided, nevertheless*, That the above mentioned deeds, leases, mortgages and other conditional sales and instruments in writing, if filed subsequent to the expiration of said period of forty days, shall be valid to affect the rights of subsequent creditors and purchasers for valuable consideration without notice only from the date of said record. Each and every locomotive engine, car and other railway equipment, shall have the name of the vendor, lessor, bailor or mortgagor plainly marked on each side thereof, followed by the word "owner," "lessor," "bailor," or "mortgagor," as the case may be; and each deed of conveyance, lease, conditional sale and mortgage of such railroad property shall contain such a description thereof as will correspond to the name so marked thereon.

Civ. '12, § 705; Civ. '02, § 634; R. S. 554; 1893, XXI, 412; 1920, XXXI, 989.

(790) § 8. Probate.—Before such deeds, leases, mortgages and other instruments in writing can be filed by the Secretary of State, the execution thereof shall first be proved by the affidavit in writing of a subscribing witness to such instrument, in the same manner prescribed for the probate of deeds in relation to the recording of deeds in the office of the Register of Mesne Conveyances of the several counties of this State: *Provided, also*, That before such deeds, leases, mortgages and other instruments in writing can be filed by the Secretary of State, copies thereof shall be furnished in

duplicate, one of which shall be given its proper file number, indexed and retained in his office, and the other shall be properly endorsed, giving the file number under which it is to be found and returned.

Civ. '12, § 706; Civ. '02, § 635; 1920, XXXI, 989.

(791) § 9. Books of Record — Fees for Recording — Certified Copy Receivable in Evidence.—Said conveyances, leases and mortgages and other instruments in writing shall be filed by the Secretary of State in his office, and for such filing he shall receive from the party offering such papers for file the sum of five dollars. A certificate or certified copy of the aforesaid papers when once filed, as hereinabove provided, by the Secretary of State, shall be competent evidence of such filing and of the facts contained in each deed, lease and mortgage or other instrument in writing so filed and certified in all the courts of this State. When any such mortgage so filed shall be fully satisfied, the mortgagee shall note the same on the margin of the copy on file or declare the same to be satisfied in a separate instrument in writing to be filed as above provided under a penalty of five hundred dollars to be recovered in any court of competent jurisdiction at the suit of the mortgagor or his assignees, or any other party aggrieved thereby.

Civ. '12, § 707; Civ. '02, § 636; 1920, XXXI, 989.

See provisions as to recording railroad mortgages under law as to railroads.

(792) § 10. Recordation of Certain Instruments Affecting Railways, Validated.—That the Act entitled "An Act to Amend Sections 705, 706 and 707 of the Code of 1912, Volume I, by substituting the words 'filed in duplicate' wherever the word 'recorded' occurs," approved March 10, 1920, shall not affect or apply to deeds of conveyance of railroad beds, tracks and rights of way, cars, locomotive engines, rolling stock and other railway equipment, leases and mortgages or other conditional sale of, or other instruments in writing relating to such property, which were duly recorded pursuant to the law as it existed prior to the approval of said amendatory Act on March 10, 1920, and the records thereof are hereby declared to be legal and valid according to the terms of the law existing when such recordations were made.

1921, XXXII, 62.

(793) § 11. Certified Copies of Pardons to be Filed With Clerk of Court.—It shall be the duty of the Secretary of State immediately upon the granting to any person of any pardon by the Governor to transmit a certified copy of such pardon to the Clerk of the Circuit Court of the county in which such person was convicted, said certified copy of such pardon to be filed by such Clerk in his office.

Civ. '12, § 708; Civ. '02, § 637; 1896, XXII, 121.

(794) § 12. Secretary of State to Report Collections.—The Secretary of State shall, on or before the tenth day of each month, make an itemized report in writing to the Comptroller General of all fees and funds derived from any source whatsoever in connection with his office; and shall at the same time pay over to the State Treasurer the amount shown by the said report to have been collected.

Civ. '12, § 709; 1905, XXIV, 911.

ARTICLE IV.

The Attorney General and Solicitors.

(795) § 1. Salary of Attorney General and of His Assistant.—The Attorney General shall receive a salary at the rate of twenty-five hundred dollars per annum; and the Assistant Attorney General, who shall be appointed by the Attorney General, shall receive a salary of thirteen hundred and fifty dollars per annum.

Civ. '12, § 710; Civ. '02, § 638; G. S. 495; R. S. 555; 1877, XVI, 247; 1880, XVII, 372; 1919, XXXI, 4.

(796) § 2. Bond.—Before entering upon the duties of his office, the Attorney General shall execute a bond, with two good sureties, to the State of South Carolina, in the sum of ten thousand dollars, for the faithful discharge of his office.

Civ. '12, § 711; Civ. '02, § 639; G. S. 496; R. S. 556; 1812, V, 675.

(797) § 3. Shall Appear for the State in the Supreme Court.—He shall appear for the State in the Supreme Court in the trial and argument in said court of all causes, criminal and civil, in which the State is a party or interested, and in such causes in any court or tribunal, when required by the Governor or either branch of the General Assembly.

Civ. '12, § 712; Civ. '02, § 640; G. S. 497; R. S. 557; 1868, XIV, 88, § 2.

(798) § 4. May File Information Against Persons Who Intrude on Property of State.—He may, when, in his judgment, the interest of the State requires it, file and prosecute information or other process against persons who intrude upon the lands, rights, or property of the State, or commit or erect any nuisance thereon.

Civ. '12, § 713; Civ. '02, § 641; G. S. 498; R. S. 558; 1868, XIV, 88, § 3.

State v. Columbia Water Power Co., 82 S. C. 192, 63 S. E. 884, 129 Am. St. Rep. 876, 17 Am. & Eng. Ann. Cas. 343, 22 L. R. A., N. S., 435n.

Attorney General has authority to institute action to enjoin placing of permanent obstructions across navigable waters. *State ex rel. Lyon v. Columbia Water Power Co.*, 82 S. C. 181, 192, 63 S. E. 884, 129 Am. St. Rep. 876, 17 Am. & Eng. Ann. Cas. 343, 22 L. R. A., N. S., 435n.

(799) § 5. Shall Advise Solicitors and Attend Grand Jury.—He shall consult with and advise the Solicitors in matters relating to the duties of their offices; and when, in his judgment, the interest of the State requires it, shall assist them by attending the grand jury in the examination of any case in which the party accused is charged with a capital offense; and when, in his judgment, the interest of the State requires it, he shall be present at the trial of any cause in which the State is a party or interested, and, when so present, shall have the direction and management of such prosecutions and suits.

Civ. '12, § 714; Civ. '02, § 642; G. S. 499; R. S. 559; 1868, XIV, 88, § 4.

Commissioner v. Rose, 1 DeS. 461; *Ex parte Dunn v. R. R. Co.*, 8 S. C. 207.

(800) § 6. Protect Public Charities and Prosecute Corporations.—He shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof, and, when necessary, shall prosecute corporations which fail to make to the General Assembly the return required by law.

Civ. '12, § 715; Civ. '02, § 643; G. S. 500; R. S. 560; 1868, XIV, 88, § 5.

(801) § 7. Shall Advise General Assembly.—He shall, when required by either branch of the General Assembly, attend during their sessions, and give his aid and advice in the arrangement and preparation of legislative documents and business, and shall give his opinion upon questions of law submitted to him by either branch thereof, or by the Governor.

Civ. '12, § 716; Civ. '02, § 644; G. S. 501; R. S. 561; 1868, XIV, 88, § 6.

(802) § 8. Shall Advise the State Officers.—He shall, when required by the Secretary of State, Treasurer, Adjutant General, the Comptroller General, Railroad Commissioner, or other State officer, consult and advise with them, respectively, on questions of law relating to their official business.

Civ. '12, § 717; Civ. '02, § 645; G. S. 502; R. S. 562; 1868, XIV, 88, § 7; 1890, XX, 705.

(803) § 9. Shall Annually Report to General Assembly.—He shall annually make a report to the General Assembly of the cases argued, tried, or conducted by him in the Supreme Court and Circuit Courts during the preceding year; with such other information in relation to the criminal laws, and such observations and statements, as, in his opinion, the criminal jurisdiction and the proper and economical administration of the criminal law warrant and require.

Civ. '12, § 718; Civ. '02, § 646; G. S. 503; R. S. 563; 1868, XIV, 89, § 8.

(804) § 10. Governor's Warrant on His Representation for Expenses of Certain Civil Actions.—On his representation, the Governor may draw his warrant on the Treasury to an amount not exceeding three hundred dollars in one year, for the contingent expenses of civil actions in which the State is a party or has an interest, for which sum he shall, annually, in October, account to the Governor; and he shall state the amount so expended in his annual report to the General Assembly.

Civ. '12, § 719; Civ. '02, § 647; G. S. 504; R. S. 564; 1868, XIV, 88, § 9.

(805) § 11. Fees From Prosecutors and Appearance in Civil Cause With Facts Denied Prosecuting Officers.—No prosecuting officer shall receive any fee or reward from, or in behalf of, a prosecutor, for services in any prosecution or business to which it is his official business to attend, nor be concerned as counsel or attorney for either party in a civil action depending upon the same state of facts.

Civ. '12, § 720; Civ. '02, § 648; G. S. 505; R. S. 565; 1868, XIV, 88, § 10.

(806) § 12. Attorney General to Account to the Treasurer.—The Attorney General shall account with the Treasurer of the State for all fees, bills of cost and moneys received by him by virtue of his office.

Civ. '12, § 721; Civ. '02, § 649; G. S. 506; R. S. 566; 1868, XIV, 89, § 11.

(807) § 13. Bond of Solicitors and Vacancies.—The Solicitors, before entering upon the duties of their offices, shall, respectively, give bond, with two good sureties, to the State of South Carolina, in the penal sum of five thousand dollars, for the faithful discharge of the duties of their respective offices.

In case any Circuit Solicitor shall cease to reside in his Circuit, his office shall become vacant. In case any vacancy shall occur in such office by death, resignation or otherwise, the vacancy thereby created shall be filled

by the Governor, by and with the advice and consent of the Senate. The Judge residing in the Circuit of the Solicitor, whose office shall thus become vacant, shall certify such vacancy to the Governor.

Civ. '12, § 722; Civ. '02, § 650; G. S. 515; R. S. 567; 1812, V, 675, § 3; 1876, XVI, 152.

Tenure of office. *State v. Jeter*, 1 McC 233; *State v. Butz*, 9 S. C. 156.

State ex rel. Gasque v. Singleton, 100 S. C. 465, 84 S. E. 989.

(808) § 14. Duties of Solicitors Relating to Attorney General—Right to Defend Persons Accused.—Solicitors shall do the duty of the Attorney General, and give their counsel and advice to the Governor and other State officers, in matters of public concern, whenever they shall be, by them, required to do so, and assist the Attorney General, or each other, in all suits of prosecution in behalf of this State, when directed so to do by the Governor, or called upon by the Attorney General. They may defend any person brought to trial before any criminal court of this State, when their duty shall not require them to prosecute such persons, or their assistance be not required against such person by the Governor or Attorney General.

Civ. '12, § 723; 1906, XXV, 120; 1877, XVI, 246; 1893, XXI, 417; 1919, XXXI, 101.

(809) § 15. Compensation of Circuit Solicitors—Payment of Costs from Defendants to County Treasurer.—The Circuit Solicitors of the various Judicial Circuits of this State shall each receive an annual salary of twenty-four hundred dollars, payable monthly; such salaries to be in lieu of all charges against the State and the counties. All costs from defendants shall be paid over by the Solicitor to the County Treasurer for the use of the State.

Civ. '12, § 724; 1906, XXV, 120; 1877, XVI, 246; 1893, XXI, 417; 1919, XXXI, 101.

(810) § 16. Compensation of Solicitors Attending General Assembly.—Whilst in attendance upon the sessions of the General Assembly, Solicitors shall receive as compensation the sum of five dollars per day for each day of actual attendance, and mileage at the rate of ten cents per mile one way, for necessary travel in the discharge of their official duties, the same to be paid upon the certificate of the Solicitors as to number of days in attendance, and actual necessary miles traveled, said certificate to be approved for payment by the Attorney General of the State.

Civ. '12, § 725; 1910, XXVI, 755.

(811) § 17. Defense of Persons Claiming Under State by Attorney General or Solicitors.—In all cases wherein the right of the State may be involved, it shall be the duty of the persons claiming under the State to call on the Attorney General, or Solicitors, in their respective districts, to defend the right of the State; on failure whereof, the record of such case shall not be adduced as evidence to substantiate any claim against the State.

Civ. '12, § 726; Civ. '02, § 652; G. S. 507; R. S. 569; 1808, V, 571, § 5.

(812) § 18. Attorney General and Solicitors to Sue for Penalties.—It shall be the duty of the Attorney General and Solicitors to sue for the penalties incurred by any public officer or board of public officers.

Civ. '12, § 727; Civ. '02, § 653; G. S. 508; R. S. 570; 1813, V, 709, § 23; 1814, V, 733, § 25; 1815, VI, 9, § 10; 1844, XI, 295, § 4.

For authority to employ assistant counsel in actions on Dispensers' bonds, see ante, § (741).

(813) § 19. **Attorney General and Solicitors to Examine the Offices of County Officers.**—The Attorney General and Solicitors are required, annually, at such times as they may deem expedient, to examine into the condition of the offices of the Clerk of the Court of Common Pleas and General Sessions, of Sheriff, and Register of Mesne Conveyances, in their respective counties, and to ascertain if the said officers have discharged the duties which now are, or shall be, required of them; and they shall make a report of the condition of the said offices, and of the manner in which said officers have discharged their duties, to the Circuit Court in each county, respectively, at the fall term in each year, and also to the General Assembly at its annual session.

Civ. '12, § 728; Civ. '02, § 654; G. S. 509; R. S. 571; 1837, VI, 577, § 2.

(814) § 20. **Solicitors to Attend Circuit Courts of Their Respective Counties.**—The Solicitors shall attend the Courts of General Sessions and Common Pleas for their respective Circuits.

Civ. '12, § 729; Civ. '02, § 655; G. S. 510; R. S. 572; 1842, XI, 222, § 4; Con., Art., § 25.

Duties in Court. *State v. Barrantine*, 2 N. & McC. 553; *State v. Addison*, 2 S. C. 365; *State v. Coleman*, 8 S. C. 237; *State v. McNinch*, 12 S. C. 95.

(815) § 21. **Solicitors to Furnish Report to Comptroller.**—It shall be the duty of the Solicitors, on the last day of October, in every year, to furnish the Comptroller General with a statement of all debts due to the State in their several possessions, showing the names of the debtors, the amount of debts, the interest, the payments made, and the balance due to the State; and if any of said officers fail to furnish the Comptroller General with such statement, he shall forfeit and pay the sum of two hundred dollars, to be recovered by action in any court of law in this State having competent jurisdiction.

Civ. '12, § 730; Civ. '02, § 656; G. S. 512; R. S. 574; 1818, VI, 108, § 11.

(816) § 22. **Solicitors to Furnish Duplicate Returns to Comptroller.**—It shall be the duty of the Circuit Solicitors, in making their returns to the Comptroller General, as by law directed, to make out and deliver to him, at the same time, fair duplicates thereof.

Civ. '12, § 731; Civ. '02, § 657; G. S. 513; R. S. 574; 1819, VI, 139, § 14.

ARTICLE V.

Notaries Public.

(817) § 1. **Governor Appoints Notaries Public—Term of Office—Jurisdiction.**—The Governor is authorized to appoint as many Notaries Public throughout the State as the public good shall require, to hold their offices during the pleasure of the Governor, and whose jurisdiction shall extend throughout the State.

Civ. '12, § 732; Civ. '02, § 662; G. S. 520; R. S. 578; 1871, XIV, 538, § 1; 1911, XXVII, 189.

(818) § 2. **Oath.**—Every Notary Public shall take the oath of office prescribed by the Constitution and the oath with respect to duelling, certified copies of which oath shall be recorded in the office of the Secretary of State.

Civ. '12, § 733; Civ. '02, § 663; G. S. 521; R. S. 579; 1871, XIV, 538, § 2; 1911, XXVII, 139.

(819) § 3. **Enrollment of Commission.**—Every Notary Public shall, within fifteen days after he has been commissioned, exhibit his commission to the Clerk of the Court of the county in which he resides and be enrolled by said Clerk as now required by law in case of Magistrates.

Civ. '12, § 734; 1911, XXVII, 139.

(820) § 4. **Seal of Office.**—He shall have a seal of office, which shall be affixed to his instruments of publication and to his protestations; but the absence of such seal shall not render his acts invalid, provided his official title be affixed.

Civ. '12, § 735; Civ. '02, § 664; G. S. 522; R. S. 580; 1871, XIV, 538, § 3; 1911, XXVII, 139.

(821) § 5. **Powers.**—He shall have power to administer oaths, take depositions and affidavits, protests for nonpayment of bonds, notes, drafts and bills of exchange, take acknowledgments and proof of deeds and other instruments required by law to be acknowledged, take renunciation of dower, and perform all other acts now or that may hereafter be provided by law.

Civ. '12, § 736; Civ. '02, § 665; G. S. 523; R. S. 581; 1871, XIV, 538, § 4; 1911, XXVII, 139.

As to protests. *Williamson v. Turner*, 2 Bay 410; *Williamson v. Patterson*, 2 McC 132; *Dohson v. Laval*, 4 McC. 57; *Halls v. Howell*, Harper 426; *Johnson v. Harth*, 2 Bail. 183; *Bank v. Green*, 2 Bail. 230; *Bank v. Stinemetz*, 1 Hill 44; *Bank v. Flagg*, 1 Hill 177; *Thompson v. Bank*, 3 Hill 77; *Ib.*; *Riley* 81; *Aiken v. Cathcart*, 2 Speers 642; *Greene v. Talley*, 39 S. C. 338, 17 S. E. 779, 780

(822) § 6. **No Jurisdiction in Criminal Cases.**—He shall exercise no power or jurisdiction in criminal cases.

Civ. '12, § 737; Civ. '02, § 666; G. S. 524; R. S. 582, 829; VI, 387.

(823) § 7. **Endorsement.**—No Notary Public shall be appointed except upon the endorsement of one of the legislative delegation from the county in which the applicant resides.

Civ. '12, § 738; 1911, XXVII, 139.

(824) § 8. **Fees.**—The fee for the commission shall be two dollars, collected by the Secretary of State as other fees.

Civ. '12, § 739; 1911, XXVII, 139.

ARTICLE VI.

Commissioners of Deeds.

(825) § 1. **Appointment.**—The Governor of the State is authorized to appoint and commission, in the several States and Territories of the Union, and in the District of Columbia, and in foreign countries, as many persons as he may deem expedient, as Commissioners of Deeds, who shall hold their officer authorized to administer oaths in the city or county in which such

Civ. '12, § 740; Civ. '02, § 667; G. S. 525; R. S. 583; 1834, VI, 504, § 1; 1906, XXV, 126.

(826) § 2. **Qualification.**—Every Commissioner, before he proceeds to perform any duty, shall take and subscribe an oath or affirmation before any officer authorized to administer oaths in the city or county in which such Commissioner shall reside, well and faithfully to execute and perform all the duties of such Commissioner, under and by the laws of South Carolina, which oath or affirmation, and the written appointment of such Commissioner, shall be filed in the office of the Secretary of this State, who shall give notice of such appointment in one or more of the gazettes of this State.

Civ. '12, § 741; Civ. '02, § 668; G. S. 526; R. S. 584; 1834, VI, 505, § 3.

(827) § 3. **Authority.**—A Commissioner of Deeds shall have authority to take renunciation of dower, and the acknowledgment of proof of any deed, mortgage, or other conveyance of any lands, tenements, hereditaments, lying or being in this State, or of any contract, letter of attorney, or any other writing under seal, to be used and recorded in this State; and such renunciation, acknowledgment, or proof, when certified to by the hand and seal of such Commissioner, shall have the same force and effect as if taken before the proper officers within this State.

Civ. '12, § 742; Civ. '02, § 669; G. S. 527; R. S. 585; 1834, VI, 505, § 1.

(828) § 4. **Powers.**—Every Commissioner shall have full power to administer an oath or affirmation to any person who shall be willing or desirous to make such oath or affirmation before him; and such oath or affirmation made before such Commissioner shall be as good and effectual, to all intents and purposes, as if taken by any Magistrate resident in this State, and competent to take or administer the same.

Civ. '12, § 743; Civ. '02, § 670; G. S. 528; R. S. 586; 1834, VI, 505, § 2.

(829) § 5. **Force of Jurat of Notaries Public in Other States.**—All verifications of pleadings, affidavits, and proofs of claims made before Notaries Public in other States shall have the same force and effect as they would have if sworn to before a Commissioner of Deeds for this State resident in another State: *Provided*, Such Notary Public shall use his official seal.

Civ. '12, § 744; Civ. '02, § 671; R. S. 587; 1888, XX, 1; 1891, XX, 1041.

Testimony certified by foreign notary under his official seal admissible. *Greene v. Talley*, 39 S. C. 338, 17 S. E. 779, 780.

(830) § 6. **Commissions to Commissioners of Deeds Valid.**—All commissions to Commissioners of Deeds for South Carolina, wherever located, issued prior to the first day of January, 1896, are hereby declared to be and remain in full force and effect, notwithstanding the proclamation of the Governor revoking same, on March 20th, 1901, and said Commissioners, and the acts of all Commissioners, heretofore or hereafter done while acting under same, shall be of the same force and effect as if said commissions had never been revoked.

Civ. '12, § 745; 1907, XXV, 773.

ARTICLE VII.**The Comptroller General.**

(831) § 1. Bond — Office Hours — Salary.—The Comptroller General shall, before he enters upon the duties of his office, give bond for the faithful discharge of the duties thereof, with one or more sureties, to be approved of by the Governor for the time being, in the sum of thirty thousand dollars. He shall receive an annual salary of twenty-five hundred dollars, and the fees and perquisites of the office shall be paid in to the Treasury of the State. He shall keep open and attend to his office from nine o'clock in the morning until two o'clock in the afternoon on every day, Sundays, public holidays, and the two next succeeding days to Christmas excepted.

CHIEF CLERK, AUDITING CLERK, CLERK STATE BOARD OF PENSIONS—DUTIES —SALARY.—His Chief Clerk and his Auditing Clerk, both to be appointed by him, shall each receive an annual salary of fourteen hundred dollars. The Clerk of the State Board of Pensions, to be appointed by him, shall receive an annual salary of not exceeding twenty-four hundred dollars. It shall be the duty of the Auditing Clerk, under the direction and supervision of the Comptroller General, to keep the phosphate and insurance records in the Comptroller General's office, visit the various counties of the State, and to visit the various penal, charitable and educational institutions of the State, and report on the conditions of the books of the same, when required by the Comptroller General, and inspect and report on the condition of the books of the various county officers of the State, and assist the Comptroller General in making the annual settlements with county officers.

Civ. '12, § 746; Civ. '02, § 672; G. S. 529; R. S. 588; 1877, XVI, 247; 1801, V, 410, § 11; 1868, XIV, 135, § 1; 1801, V, 411, § 21; 1893, XXI, 416; 1900, XXIII, 418; 1919, XXXI, 4; 1921, XXXII, 204.

(832) § 2. Record of General Assembly Appropriations, Payments and Contingent Accounts—Treasurer's Vouchers.—It shall be his duty to keep a book in which all appropriations by the General Assembly shall be entered, with all payments made under them; he shall also keep another book, properly indexed, in which he shall enter all contingent accounts allowed by the General Assembly, and the time at which payment on the same shall be made. The Comptroller General shall between the first and the tenth day of each month examine the vouchers in the office of the State Treasurer for all payments made by the Treasurer during the preceding month.

Civ. '12, § 747; Civ. '02, § 673; G. S. 530; R. S. 589; 1834, VI, 511, § 3; 1899, XX, 367.

(833) § 3. Examination of Books of the Treasurer.—The books of the Treasurer of the State shall, at all seasonable times, be open to the inspection and examination of the Comptroller General, and he shall, twice in each year, and at such other times as he shall deem necessary, examine the cash in the Treasury at Columbia.

Civ. '12, § 748; Civ. '02, § 674; G. S. 531; R. S. 590; 1801, V, 409, §§ 1, 4.

(834) § 4. Personally Superintend Transfer of Books and Money by Treasurer to His Successor.—He shall personally superintend, except in

the event of his being sick, and thereby rendered unable to attend, the transfer of money and papers from the office of the Treasurer to his successor, and report to the General Assembly thereon at their next session.

Civ. '12, § 749; Civ. '02, § 675; G. S. 532; R. S. 591; 1801, V, 409, § 4.

(835) § 5. Must Prepare Annual Estimates for the General Assembly.—He shall prepare and report at every session of the General Assembly estimates of the public revenues and public expenditures; and shall, at the same time, render fair and accurate copies of all the Treasurer's report, and a true and accurate account of the actual state of the Treasury.

Civ. '12, § 750; Civ. '02, § 676; G. S. 533; R. S. 592; 1801, V, 408, § 1.

(836) § 6. All Payments by Treasurer to Be on His Warrant, Except, Etc.—All payments by the State Treasurer, except for interest on the public debt, and the pay of officers, members, and attaches of the General Assembly, shall be made on warrants drawn by the Comptroller General, and the vouchers for the same must be filed in his office: *Provided*, That all warrants issued by the Comptroller General for the payment of claims, if not presented for payment within two years from date thereof, shall be written off of the books of the Comptroller General: *Provided*, Any warrant may be reissued upon satisfactory proof of nonpayment and loss.

Civ. '12, § 751; Civ. '02, § 677; G. S. 534; R. S. 593; 1876, XVI, 91; 1916, XXIX, 927.

(837) § 7. Payments From State Treasury—Vouchers—Proviso as to Interest on State Bonds.—After the approval of the annual Appropriation Act by the Governor, moneys may be obtained from the State Treasury only by drawing vouchers upon the Comptroller General, and all vouchers, except for appropriated salaries, shall be accompanied by a classified and itemized statement of expenditures showing in each case the name of the payee, a list of articles purchased or services rendered, together with a certified statement that such articles or services were purchased or rendered exclusively for the purpose or activity for which the appropriation was made. These statements of expenditures shall be prepared on printed forms prescribed by the Comptroller General and they shall be prepared in duplicate, the copy to be retained for the purpose of assisting in the annual audit, and as a permanent office record: *Provided*, That the interest on bonded debts of the State shall be paid in accord with Sections (857) and (861) of this Code.

1921, XXXII, 114.

(838) § 8. Lost Warrants—Issue of Duplicates.—That in case any warrant issued by the Comptroller General shall be lost and fails to reach the person to whom the same has been mailed, the Comptroller General shall, upon satisfactory proof to him of the fact of such loss, and upon receiving a bond in an amount double the sum for which the said amount was drawn, issue to the said person a duplicate warrant for the sum for which the original warrant was drawn, which duplicate warrant shall state upon its face it is a duplicate, and payable only in case the original warrant is unpaid, and such warrant, duly endorsed, shall be sufficient for payment by the State Treasurer.

1921, XXXII, 114.

(839) § 9. Unlawful to Spend Money for Purpose Other than Specified.

—It shall be unlawful for any moneys to be expended for any purpose or activity except that which it is specifically appropriated, and no transfer from one appropriation account to another shall be made unless such transfer be provided for in the annual Appropriation Act.

1921, XXXII, 114.

(840) § 10. Keep Duplicate of Books of Treasurer—Report Balance Sheet to General Assembly.

—The Comptroller General shall keep a set of books, exhibiting the separate transactions of the Treasury Department, which set of books shall be a transcript of the books of the Treasury, constituting a complete check upon that office; and the Comptroller shall, in addition to the exhibits of cash transactions of the Treasury, annually report to the General Assembly a balance sheet of the books aforesaid, setting forth as well by whom debts are due to the State as the amount of those debts.

Civ. '12, § 752; Civ. '02, § 678; G. S. 535; R. S. 594; 1834, VI, 511, §§ 1. 2.

(841) § 11. Abstract of Settlement With County Treasurers Entered in Book and Recorded.

—The Comptroller General shall enter the abstract for settlement with the several County Treasurers of this State in a book to be kept by him for such purpose, and shall enter all settlements made by such Treasurer therein as to all taxes—State, school, county and special—and the same shall be a part of the records of his office.

Civ. '12, § 753; Civ. '02, § 679; R. S. 595; 1889, XX, 293.

(842) § 12. Must Report to General Assembly of County Taxes.

—He shall prepare and present to the General Assembly, at an early period in every session, a correct and detailed statement of all the taxes, real and personal, for which each of the counties of the State shall be liable under the Tax Acts of each year. He shall, at the same time, report the amount of the local taxes collected in each county.

Civ. '12, § 754; Civ. '02, § 680; G. S. 536; R. S. 596; 1808, V, 567, § 4; 1859, XII, 746, § 4.

He cannot be compelled by mandamus to levy a tax to pay "Revenue Bond Scrip," issued under Act March 2nd, 1872. *State v. Comptroller General*, 4 S. C. 185.

(843) § 13. To Report to General Assembly All Moneys Due the State.

—He shall lay before the General Assembly, with his annual report, a statement of all moneys due to the State.

Civ. '12, § 755; Civ. '02, § 681; G. S. 537; R. S. 597; 1818, VI, 108, § 11.

(844) § 14. Examine and Report on Accounts of Persons Having Distribution of Public Money.

—He shall examine and annually report to the General Assembly on the accounts of all persons having the distribution of public money.

Civ. '12, § 756; Civ. '02, § 682; G. S. 538; R. S. 598; 1834, VI, 512, § 4; 1846, XI, 356, § 2.

(845) § 15. Report Names of Pensioners.

—He shall make an annual report to the General Assembly of the names of the pensioners of the State.

Civ. '12, § 757; Civ. '02, § 683; G. S. 539; R. S. 599; 1835, VI, 527, § 3.

(846) § 16. Shall Report Transactions Regarding Unappropriated Treasury Funds.—The Comptroller General shall report, annually, to the General Assembly, his transactions in regard to unappropriated funds in the Treasury.

Civ. '12, § 758; Civ. '02, § 684; G. S. 540; R. S. 600; 1803, V, 458, § 30.

(847) § 17. Payments for Comptroller's Books.—The books necessary for the office of the Comptroller General shall be paid for out of the Treasury of the State.

Civ. '12, § 759; Civ. '02, § 685; G. S. 541; R. S. 601; 1818, VI, 109, § 15.

(848) § 18. Pursue Defaulting Treasurers—Attorney General and Solicitor Conduct Proceedings.—The Comptroller General shall immediately commence and pursue against all County Treasurers reported by the Treasurer as being in default in making their returns, such legal measures as will be best calculated to compel an immediate compliance with the duty imposed upon them in regard to such returns, and shall enforce the performance of their duty generally by all legal means. The Attorney General and the Solicitor of the Circuit in which such default may occur shall conduct such legal proceedings, when called upon to do so by the Comptroller General.

Civ. '12, § 760; Civ. '02, § 686; G. S. 543; R. S. 602; 1808, V, 567, § 3.

(849) § 19. Enter in His Books Accounts of All Persons Distributing Public Money.—He shall enter in books, kept for that purpose, such a statement of the account of persons having the distribution of public money (directed by law to be rendered to him), as will enable him, at any time, to show how said accounts stand between the parties, respectively.

Civ. '12, § 761; Civ. '02, § 687; G. S. 545; R. S. 604; 1834, VI, 512, § 4.

(850) § 20. Shall Furnish Office Room to State Officers.—The Comptroller General of the State is authorized and directed, upon his receipt of a written application from any officer of the State Executive Department, to provide and furnish an office for the use of said officer, and the expense thereof shall be paid by the State Treasurer, out of the contingent fund of the State, on the warrant of the Comptroller General.

Civ. '12, § 766; Civ. '02, § 692; G. S. 551; R. S. 609; J. R. 1869, XIV, 289, §§ 1, 2.

(851) § 21. May Extend Time for Assessment and Collection of Taxes.—The Comptroller General, with the approval of the Governor, may extend the time for the performance of the duties imposed upon the county officers or for the assessment and collection of taxes; and when such assessment and collection of taxes are necessarily delayed, the Comptroller General may postpone the time within which the penalties imposed by law would attach.

Civ. '12, § 767; Civ. '02, § 693; G. S. 552; R. S. 610; 1876, XVI, 561.

(852) § 22. When to Pay County Auditors.—The Comptroller General should not issue to any Auditor his warrant for the salary of such Auditor, until all abstracts and reports due from or by such Auditor have been filed in the office of the Comptroller General.

Civ. '12, § 768; Civ. '02, § 694; G. S. 553; R. S. 611; 1876, XVI, 194.

(853) § 23. **Shall Furnish State Printed Copies of All Reports for Publication from His Office.**—The Comptroller General shall furnish to the State Printer, for publication in the Reports and Resolutions of the General Assembly, copies of all reports passed at each session and filed in his office.

Civ. '12, § 769; Civ. '02, § 695; G. S. 554; R. S. 612; 1878, XVI, 825.

ARTICLE VIII.

The State Treasurer.

(854) § 1. **Salary of State Treasurer and of His Clerks.**—The Treasurer of the State shall receive a salary at the rate of twenty-five hundred dollars per annum. And he shall employ a Chief Clerk at a salary of fifteen hundred dollars per annum; and two bookkeepers, the salary of each to be at the rate of thirteen hundred and fifty dollars per annum.

Civ. '12, § 770; Civ. '02, § 696; G. S. 555; R. S. 613; 1879, XVII, 128; 1893, XXI, 416; 1919, XXXI, 4.

(855) § 2. **Bond.**—The Treasurer shall, before entering on the duties of his office, give bond, with two or more good and sufficient sureties, to be approved by the Governor, with a condition for the faithful discharge of his duties, and in the penal sum of ninety thousand dollars.

Civ. '12, § 771; Civ. '02, § 697; G. S. 556; R. S. 614; 1865, XIII, 350, § 5.

(856) § 3. **Office Hours.**—The Treasurer shall keep open and attend in his office from nine o'clock in the morning until two in the afternoon on every day, Sundays, public holidays, and the two succeeding days to Christmas excepted.

Civ. '12, § 772; Civ. '02, § 698; G. S. 557; R. S. 615; 1801, V, 411, § 21.

(857) § 4. **How Interest on State Stock Is to Be Paid.**—The Treasurer shall pay the semiannual interest upon all recognized Brown Consol or Blue four and one-half per cent. of Brown four per cent. stock of this State in manner following, that is to say: To every person or persons in whose names certificates of such stock are held, whose postoffice address is furnished to the said Treasurer, or which he is able to obtain, he shall send by mail at least two days before the first days of January and July, respectively, in every year, checks drawn payable to the order of such person or persons, as the case may be, for the amount of interest due to him or them, respectively. Such checks shall be payable at some bank or other financial agency, either in Columbia, Charleston or other financial point, to be selected by the said State Treasurer upon consultation with the Governor and Comptroller General, according as either of the said cities or other financial points may be nearest to the postoffice address of such person or persons to whom such checks may be sent. And such checks, when returned to the Treasurer duly endorsed by the person or persons to whom the same were made payable, shall be taken and considered as a sufficient and absolute voucher and receipt in his hands for the payment of the amount of interest specified therein.

Civ. '12, § 774; Civ. '02, § 700; G. S. 559; R. S. 617; 1882, XVII, 753, 91; 1882, XVIII, 205; 1887, XIX, 887; 1889, XX, 350, § 2; 1890, XX, 711, § 1.

(858) § 5. **How Lost Checks Replaced.**—In case any check mailed in accordance with the provisions of the last Section shall be lost and shall fail to reach the person to whom the same has been mailed, the State Treasurer shall, upon satisfactory proof to him of the fact of such loss, and upon receiving a bond of indemnity, with sufficient surety, approved also by the Attorney General, in an amount double the sum for which said check was drawn, issue to the said person his duplicate check for the sum for which the original check was drawn, which duplicate check shall state upon its face that it is a duplicate, and that it is payable only in case the original check is unpaid. And such duplicate check, duly endorsed, shall be as sufficient a voucher in the hands of the Treasurer, the original being unpaid, as the original check would have been.

Civ. '12, § 775; Civ. '02, § 701; G. S. 559; R. S. 618; 1882, XVI, 752.

(859) § 6. **When Transfer Books to Be Closed.**—To facilitate the payment of interest in the manner hereinbefore prescribed, the State Treasurer is authorized to close the books of transfer of said stock for thirty days prior to the first days of July and January in each and every year, during which period no changes or transfers of such stock will be allowed.

Civ. '12, § 776; Civ. '02, § 702; G. S. 559; R. S. 619; 1882, XVI, 752.

(860) § 7. **Coupons in Treasurer's Hands Sufficient Vouchers.**—No receipt or voucher need be taken by the Treasurer upon the payment of coupons of any recognized Brown Consol or Blue four and a half per cent. or Brown four per cent. bonds of this State, other than the delivery to him of the coupons so paid, which shall be held and deemed sufficient vouchers for such payment.

Civ. '12, § 777; Civ. '02, § 703; G. S. 560; R. S. 620; 1882, XVI, 752.

(861) § 8. **Coupons to Be Paid in Charleston Also.**—The Treasurer is authorized and directed to arrange for the payment at maturity of the coupons of recognized Brown Consol, or Blue, or Brown four per cent. bonds of this State in the City of Charleston in addition to the other places now fixed by law.

Civ. '12, § 778; Civ. '02, § 704; G. S. 561; R. S. 621; 1882, XVI, 753.

(862) § 9. **Monthly Report to Comptroller of Cash Transactions, Etc.**—He shall, at the end of every month, report to the Comptroller General an accurate statement of the cash transactions of the Treasury, of every description, stating therein every sum of money received or paid away in behalf of the State, particularizing the person and his office of whom received and to whom paid, as also on what account received, and for what purpose paid.

He shall, at all times, when required by the Comptroller General, produce to him satisfactory statements of the cash in hand, and furnish him promptly with official information, duly certified, relative to any matter connected with the revenue and finance of the State.

Civ. '12, § 779; Civ. '02, § 705; G. S. 562; R. S. 622; 1801, V, 409; 1803, V, 458.

(863) § 10. **Duties as to Defaulting County Treasurers.**—Any County Treasurer who shall neglect to pay over to the Treasurer the amount in his hands belonging to the State, or for which he has made himself liable, as

required by law, shall be liable to be committed to jail by warrant from the Treasurer, which warrant shall be directed to all the Sheriffs of the State, who shall be bound in their several counties to yield strict obedience to the same, under penalty of liability for neglect of duty; and such County Treasurer shall remain in strict custody until he shall have rendered a full account, and paid over the taxes for which he is accountable.

Civ. '12, § 781; Civ. '02, § 707; G. S. 564; R. S. 623; 1788, V, 54, § 14.

(864) § 11. Charging County Treasurer With Interest.—If any County Treasurer shall refuse or neglect to pay the taxes received by him within the time required by law, the Treasurer shall, in addition to the coercive power which he now possesses, charge the County Treasurer with interest, at the rate of five per cent. per month, from the time he ought to have paid the taxes to the time of such settlement.

Civ. '12, § 782; Civ. '02, § 708; G. S. 565; R. S. 624; 1843, XI, 247, § 9.

(865) § 12. Report to General Assembly Names of Defaulting County Treasurers—Proceedings Against Them.—The Treasurer shall report to the General Assembly, at its annual session, every instance of default in the County Treasurers, and state particularly the means which he has made use of against such defaulters, so that the General Assembly may be fully informed of any omission of duty, wheresoever and by whomsoever, in the punctual and due collection of taxes; he shall instruct the Attorney General and Solicitors to proceed against all such defaulters, as soon as such defaults occur; and it shall be the indispensable duty of the Treasurer to enforce all legal means against defaulting County Treasurers; in failure whereof, he shall be held to make good any loss which the State may sustain thereby, and be, moreover, liable to be deemed guilty of a violation of his official duty.

Civ. '12, § 783; Civ. '02, § 709; G. S. 566; R. S. 625; 1824, VI, 259, § 12.

(866) § 13. Requisites to Drawing Appropriations from Treasurer.—No appropriation placed under the direction of any Board of Commissioners shall be drawn from the Treasury until the contract entered into by the Commissioners in virtue thereof shall have been lodged in the Treasury.

Civ. '12, § 784; Civ. '02, § 710; G. S. 567; R. S. 626; 1824, VI, 269, § 7.

(867) § 14. How Appropriations Shall Be Drawn.—The Commissioners shall be authorized to draw one-third of the appropriation placed under their direction in advance, one-third when the contract is half finished, and the balance when the work is completed and received by the Commissioners: *Provided*, That in no case shall Commissioners be allowed to draw upon any contract which is not intended to carry into complete execution all the objects for which the appropriation shall be made by the Legislature, and which objects shall be embraced by the terms of the contract.

Civ. '12, § 785; Civ. '02, § 711; G. S. 568; R. S. 627; 1824, VI, 259, §§ 8, 9.

(868) § 15. Must Raise in His Books an Account for Each Appropriation.—The Treasurer shall raise an account in the Treasury books, in every instance, for the several appropriations made by the Legislature, so that the appropriations of money and application thereof conformably thereto may appear clearly and distinctly on the Treasury books.

Civ. '12, § 786; Civ. '02, § 712; G. S. 570; R. S. 628; 1803, V, 458, § 29.

(869) § 16. **Copies of Books to Be Evidence.**—An exact copy of any entry from the books of the Treasurer, certified by the Treasurer, shall be admitted in evidence in any court of this State, in the same manner as the original books.

Civ. '12, § 787; Civ. '02, § 713; G. S. 571; R. S. 629; 1801, V, 411, § 22.

(870) § 17. **State Treasurer to Give Duplicate Receipts—Original to Payer—Penalty.**—The Treasurer, on receiving money from the County Treasurers on account of State taxes and phosphate companies on account of phosphate royalty, or from any other person or persons whomsoever, on any account, shall issue duplicate receipts for the same, one of which shall be designated the original and the other the duplicate. The original shall be held by the person or persons making the payment of the money to the Treasurer, for his protection, and the duplicate shall be immediately sent to the Comptroller General of the State by the State Treasurer, who shall from such duplicate receipt make up a cash book upon which he shall charge the State Treasurer with having received the amount so evidenced by said duplicate receipt. The said State Treasurer shall designate on the face of each receipt on what account the money has been paid, so that the Comptroller General may be enabled to charge the said Treasurer separately with such amounts. If the State Treasurer shall neglect to furnish receipts, as aforesaid, he shall forfeit and pay a sum not exceeding two hundred dollars, nor less than fifty dollars, to be recovered in any court having jurisdiction thereof, and the Comptroller General, upon information made to him, shall take the necessary measures to cause the same to be recovered.

Civ. '12, § 788; Civ. '02, § 714; G. S. 572; R. S. 630; 1889, XX, 366; 1905, XXIV, 969.

(871) § 18. **Daily Reports by State Treasurer.**—The State Treasurer shall, at the close of business on each day, send to the Comptroller General a report of all moneys paid out by him, to whom paid and on what account, except that paid upon warrants of the Comptroller General.

Civ. '12, § 789; Civ. '02, § 715; G. S. 572a; R. S. 631; 1889, XX, 366.

As to examination of Treasurer's vouchers by the Comptroller General, see ante, § (832).

(872) § 19. **To Write Off Unpaid Checks Two Years Old.**—All checks issued by the State Treasurer for the payment of claims, if not presented for payment within two years from date thereof, the amounts thereby represented shall be covered back into the State Treasury and such checks written off of the books of the State Treasurer: *Provided*, Any check may be reissued upon satisfactory proof of nonpayment.

Civ. '12, § 790; 1904, XXIV, 498.

(873) § 20. **Safe in Bank.**—The Treasurer of the State shall have a safe in the vaults of one of the banks of the City of Columbia, designated by the Governor, the Treasurer, and the Comptroller General, and may place and keep therein moneys belonging to the State.

Civ. '12, § 791; Civ. '02, § 716; G. S. 573; R. S. 632; 1884, XVIII, 786.

(874) § 21. **Deposit of State Moneys to Credit of Treasurer—Bank Book.**—To facilitate the disbursement of the public moneys, the Treasurer of the State shall deposit in such bank or banks in this State as shall be agreed upon by the Governor, the Comptroller General, and the Treasurer,

or by any two of them, and as in their opinion shall be secure, all the moneys belonging to the State, other than he may keep in the safe in the vault of one of the banks in the City of Columbia, as authorized in Section 20, the moneys so deposited to be placed to the credit of the Treasurer of the State of South Carolina. He shall keep a bank book showing his deposits in and moneys drawn from the banks in which deposits are made.

Civ. '12, § 792; Civ. '02, § 717; G. S. 574; R. S. 633; 1884, XVIII, 786.

(875) § 22. Banks Having on Deposit State Funds to Make Quarterly Statements to Treasurer.—Each bank which has funds of the State on deposit shall, on or before the fifth day of January, April, July and October, respectively, in each year render to the State Treasurer a certified statement showing the balance or balances on hand to the credit of the State at the close of business on the last day of the preceding month: *Provided*, This shall not conflict with existing rule of the Financial Board requiring monthly statements from State depositories. In case any bank shall fail to render such statement, without good cause shown, it shall be the duty of the Treasurer to at once withdraw all State deposits from such bank and close its account.

Civ. '12, § 793; 1903, XXIV, 20.

(876) § 23. Treasurer to Publish Quarterly Statements of Money on Hand and Where Deposited.—The State Treasurer shall publish, quarterly, in one daily paper in the City of Columbia, a statement showing the amount of money on hand and in what banks the same is deposited, and the respective funds to which the same belongs.

Civ. '12, § 794; 1903, XXIV, 21.

(877) § 24. Banks to Report Deposits Monthly.—The said banks shall respectively, transmit to the Governor and Comptroller General monthly statements of the moneys which shall be received and paid by them on account of the Treasury.

Civ. '12, § 795; Civ. '02, § 718; G. S. 575; R. S. 634; 1868, XIV, 15, § 2.

(878) § 25. Must Exhibit Bank Book to Comptroller and Governor Monthly, at Least.—The Treasurer shall exhibit his bank book to the Comptroller General and Governor, for their examination, on the first Tuesday in every month, and oftener, if required.

Civ. '12, § 796; Civ. '02, § 719; G. S. 576; R. S. 635; 1868, XIV, 16, § 4.

(879) § 26. Duties of Treasurer With Regard to Funds for Educational Purposes.—The State Superintendent of Education shall take and hold in trust for the State any grant or devise of lands, and any gift or bequest of money or other personal property made to him for educational purposes, and he shall pay into the State Treasury, for safe-keeping and investment, all moneys and incomes from property so received. The Treasurer of the State shall, from time to time, invest all such moneys in the name of the State, and shall pay to the State Superintendent of Education, on the warrant of the Comptroller General, the income or principal thereof as he may, from time to time, require: *Provided*, That no disposition shall be

made of any grant, devise, gift, or bequest inconsistent with the conditions or terms thereof. For all such property, his bond shall be responsible as for other funds received by him in his official capacity.

Civ. '12, § 800; Civ. '02, § 723; G. S. 583; R. S. 641; 1878, XVI, 575.

(880) § 27. How State Institutions Must Draw Appropriations.—The appropriation made for a State institution shall be paid to the Treasurer of the institution, who shall be a bonded officer, the amount of the bond not to be less than the amount to be drawn at any one time, and to be fixed by the governing Board, the bond to be approved by the Attorney General as to its form and execution, and by the Governor as to its sufficiency, and to be filed with the State Treasurer. The Treasurer of the institution shall draw his receipt warrant upon the Comptroller General for the amount needed, which receipt warrant shall be countersigned by the President or Superintendent of the institution, and have attached thereto an itemized sworn statement showing the purposes in detail for which the money to be drawn is to be used monthly only, and all money for other purposes to be drawn only when actually owing and due.

HOW WARRANTS FOR APPROPRIATION SHALL BE DRAWN.—Upon the receipt by the Comptroller General of the receipt warrant, signed and countersigned, and with statement attached as above provided, the Comptroller General shall issue his warrant on the State Treasurer in favor of the Treasurer of the institution for the amount drawn, and the State Treasurer shall pay the same, the amount thereof to be charged to the appropriation account of such institution by the Comptroller General and the State Treasurer.

Civ. '12, § 801; Civ. '02, § 724; 1900, XXIII, 356.

All moneys appropriated to public institutions are paid by State Treasurer under this section. *Hopkins v. Clemson Agricultural College*, 77 S. C. 12, 32, 57 S. E. 551.

(881) § 28. Mode of Payment of Appropriations to Educational Institutions—Itemized Statement.—The money appropriated to the State Hospital for the Insane shall be paid to the Treasurer of said institution in the following manner: On the first of each month the said Treasurer shall draw his receipt warrant upon the Comptroller General for one-twelfth of the amount appropriated for the use of said institution, which receipt warrant shall be countersigned by the Superintendent of said institution. Upon receipt by the Comptroller General of such receipt warrant so countersigned, the said Comptroller General shall issue his warrant on the State Treasurer in favor of the Treasurer of the State Hospital, and the said Treasurer shall pay the same, the amount thereof to be charged to the appropriation of said institution by the Comptroller General and the State Treasurer. At the end of such month, and before presenting any other receipt warrant, the said Treasurer of the State Hospital shall file with the Comptroller General an itemized sworn statement showing the disbursements in detail for the previous month.

Civ. '12, § 802; 1911, XXVII, 121.

(882) § 29. Funds Collected by State Departments, Institutions, Etc., to Be Deposited in State Treasury—Proviso as to State Colleges.—That all moneys collected by or for any State department, institution, board or commission shall be paid into the State Treasury on or before the tenth day of each month, and all moneys so deposited shall be credited to the

general fund unless otherwise provided for in the annual Appropriation Act: *Provided*, That this section shall not require the State colleges to turn into the State Treasury moneys collected from students for food, including college farm products, clothing, breakage, books, college entertainments, society and association dues and college publications.

1921, XXXII, 114.

(883) § 30. Revolving Funds.—That including the revolving funds now on hand the following institutions may retain from their respective collections revolving funds as follows: University of South Carolina, \$5,000.00; The Citadel, \$4,000.00; Winthrop College, \$10,000.00; State Medical College, \$5,000.00; State Colored College, \$2,000.00; School for the Deaf and the Blind, \$1,000.00; John de la Howe Industrial School, \$1,000.00; South Carolina State Hospital, \$15,000.00; State Penitentiary, \$2,000.00; Industrial School for Boys, \$2,000.00; Reformatory for Negro Boys, \$2,000.00; Industrial School for Girls, \$1,000.00: *Provided*, That all expenditures made from these revolving funds shall be reimbursed monthly out of the amounts drawn from the State Treasury.

1921, XXXII, 114.

(884) § 31. Not to Apply to Clemson College, Nor Sinking Fund Commission (Except Office Expenses)—Nor to Payments of Game Wardens, Etc.—Nor to Prevent Lawful Payments to Towns and Counties.—That the provisions of this Article shall not apply to Clemson College, nor to the Sinking Fund Commission except for the annual appropriation for its office administration; nor to the payment for services of Game Wardens or informers, nor shall this Article prevent the payment of such funds as the Statutes require shall be paid to the various towns and counties of the State.

1921, XXXII, 114.

(885) § 32. Payment of Appropriations to Meet Ordinary Expenses.—The several amounts appropriated from year to year to meet the ordinary expenses of the State shall be paid by the State Treasurer out of the usual income of the State and any unexpended balance in his hands not otherwise appropriated, in the manner prescribed by Section 6 of the preceding Article, and conformably with the terms of the remaining Sections of this Article.

Civ. '12, § 805; 1909, XXVI, 280.

(886) § 33. Salaries Paid Monthly.—The amount specified for salaries and clerical services of the officers and employees of the State shall be paid in monthly installments.

Civ. '12, § 804; 1909, XXVI, 280.

(887) § 34. Statements to Be Made to General Assembly—Appropriations—Accounts.—The amounts specified for the various officers of the State and for various public purposes, other than for salaries and clerical services, shall be duly accounted for; a detailed statement thereof shall be made to the General Assembly at its next ensuing session. No person authorized to make contracts or draw said appropriation shall exceed the

specific appropriations, nor shall any fund be expended for any other purpose than that for which it may be appropriated. All accounts shall be itemized and verified.

Civ. '12, § 806; 1909, XXVI, 280.

(888) § 35. Persons to Whom Appropriations for Various Institutions Shall Be Paid.—The amounts specified for the various educational, penal and charitable institutions of the State shall be paid to the respective executive heads thereof.

Civ. '12, § 807; 1909, XXVI, 280.

(889) § 36. Governor's Contingent Fund.—That out of the appropriation for contingent fund of the Governor for rewards and other purposes the Governor be allowed to use as much as five hundred dollars, to pay the actual expenses incurred by him in attending meetings of the different Boards of which he is a member *ex officio*, and also to pay his actual expenses when attending meetings or conventions or other gatherings in the interest of the State.

Civ. '12, § 808; 1909, XXVI, 280.

(890) § 37. Attorney General—Expenses for Litigation.—The appropriation for the Attorney General for the expenses of litigation shall be subject to the following conditions: The Attorney General shall conduct all litigation which may be necessary for any department of the State Government or any of the Boards connected therewith, and all such Boards or departments are hereby forbidden to employ any counsel for any purpose except through the Attorney General and upon his advice; out of said fund the Attorney General shall pay for dockets and blank indictments for the several Circuit Solicitors, and such other expenses as he may deem advisable.

Civ. '12, § 810; 1909, XXVI, 281.

(891) § 38. Railroad Commission Appropriation.—The appropriation for the Railroad Commissioner's office shall be advanced by the State until the same shall have been collected from the corporations liable therefor and when collected shall be placed in the State Treasury.

Civ. '12, § 811; 1909, XXVI, 281.

(892) § 39. Offices of Electricians and Engineers of State House Consolidated—Appointment—Compensation—Duties—Fireman.—The offices of Electrician and Engineer of the State House shall be consolidated, the appointment to be made by the Governor, subject to removal by him; he shall receive compensation for seven months at \$100 per month and for five months at \$75 per month; he shall attend to the boilers, engines and other appliances at least once every fifteen days; he shall do all repairing of wiring, fixtures, fuses, etc., for all State buildings and property in Columbia, and the compensation stated shall be in full for all additional help employed by him and for attendance upon lighting and heating the State House during the sessions of the General Assembly; the firemen of the heating apparatus of the State House shall be appointed by him and be subject to removal by him; one fireman shall receive compensation for seven months at \$65 per month, for five months at \$50 per month; the other, for two months at \$40 per month.

Civ. '12, § 812; 1909, XXVI, 282.

(893) § 40. Expenses of Public Buildings Itemized and Verified.—The amounts specified for expenses in connection with the public buildings of the State shall be itemized and verified by the contractors and certified to by the respective officers in charge thereof.

Civ. '12, § 813; 1909, XXVI, 282.

(894) § 41. Expenditure of Appropriation for Prizes for Farmers.—The amount specified for prizes for farmers shall be expended as State prizes for the farmers of the State who shall enter and participate in a contest for the growing of cereals per acre. All rules and regulations governing such contest, and the distribution of the prizes and the expenditure of the appropriation shall be under the direction and control of the Commissioner of Agriculture, Commerce and Industries, and the president and the professor of agriculture of Clemson College, who shall constitute a Board for this purpose.

Civ. '12, § 814; 1909, XXVI, 282.

(895) § 42. Expenditure of Appropriation for South Carolina Live Stock Association.—The amount specified for the South Carolina Live Stock Association shall be expended for printing the proceedings of the annual meetings of the association and to pay the cost of distributing the same among the farmers of the State and one copy to each member of the General Assembly.

Civ. '12, § 815; 1909, XXVI, 282.

(896) § 43. Payment of Amount Specified for Eradication of Cattle Ticks.—The amount specified for eradication of cattle ticks shall be paid out of any funds in the hands of the Trustees of Clemson Agricultural and Mechanical College, and to be expended by them in carrying out the provisions of the law.

Civ. '12, § 816; 1909, XXVI, 282.

(897) § 44. Payment of Loan to South Carolina Agricultural Society.—The amount specified as a loan to the South Carolina Agricultural Society shall be paid upon the execution and delivery by said Society of its note for said amount payable to the State, twelve (12) months after date, with interest from date at six per cent.

Civ. '12, § 817; 1909, XXVI, 282.

(898) § 45. Custody of Moneys for Erection of State College Buildings.—All moneys appropriated to provide buildings for any of the State colleges shall remain in the State Treasury until the same shall be needed for the actual erection of the respective buildings for which the appropriation is made.

Civ. '12, § 818; 1909, XXVI, 282.

(899) § 46. Payment of Amounts Specified for Expenses of Supreme Court.—The amounts specified for expenses connected with the Supreme Court shall be paid upon the approval and order of the Chief Justice. The Justices of Supreme Court are hereby authorized, in their discretion, to exchange old or duplicate editions of books in said library for other books, to be selected by said Justices.

Civ. '12, § 819; 1909, XXVI, 283.

(900) § 47. Expenditure of Amount Specified for Board of Fisheries.—

The amount specified for the Board of Fisheries shall be expended as follows: For salary of Chairman of Board of Fisheries, eighteen hundred (\$1,800) dollars, and the remainder for other expenses of said Board. As remuneration for the services required of them by law the County Treasurers of Beaufort, Colleton, Charleston, Georgetown and Horry Counties, shall each be paid by the State Treasurer, upon the warrant of the Comptroller General, each year, from the moneys collected and paid into the State Treasury by him under the provisions of the Law regulating the Board of Fisheries, three per cent. of the amount so collected by him during that year. The provisions of the Act of 1908, for compensation of the Treasurer of Beaufort County in this behalf, is hereby repealed.

Civ. '12, § 820; 1909, XXVI, 283.

(901) § 48. Direction for Expenditure of Amount for Expense of Health Department.—

The amounts specified for various expenses in connection with the Health Department shall be expended under the direction of the State Board of Health. The appropriation for carrying out the quarantine laws shall be expended under the supervision and by the consent of the Governor: *Provided*, That the Governor is authorized, in case of emergencies demanding it, to borrow seven thousand dollars additional.

Civ. 12, § 821; 1909, XXVI, 283.

(902) § 49. Payment of Appropriation for Catawba Indians.—The appropriation for the Catawba Indians shall be paid upon application of the agent: *Provided*, That said agent, before receiving his warrant, shall enter into bond in the sum of four thousand dollars, with security to be approved by the Governor, for the faithful discharge of his duty in the disbursement of any funds which may hereafter come into his hands. The said funds shall be divided among the Catawba Indians living in South Carolina: *Provided*, That the agent shall not receive exceeding three per cent. for receiving and disbursing any funds which may come into his hands as provided above. The Secretary of State shall issue the commission to said agent without charge; the appropriation for schools for the same shall be expended through their agent under bond as above specified.

Civ. '12, § 823; 1909, XXVI, 284.

(903) § 50. Compensation of Regents of State Hospital for Insane.—

The Regents of the State Hospital for the Insane shall each receive four dollars per day for each day actually engaged in attending the meetings of the said Board, and mileage at five cents per mile actually traveled.

Civ. '12, § 824; 1909, XXVI, 284.

(904) § 51. Appropriation for Penitentiary.—The balance in the hands of the directors of the State Penitentiary at the close of any year, together with all other amounts received, or to be received, from the hire of convicts or from any other source during the current fiscal year, are appropriated for the support of the penitentiary. The Superintendent of the Penitentiary be required, when called upon by the Keeper of the State House and Grounds, to furnish such convict labor as he may need to keep said State House and Grounds in good order.

Civ. '12, § 825; 1909, XXVI, 284.

(905) § 52. **Appropriation for Public Printing.**—The appropriation for public printing shall include such sum or sums as may be authorized to be drawn from the State Treasury during any session on account of public printing for that session, and no amount in excess of the amount appropriated for any year shall be drawn or expended, any existing law to the contrary notwithstanding. The sum of \$800 of the amount appropriated, if so much be necessary, shall be applied to the payment of and for binding the Acts, Journals and Reports and Resolutions of the General Assembly.

Civ. '12, § 828; 1909, XXVI, 285.

(906) § 53. **Use by Historical Commission.**—In addition to the appropriation for printing historical records, the Historical Commission may use therefor the proceeds of sale of historical publications now on hand or hereafter issued by them: *Provided*, That one copy of each publication issued be sent to each of the State institutions of learning, and an account of sales of publications be filed with their report to the General Assembly.

Civ. '12, § 830; 1909, XXVI, 286.

(907) § 54. **Mode of Payment of Appropriations Where No Direction Given.**—Where no direction is given in this Article as to the manner in which a specific appropriation shall be paid, the same shall be paid under the direction of the Governor and the Attorney General in such manner as will safeguard the interests of the State.

Civ. '12, § 832; 1909, XXVI, 286.

(908) § 55. **Certain Officers May Borrow Money on Credit of State.**—That in anticipation of the taxes hereinbefore levied, the Governor and the State Treasurer and the Comptroller General be, and they are hereby, empowered to borrow on the credit of the State so much money from time to time as may be needed to meet promptly at maturity the interest which shall mature on the first day of July and on the first day of January of each year, on the valid debt of the State, and to pay the current expenses of the State Government for the current fiscal year, and for pensions: *Provided*, That the sum so borrowed shall not exceed five hundred thousand (\$500,000) dollars.

Civ. '12, § 833; 1909, XXVI, 286.

ARTICLE IX.

Budget System.

(909) § 1. **All State Departments, Institutions, Etc., to Furnish Estimates to the Governor.**—That on or before the first day of November, annually, each of the several State departments, bureaus, divisions, officers, commissions, institutions, and other agencies and undertakings receiving or asking financial aid from the State of South Carolina, shall report to the Governor, on official estimate blanks furnished for such purpose, an estimate in itemized form showing the amount needed for the year beginning with the first day of January thereafter. The official estimate blanks

which must be used in making these reports shall be furnished by the Governor, shall be uniform and shall clearly designate the kind of information to be given thereon.

1919, XXXI, 187.

(910) § 2. Comptroller General to Furnish Estimate of Needs of State.

—On or before the first day of December, annually, the Comptroller General shall furnish to the Governor an estimate of the financial needs of the State, itemized in strict accordance with the budget classifications adopted by the Governor, and certified and approved by the presiding officer of each House for each year beginning with the first day of January thereafter; and an estimate of the financial needs of the judiciary, as provided by law, itemized in strict accordance with the budget classification adopted by the Governor, for each year, beginning with the first day of January thereafter. The Comptroller General shall transmit to the Governor with these estimates full and detailed explanations of all increases or decreases. These estimates, together with the accompanying explanations of increases and decreases, shall be included in the budget, without revisions, by the Governor, but with his recommendations thereon.

1919, XXXI, 187.

(911) § 3. Statements to Be Furnished by Comptroller General.—On or before the first day of each November the Comptroller General shall furnish to the Governor the following statements, classified and itemized in strict accordance with the budget classifications adopted by the Governor:

(1) A statement showing the balance standing to the credit of the several appropriations for each department, bureau, division, officer, board, commission, institution or other agency or undertaking of the State at the end of the last preceding appropriation year.

(2) A statement showing the monthly expenditures and revenues from each appropriation account, and the total monthly expenditures and revenues from all the appropriation accounts, including special and all other appropriations, in the twelve months of the last preceding appropriation year.

(3) A statement showing the annual expenditures in each appropriation account, and the revenues from all sources, including expenditures and revenues from special and all other appropriations, for each of the last two appropriation years, with a separate column showing the increase or decrease for each item.

(4) An itemized and complete financial balance sheet for the State at the close of the last preceding fiscal year ending September 30th.

(5) Such other statements as the Governor shall request.

1919, XXXI, 187.

(912) § 4. Departments, Etc., to Furnish Any Information Requested by the Governor.—The departments, bureaus, divisions, officers, boards, commissions, institutions, or other agencies or undertakings of the State, upon request, shall immediately furnish to the Governor, in such form as he may require, any information desired by him in relation to their respective affairs or activities.

1919, XXXI, 187.

(913) § 5. **Public Hearings.**—The Governor shall provide for public hearings on any and all estimates to be included in the budget, which shall be held during the month of November in each year, and the Chairman of the Ways and Means Committee of the House of Representatives and the Chairman of the Finance Committee of the Senate shall sit with the Governor at all public meetings or hearings and join with him in all reports and recommendations thereon to the General Assembly. They shall receive as compensation for their services seven and one-half dollars per day for the number of days actually engaged in the performance of the duties imposed by this Article and their actual traveling expenses, to be audited and approved by the Comptroller General. The Governor shall require the attendance at these hearings of the heads or responsible representatives of all State departments, bureaus, divisions, officers, boards, commissions, institutions, or other agencies or undertakings receiving or asking financial aid from the State.

1919, XXXI, 187.

(914) § 6. **Information to Be Secured by the Governor.**—On or before the first day of November in each year the Governor and his assistants must have completed a careful survey of all the departments, bureaus, divisions, officers, boards, commissions, institutions and other agencies and undertakings of the State, through which he shall be in possession of the working knowledge upon which to base his recommendations to the General Assembly.

1919, XXXI, 187.

(915) § 7. **Budgets and Statements to Be Submitted by the Governor to the General Assembly.**—Within five days after the beginning of each regular session of the General Assembly the Governor shall submit to the presiding officer of each House printed copies of a budget, based on his own conclusions and judgment, containing a complete and itemized plan of all proposed expenditures for each State department, bureau, division, officer, board, commission, institution, or other agency or undertaking, classified by function, character and object, and of estimated revenues and borrowings, for each year, beginning with the first day of January thereafter. Opposite each item of the proposed expenditures the budget shall show in separate parallel columns the amount appropriated for the last preceding appropriation year, for the current appropriation year, and the increase or decrease.

The Governor shall accompany the budget with:

(1) A statement of the revenues and expenditures for each of the two appropriation years next preceding, classified and itemized in accordance with the official budget classification adopted by the Governor.

(2) A statement of the current assets, liabilities, reserves and surplus or deficit of the State.

(3) A statement of the debts and funds of the State.

(4) A statement showing the Governor's itemized estimates of the condition of the State Treasury as of the beginning and end of each year.

(5) An itemized and complete financial balance sheet for the State at the close of the last preceding fiscal year ending September 1st.

(6) A general survey of the State's financial and natural resources, with a review of the general economic, industrial and commercial condition of the Commonwealth.

1919, XXXI, 187.

(916) § 8. **Meetings of Appropriation Committees.**—The standing committees of the House of Representatives and of the Senate, being in charge of appropriation measures, shall sit jointly in open sessions while considering the budget, and shall begin such joint meetings within five days after the budget has been submitted to the General Assembly by the Governor. This joint committee may cause the attendance of heads or responsible representatives of the departments, institutions and all other agencies of the State to furnish such information and answer such questions as the joint committee shall require, and to these sessions shall be admitted, with the right to be heard, all persons interested in the estimates under consideration. The Governor, or his representatives, and the Governor-elect shall have the right to sit at these public hearings and be heard on all matters coming before the joint committee.

1919, XXXI, 187.

(917) § 9. **General Assembly May Amend Budget Bill—Appropriation Bill to Be Itemized.**—The General Assembly may increase or decrease items in the Budget Bill as it may deem to be in the interest of greater economy and efficiency in the public service. All Bills introduced in either House carrying appropriations shall be itemized in accordance with the classifications used in the budget.

1919, XXXI, 187.

(918) § 10. **Governor May Employ Assistants—Tax Commission.**—The Governor shall be the chief budget officer of the State, and shall employ competent budget assistants and such special help as he may require to carry out the provisions of this Article. The Governor shall fix the compensation of such persons as he shall employ in this connection, and cause the same, together with their necessary traveling expenses, to be paid out of the civil contingent fund, and shall call upon the Tax Commission for any information desired, and said Tax Commission shall furnish such information, and shall be present at all hearings before the committees having charge of the appropriations in the Senate and House.

1919, XXXI, 187.

ARTICLE X.

The State Librarian and Board of Trustees of State Library.

(919) § 1. **State Librarian—How Elected and Term of Office.**—The General Assembly shall elect a State Librarian, whose term of office shall be for two years, and until a successor shall be elected and qualified.

Civ. '12, § 834; Civ. '02, § 725; 1898, XXII, 764.

(920) § 2. **Duties.**—The State Librarian shall have the charge and responsibility for the safe-keeping of the property of the State com-

mitted into the care of the said officer, and shall perform the duties required by, and shall otherwise act under the direction of, the Board of Trustees as hereinafter constituted.

Civ. '12, § 835; Civ. '02, § 726; 1898, XXII, 764.

(921) § 3. **Salary.**—The salary of said officer shall be eight hundred dollars, and it shall be due and payable as the salaries of other State officers are due and paid.

Civ. '12, § 836; Civ. '02, § 727; 1898, XXII, 764; 1900, XXIII, 416.

(922) § 4. **Oath of Office and Bond.**—The State Librarian, before entering upon the duties of the office, shall take and subscribe the oath prescribed in Section 26 of Article III of the Constitution, and shall also enter into a bond with the State, to be approved by and filed with the State Treasurer, in the sum of two thousand dollars, for the faithful discharge of the trust reposed.

Civ. '12, § 837; Civ. '02, § 728; 1898, XXII, 765.

(923) § 5. **Board of Trustees for the State Library.**—The Governor, the Secretary of State and the Superintendent of Education, and their successors in office, *ex officio*, shall constitute a Board, to be designated and known as the Board of Trustees of the State Library, and shall be vested with the duties and powers hereinafter conferred to conduct, care for and foster the State Library so as to enhance its usefulness to the citizens of the State.

Civ. '12, § 838; Civ. '02, § 729; 1898, XXII, 765.

(924) § 6. **Powers of Board of Trustees.**—The said Board shall have the power of expending any money appropriated for the increase of the State Library in the purchase of suitable books and other matter of a literary and scientific nature and works of art appropriate to a complete library, as in the exercise of discretion may seem to be for the interest of the State Library. The Board shall also have the power to make convenient rules for its care and management, which shall be printed and publicly displayed within the library hall, and so regulate the conduct of the State Library as may best advantage the citizens of the State and increase its usefulness.

Civ. '12, § 839; Civ. '02, § 730; 1898, XXII, 765.

(925) § 7. **Duties and Powers of Trustees.**—The said Board of Trustees shall be empowered to accept and retain donations of books and other property adding to the value of a public library, whether the donation be absolute or in trust, temporary or indefinitely, and shall likewise receive and disburse any funds obtained by gift, will or otherwise for the use of the State Library.

Civ. '12, § 840; Civ. '02, § 731; 1898, XXII, 765.

(926) § 8. **Duty of Trustees as to Unbound Volumes.**—It shall be the duty of the said Board of Trustees to be caused to be bound any unbound volumes deposited in the State Library that in its judgment may be necessary, and shall cause the same to be stamped as the property of the State. The cost of binding, which may not exceed the price charged by contract with the State at the time of such work, shall be paid out of the State Treasury upon the warrant of the said Board of Trustees.

Civ. '12, § 841; Civ. '02, § 732; 1898, XXII, 765.

(927) § 9. **Trustees Empowered to Sell Certain Books.**—The said Board of Trustees are hereby empowered to sell any books of any kind, in the nature of public documents, or surplus books of other kinds, whether bound or unbound, in the State Library, at a fixed and reasonable price, and the proceeds of sale of the same shall be invested from time to time by the said Board in books for the increase of usefulness of the State Library: *Provided*, That sufficient copies be retained for the use of the General Assembly and for free distribution among public libraries and the governments of other States and of the United States.

Civ. '12, § 842; Civ. '02, § 733; 1898, XXII, 765.

(928) § 10. **Trustees to Report to General Assembly Annually.**—The Board of Trustees for the State Library are required, annually, to make a report of the proceedings of the Board and the condition of the Library in its charge to the General Assembly, with any recommendations that may seem for the advancement of the interests of the Library.

Civ. '12, § 843; Civ. '02, § 734; 1898, XXII, 765.

ARTICLE XI.

Department of Agriculture, Commerce and Industries.

(929) § 1. **Department of Agriculture, Commerce and Industries Created.**—A State Department of Agriculture, Commerce and Industries is created, which shall be charged, as far as possible, with the execution of the work usually devolved upon a bureau of industries, a bureau of agriculture and a bureau of publicity.

Civ. '12, § 851; 1904, XXIV, 449; 1909, XXVI, 14, 191.

(930) § 2. **Election of Commissioner.**—That the chief officer of the said Department of Agriculture, Commerce and Industries shall be denominated the Commissioner of Agriculture, Commerce and Industries. The said Commissioner shall have the qualifications of a competent knowledge of agriculture, manufacturing and general industries, commerce, chemistry and publicity, and shall be elected, immediately upon the approval of this Act, by the qualified electors in the general election now provided by law for the election of State officers of the State Government, for a term of two years, and each succeeding two years thereafter beginning on the first day of January, 1913. In case a vacancy should occur the Governor shall appoint, for the unexpired term. The Commissioner shall be empowered to appoint a competent Clerk, whose qualifications shall be in the main the same as those required by the Commissioner.

Civ. '12, § 852; 1909, XXVI, 191, § 2; 1912, XXVII, 618.

(931) § 3. **Compensation.**—The compensation of the Commissioner of Agriculture, Commerce and Industries shall be \$2,500.00 per annum, and that of the Clerk \$1,000 per annum, payable monthly by the Treasurer, on the warrant of the Comptroller General.

Civ. '12, § 853; 1909, XXVI, 191, § 2; 1919, XXXI, 4.

(932) § 4. **Annual Report.**—The Commissioner shall make and submit to the Governor, on or before the tenth day of January of each year, a report covering the department's work of the preceding year, and the report shall be transmitted to the General Assembly, printed in the same manner as other public documents, or as shall otherwise be ordered.

Civ. '12, § 854; 1904, XXIV, 449.

(933) § 5. **Duties.**—The Commissioner shall be charged with all work looking to the promotion of agriculture, manufacturing and other industries, cattle raising, and all matters tending to the industrial development of the State, with the collection and publication of information in regard to localities, character, accessibility, cost and modes of utilization of soils, and more specifically to the inducement of capital by the dissemination of information relative to the advantages of soil and climate, and to the natural resources and industrial opportunities offered in the State; that he shall also collect from the farmers and landowners of the State and list information as to lands, stating the number of acres, location, the terms upon which they may be bought; that a land registry shall be kept, and in connection therewith, from time to time publication shall be made, descriptive of such listed agricultural, mineral, forest and trucking lands and factory sites as may be offered to the department for sale or share, which publication shall be in an attractive form, setting forth the county, township, number of acres, names and addresses of owners, and such other information as may be helpful in placing inquiring homeseekers in communication with the landowners: *Provided*, That nothing herein shall be construed to give the Commissioner of Agriculture, Commerce and Industries the right to do scientific, educational or extension work in agriculture.

Civ. '12, § 855; 1909, XXVI, 191, § 6; 1918, XXX, 825.

(934) § 6. **Publication of Information.**—The Commissioner shall collect and collate in the form of a hand-book of the State, to be issued when practicable, information showing the nature and industrial resources and advantages of the State of South Carolina, dealing with soil, climate, raw and manufactured products, agricultural and horticultural products, textile fabrics, manufacturing industries, mines and mining, native woods, means of transportation, cost of living, the market and all material and social advantages for those seeking homes and investments in agricultural or manufacturing industries.

Civ. '12, § 856; 1904, XXIV, 449.

(935) § 7. **Transportation Arrangements.**—The Commissioner is empowered to make such arrangements with oceanic and river steamship companies in this country and abroad as may best serve the interest of the commerce of the State.

Civ. '12, § 857; 1909, XXVI, § 5.

(936) § 8. **Other Departments to Furnish Information.**—In order to facilitate the collection and collation of each information of the resources of the State on all lines, the heads of the several departments of the State Government and of the State institutions are hereby required to furnish accurately such information as may be at their command to the Commis-

sioner when called upon for the same. The Commissioner is hereby empowered to enter manufacturing establishments, chartered by the State in prosecution of this work, and that the corporations operating same shall furnish such information as may not be injurious to their business.

Civ. '12, § 858; 1909, XXVI, 6.

(937) § 9. Not to Interfere With Other Departments, Etc.—Nothing in this Article contained shall be so construed as to repeal or interfere with the duties or work of the Chemist or Faculty of Clemson Agricultural and Mechanical College, or any other department of the State Government of South Carolina.

Civ. '12, § 859; 1904, XXIV, 449, § 10.

(938) § 10. Not to Bring Immigrants Into State.—The Commissioner of Agriculture, Commerce and Industries shall not directly or indirectly attempt to bring immigrants into the State.

Civ. '12, § 860; 1909, XXVI, 191, § 8.

(939) § 11. Annual Report—Classification of Statistics.—He shall collect, assort, systematize and present in a report to the Governor, on or before the fifth day of January of each year, who shall transmit it to the General Assembly, statistical details relating to all departments of labor in this State, such as the hours of labor, cost of living, supply of labor required, estimated number of persons depending on daily labor of their support. Said statistics may be classified as follows:

1. Agriculture.
2. In manufacturing and mechanical industries.
3. In transportation.
4. In clerical and all other skilled and unskilled labor not above enumerated.
5. The amount of capital invested in lands, buildings, machinery, material, and means of production and distribution generally.
6. The number, age, sex and condition of persons employed; the nature of their employment; the number of hours of labor per day, and the wages received in each of the industries and employments enumerated.
7. The sanitary conditions of factories, foundaries, machine shops, mercantile establishments, where five or more people are employed as laborers.
8. The number, condition and nature of employment of the inmates of the State prison, county jails and reformatory institutions, and to what extent their employment comes in competition with the labor of artisans and laborers outside of these institutions.
9. All such other information in relation to labor as may seem advisable to further the object sought to be obtained by this Article.

Civ. '12, § 861; 1909, XXVI, 14, § 2.

(940) § 12. Schedule of Inquiries to Be Mailed to Manufacturers Annually.—The Commissioner shall annually, on or before the first day of November, transmit by mail to the owner, operator or manager of every manufacturing establishment in this State a schedule embodying inquiries as to:

1. Name of person, partnership or corporation.
 2. Kinds of goods manufactured or business done.
 3. Number of partners or stockholders.
 4. Capital invested.
 5. Average number of persons employed, distinguishing as to sex, adults, and children under sixteen years of age.
 6. Total wages, not including salaries of managers, paid during the year, distinguishing as to sex, adults, and children under sixteen years of age.
- Civ. '12, § 862; 1909, XXVI, 14, § 3.

(941) § 13. When Answers Thereto to Be Filed.—The owner, operator or manager of every establishment which is engaged in manufacturing shall answer the inquiries thereon for the twelve months, November 1st to October 31st preceeding, and return said schedule to the Commissioner on or before the fifth day of December following receipt of said schedule.

Civ. '12, § 863; 1909, XXVI, 14, § 4.

(942) § 14. Information to Be Furnished.—It shall be the duty of all State and county officials, every employer of labor, and every person engaged in any industrial pursuit, to give to the Commissioner, or his agents, all necessary information to enable him to perform the duties herein required of him.

Civ. '12, § 864; 1909, XXVI, 14, § 5.

Punishment for impeding Commissioner, Agents or Inspectors, see Criminal Code.

(943) § 15. Commissioner May Send for Papers, Take Testimony, Etc.—The Commissioner shall have power to send for persons or papers whenever in his opinion it is necessary, and he may examine witnesses under oath, being duly qualified to administer the same in the performance of his duty, and the testimony so taken must be filed and preserved in the office of the Commissioner; he and his agents and inspectors shall have free access to all places where five or more people are employed as laborers.

Civ. '12, § 865; 1909, XXVI, 14, § 7.

(944) § 16. Reports to Commissioner Confidential.—No use shall be made in the reports of the Commissioner of the names of individuals, firms or corporations supplying the information called for by this Article, such information being deemed confidential and not for the purpose of disclosing any person's affairs.

Civ. '12, § 866; 1909, XXVI, 14, § 8.

(945) § 17. Two Inspectors to Be Employed.—Said Commissioner may employ two inspectors, who shall be appointed by the Commissioner at a salary of ten hundred dollars each per annum and necessary traveling expenses, not to exceed two hundred dollars each in any one year, to assist him in the discharge of the duties imposed by this Article from and including Section 11 to the end of this Article. The inspectors shall be under the supervision and control of the Commissioner.

Civ. '12, § 867; 1909, XXVI, 14, § 9.

(946) § 18. Examinations by Inspectors.—The Commissioner, his agents and inspectors, may enter all buildings and parts thereof which are sub-

ject to the provisions of this Article and examine the methods of protection from accidents, the means of escape from fire, the sanitary provisions and the means of ventilation, and may make investigations as to the employment of children and women.

Civ. '12, § 868; 1909, XXVI, 14, § 10.

(947) § 19. Factories to Be Provided With Suitable Water-Closets.—

Every factory, mercantile or other establishment or office where two or more males and two or more females are employed together, shall be provided with a sufficient number of separate water-closets, earth closets or privies, for the use of each sex, and plainly so designated; and no person shall be allowed to use a closet or privy which is provided for persons of other sex. Such water-closets, earth closets or privies, shall be kept clean and free from disagreeable odors.

Civ. '12, § 869; 1909, XXVI, 14, § 11.

For violation of this Section, see Criminal Code.

(948) § 20. Children Forbidden to Do Certain Work.—It shall be the duty of each corporation or other employer to place in one or more conspicuous places in each room of the factory in which any children under fourteen years of age are employed a notice or notices to the effect that said children are forbidden to clean any gears, cams or pulleys, or to clean in dangerous proximity thereto, while the same are in motion by aid of steam, water, electricity or other mechanical power; and no such employer, or its officers, superintendents, overseers or agents shall knowingly or wilfully permit or consent to such children so cleaning the said moving parts.

Civ. '12, § 870; 1909, XXVI, 14, § 13.

For violation of this Section, see Criminal Code.

(949) § 21. Statement to Be Obtained Regarding Children Under Age.

—Every person, firm or corporation employing children shall procure from the parent, guardian, or person in custody of said child or children, a signed statement in which shall be recorded the name, birthplace, age and place of residence of every such child under fourteen years of age, and the same shall be produced for inspection on demand of the Commissioner or his agents or inspectors.

Civ. '12, § 871; 1909, XXVI, 14, § 14.

(950) § 22. Powers of Inspectors.—The Inspectors appointed under this Article are empowered to visit and inspect, at reasonable hours, and as often as practicable, the factories, workshops and other establishments in this State referred to in this Article, and shall report to the Commissioner the result of their inspections. They shall enforce the provisions of this Article and prosecute all violations of the same.

Civ. '12, § 872; 1909, XXVI, 14, § 15.

(951) § 23. Blanks.—All blanks and forms required by the Commissioner under this Article shall be furnished by the Comptroller General.

Civ. '12, § 873; 1909, XXVI, 14, § 16.

(952) § 24. Expenses.—Inspectors provided for in this Article shall keep and furnish to the Comptroller General and Commissioner itemized state-

ments of necessary expenses incurred in enforcing this Article. And all the money paid out under this Article shall be on a warrant of the Comptroller General.

Civ. '12, § 874; 1909, XXVI, 14, § 17.

(953) § 25. Educational Exhibits at County Fairs Provided For—Commissioner of Agriculture—State Board of Health.—That the State Commissioner of Agriculture, Commerce and Industries, who is the authorized custodian of the State exhibit property, and the State Board of Health, are hereby authorized and required, whenever application is made to either, or both, by the officials of county fairs held in the State, and upon the guarantee by such officials of all expenses connected with the undertaking, to prepare and send to such fairs exhibits of such educational character as will be instructive and beneficial to the people attending said fairs.

1915, XXIX, 93.

(954) § 26. Commissioner of Agriculture—State Board of Health—Demonstrators in Charge of Exhibits Provided For.—The Commissioner of Agriculture, Commerce and Industries, and the State Board of Health, are further authorized and required to send in charge of these exhibits demonstrators competent to fully explain to visitors at the fairs the educational value of said exhibits.

1915, XXIX, 93.

(955) § 27. Commissioner of Agriculture—State Board of Health—May Detail Demonstrators—Expenditure of Funds.—The Commissioner of Agriculture, Commerce and Industries, and the State Board of Health, are authorized to detail necessary men to this service, though they may be employed and paid for other purposes, and to expend such funds as may be at their command as it may be necessary to prepare and arrange the exhibits contemplated by the two preceding Sections.

1915, XXIX, 93.

(956) § 28. Commissioner of Agriculture to Arrange for Inoculating Material.—That the Commissioner of Agriculture, Commerce and Industries is hereby authorized to make arrangements with any reliable manufacturer of inoculation material for the sale of such material to the citizens of the State of South Carolina at prices that shall be reasonable, and will allow a reasonable profit on the cost of production, and that failing to make such arrangements, the said Commissioner is hereby authorized to manufacture inoculation material for leguminous crops, and distribute same to the citizens of the State applying for the same at cost. The Commissioner is hereby authorized to expend from any surplus or other funds collected from other sources in his hands, such amounts as may be necessary to inaugurate the work of manufacturing inoculation material, and refund as soon as possible from the sums collected from the sale of such material such sums as may be so expended to those respective funds.

1915, XXIX, 261.

(957) § 29. Disposition of Moneys Derived From Sale.—In the event that the material is manufactured in the laboratories of Agriculture, Commerce and Industries, the Commissioner shall receive and keep current accounts of all sums derived from the sale of the material at cost, and

deposit such sums daily in some State depository bank, and shall once a month turn over all of these receipts to the State Treasurer, who shall hold same subject to the order of the said Commissioner of Agriculture, Commerce and Industries, upon warrant issued by the Comptroller General.

1915, XXIX, 261.

(958) § 30. Commissioner of Agriculture, Commerce and Industries to Arrange for Sale of Marl or Ground Limestone to Citizens of This State at Reasonable Cost—If Unable to Do So, to Report to the General Assembly With Recommendations as to Mining of Such Material by the State.—

That the Commissioner of Agriculture, Commerce and Industries is hereby authorized to make arrangements with any reliable manufacturers of crushed marl or ground limestone for the sale of such material to the citizens of the State of South Carolina at prices that shall be reasonable, and will allow a reasonable profit on the cost of production, and that in the event of the failure of said Commissioner to make such arrangements, the Commissioner shall, upon satisfying himself that such arrangements as are specified cannot be made, report such fact to the General Assembly of the State next succeeding, together with definite recommendations for the mining of such material by the State with convict labor and furnishing same to the farmers of the State at a price that shall be as near the actual cost of production as possible. In the event the arrangement is made, the Commissioner shall make public the nature and terms of the arrangement, and shall annually report to the General Assembly the full itemized details of any and all sales made to farmers through the Department.

1916, XXIX, 669.

(959) § 31. Such Material Not Subject to Fertilizer Tax.—Such material, when offered on the market under this Article, shall in no sense be considered a fertilizer and subject to the tax of twenty-five cents per ton.

1916, XXIX, 669.

ARTICLE XII.

State Crop Pest Commission.

(960) § 1. State Crop Pest Commission—Appointment, Etc.—That on and after April 1st, 1912, and every two years thereafter, the Board of Trustees of Clemson College shall designate not over five members of said Board who shall constitute and be known as the State Crop Pest Commission of South Carolina, and who shall be charged with the execution of the provisions of this Act.

Civ. '12, § 875; Civ. '02, § 741; 1901, XXIII, 703; 1903, XXIV, 22; 1912, XXVII, 748.

(961) § 2. May Appoint Certain Officers.—That the said Commission shall have power to appoint an entomologist, who shall be known as State Entomologist, and a pathologist, who shall be known as State Pathologist, and such assistants, deputies and agents of the said Entomologist and Pathologist as in their judgment may seem necessary, so that the duties hereby devolved upon them may be properly discharged. The Entomologist and

Pathologist of said Commission shall perform or direct all the duties required under the rules, ordinances and regulations of the Commission.

Civ. '12, § 877; Civ. '02, § 743; 1901, XXIII, 703; 1903, XXIV, 22; 1912, XXVII, 748.

(962) § 3. Shall Fix Salaries.—The State Crop Pest Commission shall fix the salaries of the Entomologist, Pathologist, their assistants and deputies and agents, and said salaries shall be paid out of the funds provided by law for the use of Clemson College; and in addition to said salaries, such expenses as the said Commission may allow for traveling and other incidental expenses, including reports and other publications.

Civ. '12, § 878; Civ. '02, § 744; 1901, XXIII, 703; 1903, XXIV, 22; 1912, XXVII, 748.

(963) § 4. Powers and Duties.—That the State Crop Pest Commission shall have full and plenary power to make, promulgate and enforce such just and reasonable rules, ordinances and regulations as in the judgment of the Commission may be necessary to eradicate or prevent the introduction, spread or dissemination of any injurious insects and plant diseases, and all the rules, ordinances and regulations of said Commission shall have the force and effect of law so far as they are consistent with the general laws of the State and the laws of the United States. The State Crop Pest Commission shall have authority to regulate or prohibit the shipment within, or the importation into this State of any plants, farm products, or other articles of any nature or character whatsoever from any State, Territory or foreign country, when in the opinion of said Commission such regulation or prohibition is necessary to prevent the introduction or dissemination of injurious insect pests and plant diseases.

Civ. '12, § 876; Civ. '02, § 742; 1901, XXIII, 703; 1903, XXIV, 22; 1912, XXVII, 748.

(964) § 5. Shall Adopt Remedial Measures.—When the Entomologist or Pathologist of said Commission suspect any injurious insects or plant diseases to exist in any part of the State, they shall verify such suspicions, and if well founded, the Entomologist and Pathologist shall adopt such remedial measures as they may deem necessary and practical.

Civ. '12, § 879; Civ. '02, § 745; 1901, XXIII, 703; 1903, XXIV, 22; 1912, XXVII, 748.

See Criminal Code.

Entomologist may enter premises. See Criminal Code.

For other offenses connected herewith, see Criminal Code.

(965) § 6. Penalty for Violators.—That any firm, corporation or person violating any of the rules of said Commission shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty (50) dollars nor more than five hundred (\$500) dollars, or imprisonment for not less than ten days nor more than six months, or both such fine and imprisonment, at the discretion of the court having jurisdiction. The said Commission shall have power and authority to enforce its rules, ordinances and regulations in any court of competent jurisdiction by civil as well as criminal proceedings, and if it is necessary to issue a writ of injunction, no court of this State shall have the right previous to a trial upon the merits to set aside such writ on bond; that it shall be the duty of the Attorney General and Solicitors to represent said Commission whenever called upon to do so; that said Commission in the discharge of its duties and in the enforcement of the powers herein dele-

gated, may administer oaths, hear witnesses, etc., and to that end it is made the duties of the various Sheriffs through the State to serve all summons and other papers upon the request of the Commission.

1912, XXVII, 748.

(966) § 7. **All Stock to Be Inspected Annually.**—That all fruit growers, nurserymen or corporations residing in this State, dealing in or handling fruit trees, shrubs, cuttings, vines, bulbs or roots, shall be compelled to have his or their or its stock inspected annually, on or before the first day of November of each year. If upon such inspection such stock is found to conform to the requirements of said Board, the Inspector shall furnish a certificate to that effect; or if such stock does not conform to the requirements of said Board, then the said Inspector may cause the same to be destroyed, at the expense of the owner thereof.

Civ. '12, § 880; Civ. '02, § 750; 1901, XXIII, 703; 1903, XXIV, 22, § 9.

(967) § 8. **Foreign Dealers to Furnish Certificate.**—That all persons or corporations residing without the limits of the State, dealing in trees, plants, cuttings, shrubs, vines or roots, shall register his, their or its name, and file a copy of his, their or its certificate of inspection, furnished by the Entomologist or Inspector or duly authorized official of the State in which he, they or it resides, with the Chairman of the said Board, which shall state that, in addition to inspection, the nursery stock has been fumigated under the direction of the official issuing the certificate. Upon failure to comply with this requirement, any of said articles that may be shipped into this State may be confiscated by the authority of the said Board.

Civ. '12, § 881; Civ. '02, § 751; 1903, XXIV, 22, § 10.

(968) § 9. **Issuance of Certificate of Inspection.**—Upon filing the proper certificate as above prescribed, and upon request of any person or persons residing without the limits of this State, dealing in or handling trees, shrubs, cuttings, vines, bulbs or roots, in this State, the certificate of the said Board of Entomology will be issued to the same without charge, and official tags, bearing the *facsimile* copy of such certificate and the seal of the Board of Entomology, will be furnished such applicants at cost.

Civ. '12, § 882; 1903, XXIV, 22, § 11.

Punishment for unlawful transportation, see Criminal Code.

(969) § 10. **Investigations.**—When two or more reputable citizens of any county in this State notify the Chairman of the State Board of Entomology that noxious insects or plant diseases exist in their county, it shall be his duty to have the Entomologist promptly investigate the matter, and take such steps as authorized and prescribed in this Article and by the State Board of Entomology.

Civ. '12, § 883; Civ. '02, § 752; 1901, XXIII, 703; 1903, XXIV, 22, § 13.

(970) § 11. **Penalty for Interference.**—Any person who shall seek to prevent any inspection under the direction of the State Crop Pest Commission by said Entomologist, Pathologist, deputies, assistants, or agents, or who shall otherwise interfere with the Entomologist, Pathologist, assistants, deputies, or agents, while in the performance of their duties under this Act, shall be deemed guilty of a misdemeanor, and shall, upon conviction

thereof, be punished by a fine of not less than fifty (\$50) dollars nor more than five hundred (\$500) dollars, or imprisonment for not less than ten days, or both such fine and imprisonment, at the discretion of the court having jurisdiction.

1912, XXVII, 748.

(971) § 12. **Has Police Power.**—That the members of the State Crop Pest Commission, the Entomologist, Pathologist, their assistants, deputies, and agents, shall have police power in executing the provisions of this Act. It shall be the duty of every person to report violations to the State Crop Pest Commission, Clemson College.

1912, XXVII, 748.

(972) § 13. **Fines, How Used.**—That all fines resulting from prosecutions under this Article shall be paid to the State Treasurer and deposited to the credit of the State Treasury.

1912, XXVII, 748.

ARTICLE XIII.

Board of Pardons.

(973) § 1. **Board of Pardons Created.**—There shall be a Board of Pardons, to consist of three discreet persons, citizens of this State, to be appointed by the Governor.

Civ. '12, § 884; 1906, XXV, 14, § 1.

For violation of the provisions of this Article and further provisions in connection herewith, see Criminal Code.

(974) § 2. **Terms of Office of Members.**—One of the said Board shall be appointed for one year, and until his successor shall be appointed and qualified; one shall be appointed for two years, and until his successor shall be appointed and qualified; and one for three years, and until his successor shall be appointed and qualified; after which times the terms of office shall be three years; so that the term of one member thereof shall expire each year.

Civ. '12, § 885; 1906, XXV, 14, § 2.

(975) § 3. **To Be Commissioned.**—The members of said Board shall be commissioned as other constitutional officers, and shall be required to take the oaths of office required of other State officers.

Civ. '12, § 886; 1906, XXV, 14, § 3.

(976) § 4. **Officers of Board.**—One member of said Board, who shall be the Secretary, shall reside in the City of Columbia. One of the other members shall be selected by the Board to act as Chairman, and he shall serve as such until his term shall expire. Any member shall be eligible for reappointment.

Civ. '12, § 887; 1906, XXV, 14, § 4.

(977) § 5. **Meetings of Board—Record of Proceedings.**—Within thirty days from their appointment said Board shall meet in the City of Columbia and organize, and at once notify the Governor of their readiness to consider

any petitions he may see fit to lay before them. They shall keep a complete record of all their proceedings, and hold same subject to the orders of the Governor, or the General Assembly.

Civ. '12, § 888; 1906, XXV, 14, § 5.

(978) § 6. **Duty of Board.**—It shall be the duty of the said Board to consider any and all petitions for pardons or commutation of sentence which may be referred to them by the Governor, and to make their recommendations to the Governor regarding same: *Provided*, The Governor may or may not adopt such recommendation: but in case he does not, he shall submit his reasons to the General Assembly: *Provided, further*, That the Governor may act on any petition without reference to said Board.

Civ. '12, § 889; 1906, XXV, 14, § 6.

(979) § 7. **Regular Meetings.**—Said Board shall hold regular meetings at least four times each year, beginning on the first Wednesday of January, April, July and October, respectively, and as many extra meetings as the Governor may, through the Secretary, order.

Civ. '12, § 890; 1906, XXV, 14, § 7.

(980) § 8. **Compensation of Members.**—The members of said Board shall receive as compensation for their services the sum of four (\$4) dollars for each day they shall be in session, not to exceed twenty days, and ten cents per mile, one way, for the most direct route to and from such meeting; said sum to be paid by the State Treasurer on warrant of the Comptroller General.

Civ. '12, § 891; 1906, XXV, 14, § 8.

(981) § 9. **Powers of Board.**—Said Board shall have authority to preserve order at its meetings, and to punish any disrespect or contempt committed in its presence. A majority of said Board shall constitute a quorum for the transaction of business, and a majority shall rule in all its deliberations. The members of said Board shall hold no other public office than that of Notary Public.

Civ. '12, § 892; 1906, XXV, 14, § 9.

ARTICLE XIV

Board of Fisheries

(982) § 1. **Beds of Rivers, Etc., Property of the State—Oyster Beds Not to Be Granted.**—From and after March, 1919, all the beds of the bays, rivers, creeks and shores of the sea within the jurisdiction of this State, and not conveyed by special grant or compact according to law, shall continue and remain the property of the State of South Carolina, and may be used as a common by all the people of the State, for the purpose of fishing and fowling and raking, catching oysters and other shell fish, terrapin, shad, sturgeon and other fish subject to the provisions of this Article, and any future laws that may be passed by the General Assembly, and no grant shall hereafter be issued by the Sinking Fund Commis-

sion to pass any estate, title or interest of the State in or to any natural oyster bed, rock or shoal, whether the said bed, rock or shoal be bare or not.

Civ. § 893; 1906, XXV, 85; 1917, XXX, 171; 1921, XXXII, 309.

(983) § 2. Board of Fisheries.—It shall be the duty of the Governor to appoint three (3) persons who shall constitute and be known as the Board of Fisheries of South Carolina, whose term of office shall be four (4) years. One of these appointees, who shall be the Chairman, shall be versed in and have practical knowledge of the oyster and fish industry and shall be from the tidewater section of the State. The Governor shall appoint the other two members of this Board from different sections of the State: *Provided*, That no member of the Board of Fisheries nor any of the inspectors shall be engaged in the business for market or profit, in the shell fish, terrapin or fish industries, either directly or indirectly.

Civ. '12, § 894; 1906, XXV, 85; 1917, XXX, 171; 1921, XXXII, 309.

(984) § 3. Oath—Bond.—All members of the said Board shall file the oath of office with the Secretary of State, who shall thereupon issue to each of them a commission designating each of them as a member of the Board of Fisheries of South Carolina, and also designating the Chairman; each commission to have the signature of the Governor, to be countersigned by the Secretary of State, and bear the seal of the State. The Chairman of the said Board shall enter into a bond in the penalty of three thousand (\$3,000.00) dollars, with sufficient security to be approved by the Governor, payable and conditioned as required by Sections 736 and 740 of this Volume.

Civ. '12, § 895; 1906, XXV, 85; 1908, XXV, 1157; 1917, XXX, 171; 1921, XXXII, 309.

(985) § 4. Office of Board—Meetings.—It shall be the duty of the said Board to establish an office or offices in some convenient place in the tidewater section of the State, and stated meetings shall be held by the said Board as often as may seem advisable and necessary under the restrictions imposed in Section 7.

Civ. '12, § 896; 1906, XXV, 86; 1917, XXX, 171; 1921, XXXII, 309.

(986) § 5. Board to Enforce Laws in Regard to Fisheries—May Plant Oyster Beds.—It shall be the duty of the said Board to see that all laws relating to the oystering, planting and cultivation of oysters and clams in the waters of the State, and laws relating to catching and propagation of migratory and shell fish in the waters of this State are faithfully observed, and that all persons engaged in the fish and oyster industry are fully protected in their respective rights. The Board of Fisheries shall have authority, if it be practicable, to use a part of their appropriation, not to exceed the sum of one hundred (\$100.00) dollars, for the purpose of planting oysters upon suitable bottoms in the public waters of the State, and the results shall be carefully observed and reported by them, and any profits which may be derived from such planted beds shall be paid into the State Treasury and credited to the account of the Board of Fisheries.

Civ. '12, § 897; 1906, XXV, 86; 1907, XXV, 517; 1910, XXVI, 585; 1917, XXX, 171; 1921, XXXII, 309.

(987) § 6. **Authority of Board.**—The Board shall have the authority to adopt rules and regulations for policing the waters of the State. The Board shall take recognizance of communications made to them by inspectors or other officials relating to violations or evasion of the laws of the State affecting said industries, taking such action as may be necessary to correct the same under existing laws and to do any and all things which in their judgment may seem right and proper to protect the oyster and fish industries and all persons and property lawfully engaged therein. They may employ such surveyors as from time to time may be necessary.

Civ. '12, § 898; 1906, XXV, 86; 1917, XXX, 171; 1921, XXXII, 309.

(988) § 7. **Compensation of Board—Removal for Cause.**—The salary of the Chairman of the Board is hereby fixed at two thousand five hundred (\$2,500.00) dollars per year, and he shall be required to devote his whole time and attention to the duties of said office. The remaining members of the Board shall receive a per diem of four (\$4.00) dollars and actual expenses: *Provided*, They shall not receive compensation for more than thirty (30) days in any one year. The Governor shall have the power to remove any and all of them for neglect of duty, malfeasance or malfeasance in office, and to fill any vacancies which may occur at any time in the Board.

Civ. '12, § 899; 1906, XXV, 86; 1910, XXVI, 586; 1917, XXX, 171; 1921, XXXII, 309.

(989) § 8. **Duties of Chairman.**—It shall be the duty of the Chairman of the Board to preside at all meetings of the Board, to call special meetings as may appear proper and advisable to maintain a constant supervision of the general industries and the public domain under the care of the Board, and to make all the reports and returns of the Board to the Comptroller General.

Civ. '12, § 900; 1906, XXV, 86; 1917, XXX, 171; 1921, XXXII, 309.

(990) § 9. **Records—Annual Reports—Recommendations.**—All records or accounts in the office or offices of the said Board shall be open at all times to the examination of the Governor and Comptroller General or their accredited agents. It shall be the duty of the Board to make an annual report to the Governor and to report to the General Assembly whenever that body convenes in regular session, in which shall be plainly set forth the amount of revenue derived from the several industries embraced within their supervision and the expenses incurred in the enforcement of this article, and Sections — to —, inclusive, of the Criminal Code, and they shall recommend such legislation as in their judgment and experience may be deemed advisable in the interest of those industries and revenues of the State to be derived therefrom.

Civ. '12, § 901; 1906, XXV, 89; 1917, XXX, 171; 1921, XXXII, 309.

(991) § 10. **Inspectors—Appointment — Compensation — Term — Oath — Bond.**—There shall be four (4) Inspectors to carry into effect and enforce the provisions of this law. The Inspectors shall be appointed by the Board of Fisheries, and shall have been residents for at least two

(2) years in the counties within the boundaries of which their duties are to be performed, and shall receive salaries as follows: The Inspector of each division shall receive a salary not exceeding one hundred (\$100.00) dollars per month, in the discretion of the Board of Fisheries. The term of office of said Inspector shall be at the discretion of the Board, who shall have the power to remove any Inspector at any time, and the Inspector shall not be paid for any longer time than he serves. Every Inspector shall, before the Clerk of Court of the said district in which he resides, take the oath and give bond prescribed by Section 658. The bonds shall be in the penalty of five hundred (\$500.00) dollars, and conditioned for the faithful performance of their duties. The Clerk of Court shall transmit a copy of the bond to the Chairman of the Board of Fisheries within thirty (30) days after its execution.

Civ. '12, § 904; 1906, XXV, 87; 1907, XXV, 508; 1908, XXV, 1157; 1917, XXX, 171; 1921, XXXII, 309.

(992) § 11. Further Duties and Powers of Board—Reports of Inspectors.—It shall be the duties of the Board of Fisheries to enforce all laws of the State pertaining to the collection of taxes, fines, rents and other revenues due to the State which are now, or may hereafter be, lawfully laid, assessed or fixed on or pertaining to migratory fish, shell fish, and all other edible salt fish, and they shall direct and require the Patrolmen-Inspectors to carefully observe and report to the Board the first ten (10) days of each month to make and render to the Board all violations in this respect, and to also require each Inspector during the first ten (10) days of each month to make and render to the Board a complete report of all collections during the preceding month, giving in tabulated form and detail from whom said collections were made, as well as the proper classification of said collections, and whether from taxes, fines, rents or other sources, and upon failure to make the said report as above required, the Inspector so failing shall forfeit to the Board of Fisheries, unless excused for a reasonable cause by the Board, one month's salary, which shall become a part of the general funds of the Board of Fisheries.

Civ. '12, § 903; 1906, XXV, 87; 1907, XXV, 507; 1908, XXV, 1157; 1917, XXX, 171; 1921, XXXII, 309.

(993) § 12. County Treasurers to Collect Fines, Rents, Etc.—Forfeiture of Leases.—The County Treasurer shall collect all fines, taxes, and all sums due as rent upon grounds leased for the propagation of fish, terrapin and shell fish imposed by this Article, and when the lessee remains in default in the payment of the annual rent for such planting grounds, or any part thereof, for thirty (30) days, the lease shall automatically become null and void: *Provided*, That the lease may be re-instituted with all the force and effect as the first instance upon the application of the former lessee if made to the Board within thirty (30) days from the time the lease became null and void, and upon payment of such costs and expenses as may be imposed by the Board in connection with the same.

Civ. '12, § 905; 1906, XXV, 88; 1917, XXX, 171; 1921, XXXII, 309.

(994) § 13. **Blanks for Reports.**—The Comptroller General shall provide the Board with necessary blank forms for the use of the Board and for the Inspector's reports as may be required in the execution of their duty.
Civ. '12, § 906; 1906, XXV, 89; 1917, XXX, 171; 1921, XXXII, 309.

(995) § 14. **Custody and Operation of Launches.**—The Inspector shall have charge of the launches and vessels used by the said Board for the protection and guarding of the shell fish, terrapin, and fish industries of the State to enforce the said laws thereof, and the Inspectors of each launch or vessel shall forward to the Board during the first six (6) days of each month a report of the services of his launch or vessel for the preceding month, and also a tabulated statement in detail of expenses incurred during the month, and such statement shall embrace repairs, fuel, and other incidental expenses of such launch or vessel; and any failure to furnish such report shall subject the delinquent Inspector to suspension and forfeiture of pay or absolute removal, at the discretion of the Board.

Civ. '12, § 907; 1906, XXV, 89; 1908, XXV, 1159; 1917, XXX, 171; 1921, XXXII, 309.

(996) § 15. **Maintenance of Launches—Sale or Exchange.**—The Board shall have authority to provide for repairs to be made to launches and vessels, machinery and furniture, as may be necessary to keep them in serviceable condition, and it shall be its duty to see that the launches and vessels and their appurtenances are at all times kept clean and otherwise in good serviceable condition, and the Board shall have authority to sell or exchange any launch or vessel belonging to said police fleet, and if sold, to reinvest the proceeds of such sale, or make further exchange as may appear to them to be necessary and best for the interest of the State: *Provided*, That no additional expense shall be incurred to the State by reason of such sale, exchange or reinvestment without authority of the General Assembly. The Board shall have authority to maintain four (4) launches.

Civ. '12, § 908; 1906, XXV, 89; 1917, XXX, 171; 1921, XXXII, 309.

(997) § 16. **Designation of Oyster Beds—Rentals—Deposit of Shells or Oysters.**—It shall be the duty of any person desiring to obtain a location for the planting or propagating shell fish, terrapin, or fish in any portion of the water front beds, bottoms or marshes below high water mark, the property of the State, not naturally producing oysters or clams in sufficient quantity to warrant catching them for market, or which, by reason of the small quantity of oysters thereon, shall not, in the judgment of the Board, be considered natural oyster beds within the meaning of the law, apply to the Board of Fisheries and have its location ascertained and designated and surveyed and the same shall be marked with suitable stakes smooth and free from snags and spurs, or by metes or bounds, courses and distance, having their places beginning and ending designated by permanent objects on the shores agreed upon by the applicant and Inspectors; and he shall pay to the County Treasurer rent for the lands designated to him at the rate of twenty-five (25) cents per acre for the first five (5) years, and after five years

at the rate of fifty (50) cents per year for each and every year of his rental, to be payable on the first day of September of each year, and so long as he continues to pay such rent he shall have exclusive right to occupy such land for a period of fifteen (15) years, subject to such rights, if any, as any other person or persons may have previously acquired and shall have the prior right to renew such lease at such rate per acre as in the judgment of the Board may seem just and proper. The first year's rent to be a *pro rata* of the yearly rate, based on the time elapsed from execution of the lease to the first day of September next following. In case of two or more applicants for the same bottom, preference shall be given to the owner or owners of the adjacent land. In case no such owner or owners apply, then preference shall be given in order of application. The lessee shall be required to deposit under the supervision of the Inspector of his district within such time as may be designated by the Board in the lease, shells or oysters to the amount of not less than ten(10) bushels, nor more than one thousand (1,000) bushels per acre for the entire area leased, the amount to be fixed by the Board. The lessee shall be required to prove compliance to the satisfaction of the Board of Fisheries and in default of such proof the lease shall be annulled. If any portion of said water fronts, beds, bottoms, or marshes be occupied with oysters or clams actually planted thereon or held by person or persons under proper assignment, the occupant shall have the prior right against all others to have the land so occupied by him assigned to him by the Inspector: *Provided*, The said occupant shall have the land assigned to him ascertained and designated, and surveyed and rents paid within thirty (30) days from the time the Inspector is called to locate the same.

Civ. '12, § 909; 1906, XXV, 90; 1907, XXV, 509; 1910, XXIV, 579; 1917, XXX, 171; 1921, XXXII, 309.

(998) § 17. Disposition of Moneys Received.—All licenses, fees, rentals and penalties, and all moneys whatsoever, collected under the supervisions of this chapter shall be paid into the State Treasury by the officers herein charged with the duties of collecting the same: *Provided*, That one-half of all penalties collected for violating the provisions of said section shall be paid to the informer. These moneys shall be entered by the State Treasurer on the account of the Board of Fisheries, together with all sums expended under the provisions of this Article. If, at the end of any fiscal year, there be a balance to the credit of the account, the State Treasurer shall place one-half of the balance into the general fund of the State, and shall remit the other half to the Treasurers of the counties in which said licenses, rentals, penalties, etc., shall have been collected to be credited to the general fund of said counties in the proportion in which each county has contributed to the said fund.

Civ. '12, § 910; 1910, XXVI, 586; 1917, XXX, 171; 1921, XXXII, 309.

(999) § 18. Leases.—Not over one thousand (1,000) acres shall be rented to any one individual or corporation. Leases shall be granted only for reasonable contiguous and compact areas, subject to the dis-

cretion of the Board of Fisheries. All applications for leases shall be made to the said Board in writing and advertised in one or more papers at the cost of the applicant and published for three consecutive weeks, in the county in which the lands applied for are located. The Board of Fisheries is authorized to lease any of the marsh lands of the State for the purpose of erection of wharves and depositories of shells to those who intend to establish oyster canneries. These leases to be granted in the discretion of the Board of Fisheries and run for a term not exceeding fifteen (15) years, with privilege of renewal: *Provided*, Said marsh lands so leased shall be used one year from date of said lease.

Civ. '12, § 911; 1906, XXV, 91; 1908, XXV, 1159; 1917, XXX, 171; 1921, XXXII, 309.

(1000) § 19. Survey and Plat of Grounds Now Occupied—Recordation.—Any person, firm or corporation who is now occupying oyster planting ground, or is desirous of occupying an oyster planting ground, shall notify the Inspector of his desire to continue to occupy, or his desire to occupy certain oyster planting grounds, and the Inspector shall notify the surveyors, employed by the applicant or applicants who shall survey the said grounds, and make a plat of same, the surveyor to receive for surveying and making plat, fifty (50) cents per acre, or portion thereof, for five (5) acres or less; twenty-five (25) cents per acre for more than five acres and up to thirty (30) acres; fifteen (15) cents per acre for each acre more than thirty (30) acres and up to fifty (50) acres, and ten (10) cents per acre for all over fifty (50) acres. The cost of surveying and plat to be paid by the renter. This survey and plat to remain good so long as rent is annually paid and the ground is occupied by the party paying for the survey and plat under the conditions of Section 16. This said survey and plat shall indicate the metes and bounds, fixed and permanent objects on the shore as accurately as may be filed by the Inspector in the office of the Clerk of Court of his county, there to be forthwith recorded in a well bound and substantial book and indexed in the name of the assignee and thereupon at once a written memorandum thereof shall be filed by the Clerk of Court. The Clerk of Court shall receive the said survey and plat, and record same, and shall be paid by the assignee for his services, the same fees he now receives for recording deeds and plats. After the same is recorded the assignee shall be entitled to withdraw the original from the Clerk's office. Each county shall furnish the Clerk with the necessary books for recording same. The fees due the Clerk of Court for the recordation and filing of said surveys and plat shall be collected as other fees due the Clerk. The Inspector shall furnish copies of said surveys, plats and memorandum to the Board of Fisheries.

Civ. '12, § 912; 1906, XXVI, 91; 1908, XXV, 1160; 1917, XXX, 171; 1921, XXXII, 309.

(1001) § 20. Oysters, Etc., to Be Deemed Goods and Chattels.—Oysters or clams imbedded or planted, oysters or clams deposited by any person making up a cargo for market, and shells planted for the formation of oyster or clam beds, shall be deemed goods and chattels of which larceny may be committed, although there be no interval between the severing and the taking away.

Civ. '12, § 913; 1906, XXV, 92; 1917, XXX, 171; 1921, XXXII, 309.

(1002) § 21. **Records of Canneries—Inspection—Records of Shippers of Clams, Shad, Etc.,—Of Common Carriers.**—All managers, person in charge of canning factories shall be required under a penalty of not less than one hundred (\$100.00) dollars, to keep a book in which shall be entered the names of each person from whom they shall purchase oysters, together with the date of purchase and quantity purchased; the name, color, and approximate tonnage of the boat in which the oysters were brought to the factory; the quantity of oysters canned each day, and the quantity of oysters packed for shipment each day; the date and amount of each shipment of canned oysters, together with a copy of the bill of lading of said shipment, and to make an itemized, written report to the Board of Fisheries not later than the fourth day of each month; the said book to be open at all times to the inspection of the Board of Fisheries or its agents, or the Comptroller General or his agents, and shall within the first five (5) days after the first day of May in each year, make a report to the Board of Fisheries of the number of canned oysters, stamps of each kind and denomination on hand on the first day of May. All who catch or buy terrapin or clams for the purpose of sale or export shall be required to keep a book in which shall be entered the date of each purchase of terrapin or clams, together with the number of terrapin and the true name and address of the person or persons from whom the terrapin are purchased, and the date of each shipment, together with the number shipped and the waybill covering each shipment and to make itemized, written reports to the Board of Fisheries no later than the fourth day of each month; said book to be open at all times to the inspection of the Board of Fisheries, or its agents, or the Comptroller General or his agents. All persons engaged in the shipping or sale of sturgeon, shad, raw shucked oysters or clams shall be required to keep a book in which shall be entered the date and quantity of each shipment or sale, together with a certified copy of the bill of lading covering said shipment, and to make itemized, written reports to the Board not later than the fourth day of each month, said book to be open at all times for the inspection of the Board of Fisheries or its agents, and the Comptroller General or his agents. All common carriers and their agents are hereby required to keep a full and correct record of each shipment of clams, oysters, terrapin, shad or sturgeon, and said record shall be open at all times for the inspection of persons charged with the enforcement of this article.

Civ. '12, § 915; 1906, XXV, 95; 1907, XXV, 515; 1908, XXV, 1165; 1917, XXX, 171; 1921, XXXII, 309.

(1003) § 22. **Impost Tax on Oysters, Clams and Terrapin—Stamping of Packages—Duties of County Treasurers.**—For the support of the Board of Fisheries and to defray the expenses of this Article, for the improvement of the natural bed, for the protection of the private beds, an impost tax shall be placed upon all oysters, clams and terrapin, and the tax shall be at the rate of one (1) cent upon each sixty (60) ounces of canned oysters, three (3) cents upon every gallon of shucked oysters gathered in this State, twenty (20) cents upon each bushel of clam in the shell, ten (10) cents upon each terrapin. Each package containing oysters canned in this State, or raw or shucked oysters gathered in this State, clams gathered in this State or terrapin offered for sale or transportation shall be stamped by the manufacturer by the number of

ounces or quantity of oysters and number of terrapin and the number of bushels of clams contained therein, and the number of ounces and fractions of ounces of oysters canned within the State, from and after the passage of this Act. It shall be the duty of the County Treasurer to furnish said stamps in any and such denominations as they may decide will be best to meet the requirements of the shipper and dealers, and to sell said stamps direct to the persons using same. The County Treasurer of each county in which any impost tax stamps are sold or taxes collected under this article shall keep a book in which shall be entered all impost tax stamps received by him, showing the kind, denomination, quantity and serial number of all stamps received and each sale of such stamps made by him, the name of the purchaser, the date of such purchase, kind, denomination and quantity sold; and shall, within the first five (5) days of each month, forward to the Chairman of the Board of Fisheries a statement, showing the quantity of each kind, and the dates of sales, and the names of the purchasers, and as remuneration of the services required of them by the provisions of this chapter, the County Treasurer of each county in which any impost tax stamps are sold, or taxes collected under this Article, shall be paid by the State Treasurer upon warrants of the Comptroller General each year, from the moneys collected and paid into the State Treasury by him under the provisions of this chapter, five (5) per cent. of the amount so collected by him during the year. The County Treasurer of each county in which any impost tax stamps are sold shall, in January, April, July and October of each year, and on or before the fifth days of said months, forward to the Chairman of the Board of Fisheries a Statement of all such stamps in his hands, showing the kind, denomination, quantity, and serial number of the same.

Civ. '12, § 914; 1906, XXV, 94; 1907, XXV, 513; 1908, XXV, 1163; 1910, XXVI, 583; 1917, XXX, 171; 1921, XXXII, 309.

(1004) § 23. License for Penning Terrapin—For Buying—Violation a Misdemeanor—Penalty.—Each and every person, firm or corporation engaged in the penning or exporting from this State of terrapin shall apply to the County Treasurer in his respective county for a license for the same, and the said County Treasurer shall, upon the payment of twenty-five (\$25.00) dollars by said person or persons, firm or corporation, issue to each person or persons, firm or corporation, a license to pen in this State and export from the State terrapin for one (1) year, subject, however, to Section 1 and Section 38 of the Criminal Code; all persons, firms or corporations other than common carriers, who, for themselves or others, hold terrapin in confinement for the purpose of sale or delivery shall be deemed and considered as being engaged in the business of penning terrapin within the meaning of the article. And whenever any one person or persons, firm or corporation shall maintain a pen or store or agency in more than one place or locality, for the purpose of buying terrapin for commercial purposes, the payment of a separate license of twenty-five (\$25.00) dollars for such pen, store or agency shall be required: *Provided*, That nothing herein contained shall be construed so as to require any such persons, firm or corporation to take out any license for any employee or employees engaged by such person or persons, firm or

corporation, respectively, for catching or gathering terrapin. Any person or persons, firm or corporation buying or receiving terrapin for the purpose of reselling or using them in any way for commercial purposes, shall be subject to the same license as herein required for penning; and all terrapin penned in this State shall be subject to a tax of ten (10) cents each, whether the same shall have been gathered, caught, or bought within the State or not. That any person, persons, firm or corporation penning terrapin for any length of time, whether same is used for commercial purposes or not, shall be required to pay a license fee of twenty-five (\$25.00) dollars. Any employee or employees buying or selling terrapin for any person, persons, firm or corporation shall be subject to the same license fee of twenty-five (\$25.00) dollars. Any person, persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, or imprisonment for not less than thirty (30) days nor more than six (6) months.

Civ. '12, § 916; 1908, XXV, 1167; 1917, XXX, 171; 1919, XXXI, 120; 1921, XXXII, 309.

(1005) § 24. Closed Season for Shad—Impost Tax—Nets.—It shall be unlawful to catch, buy or ship shad, and the specie of shad known as hickory shad, between the first day of April and the 31st day of December in any year within forty (40) miles of the mouth of any river emptying into any gulf, bay or ocean, and above said limit to the source of any river between the first day of May and the thirty-first day of December in any year. An impost tax of five (5) cents shall be put upon each shad and one (1) cent upon each hickory shad offered for sale or shipped from any point within this State to another point within this State or without this State: *Provided*, Shad caught in this State for personal use only shall be exempted from this tax. No nets shall be used under five and a half (5½) inch mesh for white shad, and no net shall be used under three and a half (3½) inch mesh for hickory shad, and no net shall be stretched more than half way across any navigable stream, nor within two hundred yards of each other, and no nets of any kind shall be allowed below a line where Mosquito Creek empties into Winyah Bay across said bay in an easterly direction to the opposite shore of said bay, nor shall any device, net or seine for the stoppage or collection of fish be set or used in any manner whatsoever within one mile of the mouth of the Waccamaw, Great Pee Dee and Bull Creek Rivers.

1921, XXXII, 309.

(1006) § 25. Closed Season for Sturgeon—Use of Nets—License—Violation a Misdemeanor—Penalty.—There shall be an open and closed season for the catching and shipping of sturgeon and caviar, as follows: The open season shall be from April 1 to October 1 in each year, and no person or persons shall fish for, catch, or have in his, her or their possession any sturgeon between the first of April and the first day of October, both dates inclusive. Each person, firm or corporation fishing for sturgeon shall make a sworn report to the Inspector by the first day of May of the number of nets he, she or they have or will use during the season, and they

shall make a written report to the Chairman of the Board of Fisheries within five (5) days after the close of the season of the number of sturgeon caught by such person, firm or corporation and the number of pounds of caviar shipped. No sturgeon net shall be used without having a license attached to the same when in use in such manner; that is, shall be on top or above the water in plain sight at all times. No nets shall be used less than ten (10) inches mesh. There shall be a license for the catching, buying and shipping of sturgeon or caviar as follows: Each sturgeon net license, fifteen (\$15.00) dollars. Each person or firm shipping caviar or sturgeon shall pay a license of one hundred (\$100.00) dollars; non-residents fishing for sturgeon shall pay a license of ten (\$10.00) dollars; non-residents buying or shipping sturgeon or caviar, five hundred (\$500.00) dollars; non-residents using personal nets or boats shall pay a license of two hundred (\$200.00) dollars. A license pursuant to these rules is non-transferable, and if a licensed net be used by any other person than the licensee or person in his employ, or under his immediate supervision, it shall be deemed forfeited and revoked. The owner of each non-resident license must exhibit the same when requested by each Inspector or member of the Board of Fisheries. Applicants for license shall apply to the County Treasurer, license blanks, tags, etc., to be furnished to the Treasurer by the Board of Fisheries. The Board of Fisheries may revoke any license granted hereunder at any time for any reason which to the Board may seem sufficient. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than ten (\$10.00) dollars nor more than two hundred (\$200.00) dollars, or imprisonment for not less than thirty (30) days nor more than six (6) months.

1921, XXXII, 309.

(1007) § 26. License for Fishing Boats—Violation a Misdemeanor—Penalty.—Any person or persons, firm or corporation or employees of same fishing for edible salt water fish within the boundaries of the State shall pay a license of five (\$5.00) dollars for each boat used when fishing for commercial purposes. Each boat shall be designated by a number which shall appear on the license, number of boat being given by the purchaser of a license. The owner of each boat shall make a report to the Inspector in his district, on or by the fifth of each month, of the number of fish caught. Applicants for license shall apply to the County Treasurer. Licenses to be furnished the County Treasurer by the Board of Fisheries. Any person, persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than five (\$5.00) dollars nor more than fifty (\$50.00) dollars, or imprisonment for not less than five (5) days nor more than thirty (30) days.

1921, XXXII, 309.

(1008) § 27. Board of Fisheries to Enforce Laws—To Furnish Stamps, Etc.—Revocation of License.—That it shall be the duty of the Board of Fisheries herein provided for to enforce all existing laws in regard and relating to the open and close season in reference to migratory fish and shell

fish. All licenses, stamps, blanks, tags, etc., shall be furnished the County Treasurer by the Board of Fisheries. The Board of Fisheries may revoke any license granted at any time and for any reason that to the Board may seem sufficient.

1921, XXXII, 309.

(1009) § 28. Appropriation.—To meet the necessary expenses of the Board there shall be appropriated annually the sum of ten thousand five hundred (\$10,500.00) dollars, which shall include the salaries as provided in this article for the enforcement of the provisions herein contained.

Civ. '12, § 902; 1906, XXV, 87; 1907, XXV, 517; 1917, XXX, 183; 1921, XXXII, 309.

(1010) § 29. Sections of Criminal Code to Be Construed as Part Hereof.—Sections — to — of the Criminal Code, both inclusive, shall be construed in connection with and as a part of this Article.

Civ. '12, § 918; 1917, XXX, 171; 1921, XXXII, 309.

(1011) § 30. Board to Have Supervision of Catching, Etc., of Fish, Clams, Etc.—The regulation of catching, gathering, selling, exporting or canning oysters, terrapin, clams, shad and sturgeon is under the supervision of the Board of Fisheries mentioned in Section 11 of this Article.

1921, XXXII, 309.

(1012) § 31. Forfeiture of Vessels, Etc., Used in Violation of Act—Penalties—Evidence—Searches.—Any vessel, boat or other craft, tackle, apparel, anchors, cable, sails, appurtenances, and any dredge, scrapes or other instruments used in violation of this chapter shall be, together with the cargo of such vessel, craft or boat, forfeited to the State, and upon being condemned as forfeited in proceedings upon a hearing before the Board, the net amount realized from the condemnation proceedings shall be paid over by the Board into the Treasury of the State. The persons charged with the enforcement of Sections 31 to 48, inclusive, shall have the right, without warrant, to arrest any person or persons who has, or have, in her, his or their possession, any oysters, clams, terrapin, shad or sturgeon in violation of Sections 30 to 48, inclusive, and take such person or persons to the nearest Magistrate and swear out the proper arrest warrants. The unlawful possession of such oysters, clams, terrapin, shad or sturgeon shall be *prima facie* evidence of guilt, and if such person or persons is held for trial by the Magistrate conducting the preliminary examination the said Magistrate shall issue an order for the release of the terrapin and dumping of oysters, clams, shad or sturgeon. Any person or persons violating the provisions of this section shall be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, or imprisonment for not less than twenty (20) days nor more than thirty (30) days. The persons charged with the enforcement of Sections 31 to 48, inclusive, shall have authority to enter and search any vessel, car, vehicle or place suspected of containing any oysters, clams, terrapin, shad or sturgeon in violation of Sections 31 to 48, inclusive, and shall be authorized to open and examine any package containing any article subject to taxation under the provisions of said sections.

1921, XXXII, 309.

(1013) § 32. **Unlawful for Non-residents to Gather Oysters, Etc.—Provisos—Violation a Misdemeanor—Penalty.**—It shall be unlawful for any person to gather or catch clam, oysters or terrapin from public grounds of the State who is not a *bona fide* resident of this State, and who has not continuously resided herein for two years: *Provided, however,* That nothing contained in this section shall prohibit a non-resident who shall have leased any lands for the purpose of planting and cultivating shell fish under the provisions of Sections 16, 17, 18, and 19 of this Article, from gathering oysters from the natural oyster beds of the State for the purpose of planting and cultivating them upon leased lands: *Provided, however,* That nothing in this section shall prevent the gathering of oysters by non-residents who are engaged in the business of operating oyster canning factories within the State, or shucking raw oysters within the State, or who are employed by those who are engaged in the said business. Subject to the provisions of this chapter the employment of non-residents by citizens of this State lawfully engaged in any of the fishing industries shall be permitted, but no non-resident shall be allowed to gather or catch any shell fish or other fish from the public lands and waters of this State for market purposes, except as such employee. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, fined not less than fifty (\$50.00) dollars nor more than one hundred (\$100.00) dollars, or to be imprisoned for not less than twenty (20) days nor more than thirty (30) days.

1921, XXXII, 309.

(1014) § 33. **Closed Season for Oysters and Clams—Proviso—Violation a Misdemeanor—Penalty.**—It shall be unlawful for any person or persons, firm or corporation, to remove, buy or sell any oysters from the natural reefs, bottoms, beds or marshes, the property of the State, between the first day of May and the first day of October, inclusive; clams from the first day of July to the first day of October: *Provided,* That nothing in this section shall be taken to forbid the removal of oysters from said natural reefs, beds, bottoms or marshes for the purpose of replanting said oysters or clams. Possession of oysters or clams during the term specified shall be *prima facie* evidence of infringement of this provision, and that the onus of proof that such oysters or clams coming from private beds or from without the State are to be used for planting purposes shall rest upon the accused. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, or imprisonment for not less than twenty (20) days nor more than thirty (30) days.

1921, XXXII, 309.

(1015) § 34. **Use of Scoops, Dredges, Etc., Regulated—Violation a Misdemeanor—Penalty.**—It shall be unlawful for any person or persons to use scoops, scrapes or dredges for the purpose of taking or catching of oysters or clams from the public grounds of any bed, rivers, creeks, strait or any tributary of such in this State under twelve feet in depth at low tide. Any prson or persons violating the provisions of this section shall

be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five (\$25.00) dollars, or to be imprisoned for not less than six months.

1921, XXXII, 309.

(1016) § 35. **Removal of Oysters or Clams in Shell Prohibited—Penalty—Tax on Export of Seed Oysters—Shipment of Oysters From Leased Grounds—Tax—Penalty for Violation.**—It shall be unlawful for any person or persons, firm or corporation to carry any oysters or clams in the shell out of the State in any boat or vessel, or by other mode of transportation, and all boats or vessels, or other vehicles of transportation found loaded with oysters for transportation out of this State shall subject the owner or person in charge to a fine of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars, or imprisonment for not less than one month nor more than twelve months: *Provided, however,* That nothing in this Section shall prevent the carrying of seed oysters out of the State for planting purposes, with the consent of the Board of Fisheries, and that a tax of five (5) cents per bushel be paid for each bushel so carried. Any person or persons, firm or corporation carrying seed oysters out of the State for planting purposes shall replace, on the grounds from which same are taken, twenty-five (25) per cent. of the amount so taken in oyster shells. Shells to be planted under the direction of the Inspector: *Provided, further,* That oysters which have been collected from lands leased from the State may be exported in the shell from the State: *Provided,* They are shipped in barrels or other packages, and that a tax of five (5) cents per bushel be paid for each bushel so exported, and that a stamp or stamps purchased from the County Treasurer in payment of said tax be affixed to each package, certifying that the tax upon the same has been paid. Any person or persons, firm or corporation shipping or transporting such oysters without the aforesaid stamp attached to package shall be punished as above provided in this section, and all persons or corporations engaged in exporting such oysters shall be required to keep a book in which shall be entered the date and amount of each shipment, and shall make an itemized report thereof within the first four (4) days of each month to the Board of Fisheries under penalty of a fine not exceeding one hundred (\$100.00) dollars or imprisonment not exceeding thirty (30) days.

1921, XXXII, 309.

(1017) § 36. **Small Oysters to be Returned—Planting Oysters Required of Canneries—Penalty for Failure.**—All oysters taken from public grounds of this State with whatsoever implements or instruments shall be culled, and all oysters whose shell measures less than three inches from hinge to mouth, except what are attached to a larger oyster, and cannot be removed without destroying the small oyster, and all shells taken without said oysters shall be returned to the public grounds near and where taken, and no oyster shall be allowed by the Inspector to be marketed which shall consist of more than ten per cent. of smaller oysters in shells. The manager or person in charge of each canning factory in this State shall each year distribute upon such lands or bottoms, between

high water and low water mark as shall be designated by the Chairman of the Board of Fisheries or by an inspector under his approval and in such manner as said Chairman or Inspector shall require, a quantity of oyster shells which shall be equal to not less than three per cent. or more than thirty per cent. of the quantity of oysters in the shell purchased or received by such canning factory during said year, the quantity of shells within the limits required to be deposited and distributed by the manager or person in charge of such canning factory to be fixed by the Board of Fisheries or by the Chairman of the said Board for each year, of which requirement they shall be duly notified and shall deposit said shells not later than the first day of June: *Provided*, That the grounds or bottom designated shall be within ten (10) miles of the canning factory from which the shells shall be required to be deposited and distributed upon them. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred (\$100.00) dollars, or be imprisoned for a term of not less than one (1) month nor more than six (6) months.

1921, XXXII, 309.

(1018) § 37. Containers of Oysters Prescribed—Violations a Misdemeanor—Penalty.—All oysters sold in the shell in this State shall be measured in a circular tub with straight sides, straight solid bottom, holes in the bottom not more than one-half inch in diameter. The said measure shall have the following dimensions: A bushel shall measure eighteen (18) inches from inside across bottom and twenty-one (21) inches from bottom to top of chime. All measures used for buying or selling oysters shall have a grade, to be adopted by the Board of Fisheries or its lawful Inspector. Any person violating this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars, or imprisonment for not more than thirty (30) days. All measures found in the possession of any such person not meeting the requirements of this section shall be destroyed by said Board or its lawful agents.

1921, XXXII, 309.

(1019) § 38. Sale or Shipment of Canned, Etc., Oysters, Etc., Without Stamp Unlawful—Violation a Misdemeanor—Penalty.—It shall be unlawful for any person or persons, firm or corporation, to sell, or ship, and it shall be unlawful for any person or persons, firm or corporation, to receive or transport said canned oysters, raw shucked oysters, terrashad clams, except there be affixed to each package a stamp or stamps, furnished by the Board of Fisheries certifying that the said impost tax thereon has been paid. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand (\$1,000.00) dollars nor less than five hundred (\$500.00) dollars, or to be imprisoned for not more than twelve (12) months nor less than six (6) months.

1921, XXXII, 309.

(1020) § 39. Counterfeiting Stamps a Misdemeanor—Penalty.—It shall be unlawful for any person or persons to counterfeit any stamp adopted by Board of Fisheries, or produce any similar design thereof, or to aid or assist in the uttering. Any person or persons, firm or corporation violating this section shall be guilty of a misdemeanor, and, upon conviction, shall pay a fine of not less than five hundred (\$500.00) dollars nor more than one thousand (\$1,000.00) dollars or to be imprisoned for not less than six (6) months nor more than twelve (12) months.

1921, XXXII, 309.

(1021) § 40. Failure to Make Reports, or Making False Reports, or False Entries in Books a Misdemeanor—Penalty.—Any person or persons, firm or corporation failing or refusing to make the reports required by Section 21 of the Civil Code, or who shall make false entries in the books required by said section of the Civil Code, or who shall make false reports, shall be deemed guilty of a misdemeanor, and, upon conviction in any Court of competent jurisdiction, shall be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, or imprisoned for not less than ten (10) days nor more than thirty (30) days.

1921, XXXII, 309.

(1022) § 41. Closed Season for Terrapin—Terrapin on Hand at Beginning of Closed Season to Be Reported—Violation of Section a Misdemeanor—Penalty.—It shall be unlawful for any person or persons, firm or corporation to catch, purchase, trap, sell, except as hereinafter provided, or have in his possession terrapin between the first day of April and the fifteenth day of July in each year. Any person or persons, firm or corporation having terrapin in his, her or its possession previous to the first day of April in any year, desiring to carry them over and retain possession of the same until the succeeding fifteenth day of September, shall, within ten (10) days after the first of April of each year, make a report under oath to the Board of Fisheries of the number of terrapin he, she or they have in his, her or their possession for that purpose on the first day of April of each year, said report to state location of said terrapin, in what pen said terrapin are kept, so that said Board may be able to find said terrapin or pens and ascertain the correctness of the report. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than twenty-five (\$25.00) dollars nor more than two hundred (\$200.00) dollars, or imprisonment for not less than thirty (30) days nor more than six (6) months.

1921, XXXII, 309.

(1023) § 42. Unlawful to Catch, Etc., Terrapin Less Than Five Inches in Length—Seines—Prima Facie Evidence—Arrest—Penalty.—It shall be unlawful to catch, sell, hold in possession any terrapin less than five inches in length under the medial line of the bottom of the shell, or to use any seine of a smaller mesh than five and three-fourths ($5\frac{3}{4}$) inches for the purpose of catching terrapin. The having of terrapin under five inches in length, or a pen for the penning of terrapin, where the owner or manager

has not taken out license to pen terrapin, as provided in Section 23 of the Civil Code, or of a terrapin seine of smaller mesh than five and three-fourths ($5\frac{3}{4}$) inches, whether the owner or manager of said boat has taken out license to gather terrapin or not, shall be *prima facie* evidence of the violation of this section and the person charged with the enforcement of this section shall have the right to arrest such person or persons without first serving a warrant and take such person or persons to the nearest Magistrate and there swear out the proper arrest warrant. Any person or persons violating the provisions of this section shall be punished by a fine of not more than one hundred (\$100.00) dollars nor less than twenty-five (\$25.00) dollars, or be imprisoned for not more than thirty (30) days nor less than fifteen (15) days.

1921, XXXII, 309.

(1024) § 43. Unlawful Taking of Certain Oysters Larceny.—Any person or persons who shall unlawfully gather, remove, take or steal from any oyster bed, laying or fishery, any oysters or oyster brood there growing, lying or being such oyster bed, laying or fishery being the property of another person or persons, or cultivated and used by the proprietors thereof for the production, growing and improvement of oysters, and being sufficiently marked out, shall be deemed and held guilty of larceny, and he, she or they, his, her or their aiders, helpers, abettors or accessories, being thereafter convicted by due course of law, shall be punished as in case of larceny.

1921, XXXII, 309.

(1025) § 44. Unlawful Use of Dredge, Etc., for Purpose of Taking, a Misdemeanor—Penalty.—If any person or persons who shall unlawfully and wilfully use any dredge or net, instrument or engine, whatsoever, within the limits of any such oyster beds, laying or fishery, as aforesaid, for any purpose of taking oysters or oyster brood, although none be actually taken, or shall have any net, instrument or engine drag upon the ground or soil of any such oyster bed, laying or fishery, every person or persons so offending shall be held and deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine or imprisonment or both, as the Court may award, such fine not to exceed one hundred (\$100.00) dollars, and such imprisonment not to exceed six (6) months. Nothing contained in this section or Section 45 shall be construed to prevent any person or persons from catching or fishing for any swimming or floating fish with any net, instrument or engine adopted for taking swimming or floating fish.

1921, XXXII, 309.

(1026) § 45. Penalty for Violation of Provisions of Civil Code as to Shad or Sturgeon.—Any person or persons, firm or corporation violating the section in the Civil Code pertaining to shad and sturgeon shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars, or imprisoned for not less than ten (10) days nor more than thirty (30) days.

1921, XXXII, 309.

(1027) § 46. **Use of Purse Nets or Seines in Salt Waters of the State, or Manufacture of Fertilizer From Certain Fish So Caught, a Misdemeanor—To What Limits Applicable—Penalties.**—It shall be unlawful for any person, firm or corporation to fish for or catch any mullets, menhaden, fatbacks, or any other kind or class of fish within the salt waters of the State of South Carolina to the extreme limit of the State's jurisdiction in and over such waters in any purse nets or purse seines. Any person or persons who shall knowingly cook or manufacture for fertilizer any menhaden, fatbacks, mullets or fish of like kind and nature caught in any purse net or purse seine, at any place within this State shall be guilty of a misdemeanor, and for each and every offense shall be fined not less than five hundred (\$500.00) dollars or imprisoned for one year, or both, at the discretion of the Court. For the purpose of this section the following boundaries are hereby declared to be the boundaries to which the waters of the said State extend, to wit: A distance of three nautical miles measured from the outer beach or shores of said State of South Carolina, out and into the waters of the Atlantic Ocean; and any portion of any water within a distance of three miles from said waters to the Atlantic Ocean to any beach or shore of said State shall be deemed within the waters of said State for the purpose of this section. Every person found fishing for menhaden, fatbacks or mullets within three miles of the shore of any county in this State shall be presumed to have violated this section, and all such persons, firm or corporation shall be subject to all fines and penalties prescribed in this section, and they may be prosecuted in the Courts of any county in this State, and all persons aiding and abetting shall be guilty as principals.

1921, XXXII, 309.

(1028) § 47. **Unlawful to Gather Turtle Eggs Without License, or Molest Turtle on Beach—Violation a Misdemeanor—Penalty.**—It shall be unlawful for any person or persons, firm or corporation to gather turtle eggs for commercial purposes without taking out a license of five (\$5.00) dollars for each year; license to be purchased from the County Treasurer; no person or persons shall molest or injure in any way any turtle found on any of the shores of the beaches of this State. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten (\$10.00) dollars nor more than twenty-five (\$25.00) dollars, or imprisonment for more than thirty days.

1921, XXXII, 309.

(1029) § 48. **Closed Season on Terrapin for Commercial Purposes From July 15, 1921, to July 15, 1925.**—There shall be a close season on terrapin beginning July 15, 1921, and ending July 15, 1925. No person or persons, firm or corporation shall catch or gather terrapin for commercial purposes within the above dates: *Provided, however,* That nothing herein contained shall prohibit any person from catching or gathering terrapin for personal use.

1921, XXXII, 309.

(1030) § 49. **Closed Season for Migratory Fish.**—That it shall be the duty of the Commission herein provided for to enforce all existing laws in regard and relating to the open and closed seasons in reference to migratory fish.

Civ. '12, § 917; 1906, XXV, 98; 1907, XXV, 517; 1917, XXX, 183; 1921, XXXII, 309.

ARTICLE XV.

Protection of Fish and Sheep.

(1031) § 1. **Fishways to Be Constructed Over Dams.**—All manufacturing companies or persons who have erected, or may erect, artificial dams across the inland creeks, streams or waters of this State, which prevent the migratory fish from ascending the same, shall construct proper fishways over the same; and should such manufacturing companies or persons refuse or fail so to do, they shall be liable to a fine of five thousand dollars, recoverable by the county in which such dam has been or may be erected, in a court of competent jurisdiction.

Civ. '12, § 3433; Civ. '02, § 2347; G. S. 1670; R. S. 1848; 1871, XIV, 661.

(1032) § 2. **Fish Sluices to Be Designated.**—It shall be the duty of the County Board of Commissioners to designate the fish sluices on the several rivers, so as to leave one or more passages for fish up the said river, which sluices shall be sixty feet wide, or, where there are two or more sluices, they shall be, together, sixty feet wide; and when they shall be so designated, it shall be lawful for any person to open such sluices.

Civ. '12, § 3434; Civ. '02, § 2348; G. S. 1672; R. S. 1849; 1827, VI, 340; 1837, VI, 569; 1879, XVII, 74; 1890, XX, 705.

(1033) § 3. **Fish Sluices to Be Designated Yearly.**—The said Commissioners shall designate and lay out the fish sluices but once a year, and shall execute this duty on or before the first day of October, whenever they shall determine to change them in any year.

Civ. '12, § 3435; Civ. '02, § 2349; G. S. 1673; R. S. 1850; 1838, XV, 599.

(1034) § 4. **Fish Sluices Not to Be Designated Through Ways Erected by Public Authority.**—Nothing herein contained shall be construed to give authority to the said Commissioners to designate any fish sluice through any dam erected by public authority, for the improvement of the navigation of any of the said rivers, or to designate any fish sluice through any dam erected by individuals for the purpose of propelling any machinery, where the owner of such dam shall leave open a part of the river sixty feet wide, or, where the dam extends entirely across the river, shall construct therein a sufficient fish sluice sixty feet wide, and shall keep the same open for and during the months of February, March and April, in each year.

Civ. '12, § 3436; Civ. '02, § 2350; G. S. 1674; R. S. 1851; 1827, VI, 341.

(1035) § 5. **Draining of Private Ponds to Take Fish Lawful—Open Season—Method of Taking Fish.**—That all persons owning any private pond shall be, and are hereby, permitted to draw off the waters of same for the purpose of catching the fish living therein: *Provided*, Such draw-

ing is done during the open season for catching game fish, as otherwise provided for: *And provided, further*, That the catching of fish under this section shall be by hand or hand nets only.

1921, XXXII, 190.

(1036) § 6. How Often Pond May Be Drawn—Sale of Fish.—That no such pond shall be drawn oftener than once in every three years, and any fish caught at such time can be sold within the bounds of the State.

1921, XXXII, 190.

(1037) § 7. Private Pond Defined.—That the words “private pond” shall mean all ponds located on small streams of water, regardless of their position on such stream, such streams of water not to be any river or navigable stream in this State.

1921, XXXII, 190.

(1038) § 8. Persons May Kill Dogs Worrying Sheep.—It shall be lawful for any person who may find any dog in act of worrying or destroying any sheep in this State to kill said dog, and he shall not be held to answer to any action, civil or criminal.

Civ. '12, § 3437; Civ. '02, § 2351; G. S. 1701; R. S. 1835; 1878, XVI, 563.

(1039) § 9. Owners of Dogs to Pay for Sheep Killed—Costs Allowed.—The owner of any dog, or person having in his care or keeping any dog, shall be liable to pay to the party injured double the value of the sheep that may be killed or injured by such dog, to be recovered by action at the suit of the party injured, in any court having competent jurisdiction. In all such actions the recovery of ten dollars shall carry costs.

Civ. '12, § 3438; Civ. '02, § 2352; G. S. 1702; R. S. 1836; 1859, XII, 826.

Corkfield v. Singletary, 15 Rich. 210.

(1040) § 10. U. S. Fish Commissioner and Agents to Have Free Right to Fish and Conduct Fish Culture Operations.—That nothing contained in the laws of this State, for the protection of fish, or which provides for a closed time in the creeks, streams, and inland waters, shall be construed to restrict or interfere in any manner with the United States Fish Commissioner or his agents when fishing for fish of any kind in connection with operations of any fish hatcheries, but the United States Commissioner of Fisheries, and his duly authorized agents, are accorded full and free right to conduct fish cultural operations, and all fishing and other operations necessary therefor, in such manner and at such times as is considered necessary and proper by the said Commissioner or his agents.

1917, XXX, 192.

(1041) § 11. Not to Affect Other Amendments.—That this amendment shall not in any wise alter, change or repeal any amendment heretofore passed, and now existing as to said Section.

1917, XXX, 192.

ARTICLE XVI.**Audubon Society of South Carolina.**

(1042) § 1. **Incorporation of Audubon Society—Rights and Powers.**—The Audubon Society of South Carolina, incorporated by an Act of the General Assembly, entitled “An Act to provide for the preservation of wild birds, nonmigratory fish and animals in the State.” approved the 19th day of February, A. D. 1907 (XXV, 659), and their association, shall remain and have perpetual succession, with power to take and hold, either by gift, grant, purchase, devise, bequest or otherwise, any real and personal estate not exceeding fifty thousand dollars in value, for the general use and advancement of the purposes of the said corporation, or for any special purpose consistent with the charter, and such property shall be exempt from taxation, to make rules and by-laws not inconsistent with the laws of this State for its government and for the due and orderly conduct of its affairs, and for the execution of the powers herein conferred, and to change the same from time to time, and to have and use a common seal, and to change the same at pleasure.

Civ. '12, § 919; 1907, XXV, 569.

(1043) § 2. **Officers.**—The officers of said corporation shall be a President, Vice President, Secretary and Treasurer, and such other officers as may be fixed by the by-laws.

Civ. '12, § 920; 1907, XXV, 659.

(1044) § 3. **Objects of Society.**—The objects for which this corporation is formed are to promote among the citizens of South Carolina a better appreciation of the value of wild birds, nonmigratory fish, and animals to men and the State; to encourage parents and teachers to give instruction to the children on this subject; to stimulate a public sentiment against the destruction of wild animals, nonmigratory fish, and wild birds and their eggs; to secure the enactment and enforcement of proper and necessary laws for the protection and preservation of the wild birds, nonmigratory fish, and animals of the State; to provide for the naming of special officers and investing them with necessary power, who shall work under the direction and control of the Audubon Society of South Carolina, looking to the rigid enforcement of the present game, nonmigratory fish and bird protective laws, and such other laws of like nature as are herein and may hereafter be enacted; to distribute literature bearing on these topics among the members of the Society and other persons; and to raise and provide funds for defraying the necessary expenses of the Society in the accomplishment of the purposes herein named.

Civ. '12, § 921; 1907, XXV, 659.

ARTICLE XVII.**Public Service Commission.**

(1045) § 1. **Public Service Commission Created—Powers.**—There shall be a Public Service Commission of three reputable and competent citizens of this State, to be appointed by the Governor, by and with the consent of the Senate, who shall be authorized to fix and establish in all cities of this State, now or hereafter incorporated under any general or special law of this State, maximum rates and charges for the supply of water, gas or electricity furnished by any person, firm or corporation to such city and the inhabitants thereof, such rates to be reasonable and just.

Civ. '12, § 922; 1910, XXVI, 564.

(1046) § 2. **May Summons Certain Public Utility Corporations for Hearing on Rates.**—Upon complaint in writing of twenty or more citizens to the Mayor or Council of any such city, that any person, firm or corporation is charging an unjust or unreasonable rate for water, gas or electricity, furnished by the same, the said city, Mayor or Council may request the Public Service Commission to summon such person, the members of such firm or the officers of such corporation to appear before them, with their books relating to such matters, when such examination shall be made as may be necessary to determine whether or not the said rates are unjust or unreasonable; and if upon such examination the said Public Service Commission shall determine that the said rates are unreasonable or unjust, it shall be their duty to fix such rates to be paid for water, gas or electricity as they may deem to be just and reasonable: *Provided*, That in case the said Public Service Commission shall fix unjust and unreasonable rates the same may be reviewed and determined by the Circuit Court of the county in which such city is located.

Civ. '12, § 923; 1910, XXVI, 564.

(1047) § 3. **Members Shall Give Bond—Compensation.**—The members of the said Public Service Commission shall give a bond of one thousand dollars for the faithful performance of their duty, and shall each receive the sum of ten dollars a day while actually employed and necessary expenses, the same to be paid by the firm, person or corporation against whom the complaint is made if the rates charged are found to be unjust or excessive, but if otherwise then such expense shall be paid by the city authorities wherein the complaint is made.

Civ. '12, § 924; 1910, XXVI, 564.

Banks et al v. Columbia Ry., Gas & Electric Co., 113 S. C. 99, 101 S. E. 285.

(1048) § 4. **Terms of Office.**—That the term of office of the members of said Public Service Commission shall be for two, four and six years, respectively, to be determined by lot at their first meeting, and every two years thereafter the Governor shall appoint one member, to serve for a term of six years and until his successor is appointed and qualified, any of said members to be removed at the pleasure of the Governor: *Provided*, That the provisions of this Article shall not apply to the cities of Charleston, Marion, Sumter and Union, or the town of Conway.

Civ. '12, § 925; 1910, XXVI, 564; 1912, XXVII, 551; 1918, XXX, 774; 1920, XXXI, 1102.

ARTICLE XVIII.**Board for Uniformity of Legislation.**

(1049) § 1. **Board for Promotion of Uniformity of Legislation Established.**—The Governor shall appoint three suitable persons, and they and their successors are hereby constituted “a Board of Commissioners for the promotion of uniformity of legislation in the United States.” Any vacancy in said Board by resignation, death or (however) otherwise arising, shall be filled by the appointment by the Governor of a suitable person.

Civ. '12, § 926; 1909, XXVI, 127.

(1050) § 2. **Duty of Board.**—It shall be the duty of the said Board to examine the subjects of insolvency, the descent and distribution of property, the execution and probate of wills and other subjects upon which uniformity of legislation in the various States and Territories of the Union is desirable, but which are outside the jurisdiction of the Congress of the United States; to confer upon these matters with the Commissioners appointed by other States and Territories for the same purpose; to consider and draft uniform laws to be submitted for approval and adoption by the several States; and generally, to devise and recommend such other or further course of action as shall accomplish the purposes of this Article.

Civ. '12, § 927; 1909, XXVI, 127.

(1051) § 3. **To Keep Record—Annual Report.**—The said Board of Commissioners shall keep a record of all its transactions, and shall at each regular session of the Legislature in each year, and may at any other time, make a report of its doings and of its recommendations to the General Assembly.

Civ. '12, § 928; 1909, XXVI, 127.

ARTICLE XIX.**Board for Distribution of Dead Bodies for Scientific Purposes.**

(1052) § 1. **Board Created to Distribute Dead Bodies for Scientific Purposes.**—The professors of anatomy, the professors of surgery, and the demonstrators of anatomy of the Medical College of the State of South Carolina, and of several colleges and schools of this State, authorized by law to teach medical science and issue diplomas, shall constitute a Board for the distribution and delivery of dead human bodies as and for the purpose provided in this Article. The said Board shall have power to make rules and regulations for their government and the proper discharge of their functions.

Civ. '12, § 929; 1909, XXVI, 166.

(1053) § 2. **Shall Keep Records.**—They shall keep a record of their proceedings and particularly of all bodies received and distributed, which record shall be open at all times to the inspection of each member of the Board and the Attorney General and the Solicitor of each Circuit in the State.

Civ. '12, § 930; 1909, XXVI, 166.

(1054) § 3. **Certain Dead Bodies to Be Turned Over to Board.**—All officers, agents and servants of every city in the State, and of every almshouse, prison, morgue, hospital, jail, or other public institution in such cities having charge or control of any dead human body which is required to be buried at the public expense, and every officer or other person having charge or control of the body of any person upon whom the sentence of death for crime has been executed under the law, shall notify the said Board, or such person or persons as may, from time to time, be designated by the Board or their duly authorized officer or agent, whenever and as soon as any such body comes to his or her or their possession, charge or control, and shall, without fee or reward, deliver such body, and permit the said Board and its agents, and such physicians and surgeons as may, from time to time, be designated by the Board and shall have given the bond hereafter required to take and remove any such body to be used for the advancement of medical science, but no such notice need be given nor shall any such body be delivered if any person claiming to be and satisfying the authorities in charge of said body that he is of kin or related by marriage to the deceased, shall claim the body for burial and pay the expenses thereof; nor shall the notice be given for the body be delivered if the deceased was a traveler who died suddenly.

Civ. '12, § 931; 1909, XXVI, 166.

(1055) § 4. **How Distributed.**—The bodies received shall be distributed by the Board to and among Medical Colleges of the State of South Carolina, colleges and schools aforesaid, and such physicians and surgeons as the Board may designate. The colleges and schools shall first be supplied with bodies needed for lectures and demonstration. The remaining bodies shall be distributed equitably among the physicians and surgeons aforesaid: *Provided*, That in such equitable distribution, the physicians and surgeons as aforesaid of the city where the death of the person takes place shall have prior right to receive the body. The Board, instead of by themselves or through their agents receiving and delivering said bodies, may, from time to time, either directly or by their officers or agents, designate physicians and surgeons to receive the same, and the number each shall receive. For the purpose of the distribution contemplated by this Section, the body shall be held, subject to the order of the Board or their authorized agent, in the city where death occurs, not less than twenty-four hours.

Civ. '12, § 932; 1909, XXVI, 166.

(1056) § 5. **How Bodies Transported.**—The said Board may employ a carrier or carriers for conveyance of the said bodies, which shall be well enclosed in a suitable case, and carefully deposited, free from public observation. Every such carrier shall obtain a receipt by name, or if the person be unknown, by a description for each body delivered by him, and deposit such receipt with the Secretary of the Board. After the said bodies shall have been sufficiently used for the purposes of instruction, they shall be decently interred by the university, college, physicians and surgeons, as the case may be, receiving them.

Civ. '12, § 933; 1909, XXVI, 166.

(1057) § 6. **Bond to Be Given in Order to Receive Bodies.**—Neither the colleges, schools, physicians or surgeons shall be allowed to receive any such body until a bond shall have been given to the State by such physician or surgeon, or by or in behalf of the college or said school, to be approved by the Judge of the Circuit Court, County Clerk or Circuit Solicitor, and filed in the office of the Clerk of said Court, in the penalty of one thousand dollars, with condition that all such bodies which the said physician or surgeon or the college or school, as the case may be, shall receive thereafter, shall be used only for the promotion of medical science within this State. If any person sell or buy any such body, or in any way traffic in the same, or transmit or convey, or procure in order to be transmitted or conveyed, any such body to any place outside of this State, he shall be fined not exceeding two hundred dollars, or, in the discretion of the court, be confined in jail not exceeding one year: *Provided*, That the Board may, in its discretion, on the application of any person empower such person to import into this State and traffic in such anatomical material and pathological specimens as the Board may designate.

Civ. '12, § 934; 1909, XXVI, 166.

CHAPTER XX.

County Officers.

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ARTICLE I.

The County Supervisor and County Board of Commissioners, and Herein of Special Provisions in Certain Counties With Regard to County Government and Highways.

(1058) § 1. **Election of County Supervisor—Term of Office—Sub-supervisors.**—Except as hereinafter provided in this Chapter, there shall be in each of the counties of this State a County Supervisor, who shall be elected by the qualified electors of the respective counties, and whose term of office shall be for four years and until his successor shall have been elected and qualified: *Provided*, That the term of office of the County Supervisor of the Counties of Bamberg, Berkeley, Calhoun, Jasper, and York shall be for two years and until their successors shall have been elected and qualified: *And provided, further*, That there shall be elected by the

qualified electors of Abbeville County two men, who shall be known as Sub-supervisors of said county, who shall hold their offices for the term of four years and until their successors shall have been elected and qualified. The said Sub-supervisors shall each receive a salary of two hundred dollars per year, payable monthly, as the salaries of other county officers are paid, and said Sub-supervisors shall assist the County Supervisor in the management of the affairs of the county, and a majority of the Board shall approve all claims against the county before the same can be paid.

Civ. '12, § 935; Civ. '02, § 753; R. S. 643; 1893, XXI, 482; 1899, XXIII, 1; 1908, XXV, 1350, 1186, 1912; 1909, XXVI, 124, 180; 1910, XXVI, 685, 687, 699, 700; 1911, XXVII, 62; 1913, XXVII, 121, 146; 1915, XXIX, 420, 515; 1916, XXIX, 793, 798, 859; 1918, XXX, 836; 1921, XXXII, 60, 102.

For section on beginning of term, see § (759).

(1059) § 2. General Jurisdiction of Supervisor—Administering Oaths.

—The County Supervisor shall have general jurisdiction over all public highways, roads, bridges and ferries, and over the paupers, and in all matters relating to taxes and disbursements of public funds for county purposes, in their respective counties, and in any other case that may be necessary for the internal improvement and local concerns of their respective counties; said Supervisor shall have power and authority to administer oaths to any person in reference to matters appertaining to his office.

Civ. '12, § 937; Civ. '02, § 755; R. S. 645; XXI, 482; XXIII, 666; 1913, XXVIII, 18; 1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1060) § 3. Bond of Supervisor.—The County Supervisor so elected shall, before entering upon the duties of his office, execute a bond for the use of the county, with three or more sufficient sureties, for the faithful performance of his duties, in the penal sum of five thousand dollars, except in Pickens County, where his bond shall be in the sum of two thousand dollars, and in Greenwood County, where his bond shall be three thousand dollars. Said bond to be approved in the same manner as now provided for bonds of County Auditors and County Treasurers, except in Hampton County, where he shall file with the Clerk of Court a bond in the sum of five thousand dollars, for the use of the county in some good surety company duly executed, or a bond duly executed with two or more sufficient sureties, to be approved by the Clerk of Court.

Civ. '12, § 936; Civ. '02, § 754; R. S. 644; XXI, 482; XXIII, 666; 1905, XXIV, 902; 1908, XXV, 1177; 1910, XXVI, 686; 1919, XXXI, 281; 1921, XXXII, 61, 65.

(1061) § 4. County Board of Commissioners—How Composed—Generally.—Except as otherwise provided in this Chapter, and except in the County of Berkeley, there shall be in each of the counties in this State a County Board of Commissioners, which shall be composed of the County Supervisor, who shall be elected and hold office as now provided by law, and two Commissioners, who shall be appointed by the Governor, upon the recommendation of the members of the General Assembly, from the several counties, or a majority of them, and whose term of office shall be coterminal with that of the Supervisor, with whom they are appointed to serve, and until their successor shall be appointed and qualified. The said Commis-

sioners shall be commissioned by the Secretary of State as other county officers, but without charge for their commissions: *Provided*, That in the Counties of Bamberg, Laurens and Oconee, the said two Commissioners shall be elected by the qualified electors thereof, at each general election, and shall hold office for two years, and until their successors are elected and qualified: *Provided, further*, That the said Commissioners in the County of McCormick, shall be elected by the qualified electors of said county, and shall hold office for the term of four years and until their successors shall be elected and qualified: *Provided, further*, That in Richland County one Commissioner shall be elected in each Township by the qualified electors thereof at each general election, and shall hold office for two years and until their successors shall be elected and qualified: *Provided, further*, That in the County of Florence, said Commission shall hereafter be composed of the Supervisor and three Commissioners, who shall have all the duties and liabilities and authority now conferred by law upon County Commissioners: *Provided, further*, That in Lee County there shall be five Commissioners: *Provided, further*, That in the County of Jasper there shall be four Commissioners, one to be elected from each township: *Provided, further*, That in the County of Beaufort there shall be two Commissioners, who shall be elected by the qualified electors of said county, and whose term of office shall be coterminal with that of the Supervisor, with whom they are elected to serve, and until their successors shall be elected and qualified: *Provided, however*, Not more than one Commissioner shall be chosen from any one township: *And provided, further*, That each of said Commissioners shall receive an annual salary of two hundred and twenty-five dollars, payable monthly, and said Commissioners shall meet monthly, and be paid mileage to and from such meeting at the rate now provided by law for jurors.

Civ. '12, § 938; Civ. '02, § 756; 1899, XXIII, 2, 113; 1900, XXIII, 279; 1901, XXIII, 664, 666; 1903, XXXIII, 27; 1905, XXIV, 769, 970; 1907, XXV, 643, 644; 1908, XXV, 1048, 1049, 1176, 1181, 1184, 1191, 1203; 1909, XXVI, 52, 153; 1910, XXVI, 685, 690; 1911, XXVII, 62, 63; 1912, XXVIII, 827; 1913, XXVIII, 55, 74, 129; 1915, XXIX, 515; 1916, XXIX, 717; 1917, XXX, 238, 246; 1919, XXXI, 5, 82; 1920, XXXI, 834; 1921, XXXII, 1, 85, 102, 109, 297.

(1062) § 5. **Bond of Commissioners.**—The said County Commissioners appointed, or elected, as prescribed in Section 4 above, shall each give bond in the sum of one thousand dollars, except in Lexington and Pickens Counties, where their bonds shall be in the penal sum of two thousand dollars.

Civ. '12, § 942; Civ. '02, § 762; 1901, XXIII, 666, 667; 1911, XXVII, 137; 1913, XXVII, 22.

(1063) § 6. **Boards of County Commissioners May Elect Clerk.**—That said Boards may, in each of the counties of the State, elect a clerk, who shall perform the duties of secretary, be paid an annual salary as now provided by law, and which term of office shall be coterminal with that of the members of the Board electing him.

1914, Special, XXIX, 449.

(1064) § 7. **Time of Annual Report of County Board of Commissioners.**—The County Board of Commissioners of the several counties shall submit to the presiding Judge on the first day of the first term of the Court of General Sessions in each year, to be by him submitted to the

Grand Jury of the county with an itemized statement of all amounts ordered to be paid by them for the preceding fiscal year, the condition of the highways and bridges and the poor farm, and other matters concerning the welfare of the county.

Civ. '12, § 947; Civ. '02, § 768; 1896, XXII, 246.

(1065) § 8. Accounts to Be Presented—Approval and Payment.—All accounts, claims and demands of whatever nature existing against the county for opening, constructing, maintaining and operating any public highway, road, bridge or ferry, shall be presented to the County Board of Commissioners, duly attested, and if approved by said Board the County Supervisor shall draw his warrant upon the County Treasurer, under the seal of the County Board of Commissioners, for the amount of any such claim or claims, which warrant shall be countersigned by the secretary of the Board, and the same shall be paid by said Treasurer out of the county road fund.

Civ. '12, § 945; Civ. '02, § 767; 1893, XXI, 485.

(1066) § 9. Quarterly Statements Published—Treasurer Reports.—That the Board of County Commissioners of Anderson County and the County Supervisor of Greenville County shall, under oath, prepare and publish in one issue of a newspaper published at the county seat of said county, quarterly, a condensed statement of all receipts and disbursements by funds or departments, together with a statement of the balance of cash on hand, and the amount of the county's indebtedness, if any, and at what rate of interest contracted. The original of said statement shall be filed in the office of the Clerk of Court of said county as a permanent county record. In the County of Anderson the County Treasurer shall file with the Supervisor at the end of each quarter herein referred to, a statement showing the amount of moneys on hand to the credit of the county, and said statement shall further show to what department or branch of the county funds properly belong.

1915, XXIX, 449; 1920, XXXI, 1001.

(1067) § 10. County Supervisor to Publish Quarterly Reports—Exceptions.—The Supervisors of the State are required to publish in some newspaper published in their respective counties, at least in one issue thereof, and within fifteen days after each meeting of the County Board of Commissioners at which claims are audited, a full statement of the claims audited by said Board at its meeting immediately preceding said publication. The said statement shall show, as published, the file number of the claim, the amount claimed, the amount allowed, the nature of claim or service rendered and the name of the claimant. Said publication shall be paid for at the rate now allowed by law for public printing: *Provided*, The same does not exceed sixty dollars per annum: *Provided*, The provisions of this section shall not apply to the Counties of Barnwell, Bamberg, Charleston, Chesterfield, Darlington, Anderson, Berkeley, Kershaw, Hampton, Horry, Jasper, Laurens, Marlboro, Marion, York, Oconee, Lexington, Georgetown, Greenville, Lancaster, Lee, Chester, Greenwood, Pickens, Spartanburg, Union and Cherokee: *Provided*, That in Sumter County

said statement shall be published in only one newspaper to be selected monthly by the County Board of Commissioners, and that in publishing said statement the file numbers shall be omitted.

Civ. '12, § 951; 1907, XXV, 634; 1910, XXVI, 631; 1916, XXIX, 808; 1920, XXXI, 866. 1921, XXXII, 48.

See State ex rel. Fooshe v. Burley, 80 S. C. 130, 61 S. E. 255.

(1068) § 11. County Supervisor of Jasper County to Publish Statement of Claims Paid—Proviso.—That the Supervisor of Jasper County be, and he is hereby, required to publish, quarterly, an itemized statement of all claims paid by Jasper County in some paper published in Jasper County: *Provided*, That if there is no paper published in Jasper County the Supervisor of said county be, and he is hereby, required to mail, quarterly, said statement to each and every qualified elector in said county.

1921, XXXII, 48.

(1069) § 12. Payment of Expense.—That the Supervisor is hereby empowered to pay the expenses of the publishing or mailing of such statement, as the case may be, out of the funds of the county.

1921, XXXII, 48.

(1070) § 13. Noncompliance a Misdemeanor — Penalty.—That if the Supervisor shall fail to comply with the provisions of Sections 11 and 12 he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred (\$500.00) dollars nor more than one thousand (\$1,000.00) dollars.

1921, XXXII, 48.

(1071) § 14. Supervisor of Jasper County to Make and File Certain Itemized Statement.—That the Supervisor of Jasper County be, and he is hereby, required to keep an itemized statement of all amounts expended by him for the purchase of supplies for the chaingang of said county, said statement showing the names of the articles purchased and the cost thereof, and to submit a report thereof to the County Board of Commissioners at each regular meeting of the said Board. The said Board of County Commissioners shall submit the said report to the Grand Jury for examination at each term of the Court of General Sessions for said county.

1916, XXIX, 753.

(1072) § 15. Duplicate Copies of Approved Claims by County Supervisors and Commissioners to Their Representatives.—It shall be the duty of the County Supervisors or County Boards of Commissioners of each county in this State, and they shall be required to have a duplicate of each claim approved by the said County Supervisors or by the County Boards of Commissioners for each fiscal year, the said duplicate copy to show the township from which it originates, and be for the use of the Senators and members of the House of Representatives of their respective counties, and the said duplicates to be made as the different transactions occur in the different offices of the County Supervisors or County Board of Commissioners, and to be delivered on demand to the Senator or any of the members of the House of Representatives upon their receipt for the same: *Provided*, That at the beginning of each fiscal year the Senator or some of

the members of the House of Representatives shall give notice that such duplicate copy is required of them for his use or for the use of the legislative delegation from said county.

Civ. '12, § 953; Civ. '02, § 770; 1898, XXII, 735.

(1073) § 16. Right to Administer Oaths and Punish.—The members of the County Board of Commissioners shall have power to administer oaths to all persons appearing before them, and to punish by fine not exceeding ten dollars, or imprisonment in the county jail not exceeding twenty hours, any and all persons guilty of disorderly conduct amounting to an open or direct contempt or wilful interruption of their proceedings.

Civ. '12, § 954; Civ. '02, § 771; R. S. 661; 1893, XXI, 486.

(1074) § 17. Chairman of Boards of Township Commissioners May Administer Oaths.—That the Chairmen of the Boards of Township Commissioners in the several counties of this State be, and they are, invested with power and authority to administer oaths as are Notaries Public, in all matters connected with the conduct of their offices.

Civ. '12, § 955; 1907, XXV, 651.

(1075) § 18. County Supervisor of Edgefield County to Publish Statements.—It shall be the duty of the Supervisor of Edgefield County to publish by the 15th of each month, in a newspaper published in said county, a statement setting forth all claims paid or approved for payment by him for the preceding month. And once every three months the Supervisor shall append to the regular monthly statement for publication a detailed statement setting forth the total indebtedness of the county: *Provided*, The cost of the publication of the monthly reports of the Supervisor shall not exceed the sum of sixty (\$60.00) dollars per annum.

1920, XXXI, 844.

(1076) § 19. Annual Statement of Financial Condition of Lee County Required.—That the County Supervisor of Lee County is hereby authorized and required to annually prepare and publish in one or more newspapers having a general circulation in the counties, a verified itemized statement showing the financial condition of the counties, including all moneys received by the counties during the fiscal year, and from what source, and each and every bill against the counties which shall have been approved and paid, and all outstanding obligations, which statement shall be totaled and show what balance remain to the credit of each fund, or what deficit, if any.

1914, XXIX, 16; 1915, XXIX, 115.

(1077) § 20. Convicts May Be Sentenced to County Chaingangs—Municipal Convicts—Time.—All the Courts of this State and municipal authorities which under existing laws have power to sentence convicts to confinement in prison with hard labor, shall sentence all able-bodied male convicts to hard labor upon the public works of the county in which said persons shall have been convicted, and in the alternative to imprisonment in the County Jail or State Penitentiary at hard labor: *Provided*, That municipal authorities may sentence municipal convicts to work upon the

streets and other public works of the municipality in which they have been convicted, and such convicts when so sentenced shall work under the exclusive direction and control of the municipal authority imposing sentence: *Provided*, That no convict whose sentence shall be for a period longer than five years shall be so sentenced.

Civ. '12, § 956; Civ. '02, § 772; R. S. 662; 1893, XXI, 486; 1896, XXII, 244; 1897, XXII, 400; 1899, XXIII, 13.

(1078) § 21. County Supervisor in Charge of Chaingangs—How They Are to Be Worked.—All convicts upon whom may be imposed sentence of labor on the highways, streets and other public works of a county shall be under the exclusive supervision and control of the County Supervisor and by him formed into a county chaingang and required to labor on the highways, roads, bridges, ferries and other public works or buildings of the county; and he shall direct the time, place and manner of labor to be performed by said chaingang: *Provided*, That said chaingang shall not be worked in connection with or near any road contractor or overseer. And all convicts upon whom may be imposed sentence of labor on the highways, streets or other public works of a city or town shall be under the exclusive supervision and control of the municipal authorities of such city or town, or such officer or officers as such municipal authorities may appoint, and by them or him formed into a city or town chaingang, and required to labor on the streets, lanes, alleys, drains and other municipal works or buildings of such city or town (including public parks owned and controlled by such city or town, whether within or without the corporate limits of such city or town), but on no other highways, streets or other public works in or of the county in which such a city or town may be situated: *Provided*, That if any convicts upon whom may be imposed sentence of labor on the highways, streets and other public works of a county are not formed into a county chaingang, or are not required to labor on the highways, streets and other public works of a county, they may be required to labor on the highways, streets and other public works of any city or town in such county having a city or town chaingang, upon such terms as may be agreed upon by and between the County Board of Commissioners of such county and the municipal authorities of such city or town.

Civ. '12, § 957; Civ. '02, § 773; R. S. 663; 1896, XXII, 245.

State ex rel. Bates et al v. Patterson. County Sup'r. et al. 95 S. C. 463. 79 S. E. 309.

(1079) § 22. Care of Convicts—Expenses.—That the County Board of Commissioners shall diet and provide suitable and efficient guards and appliances for the safe-keeping of said convicts. They shall likewise provide all necessary tools, implements and road machines for performing the work required of said convicts, all costs and expenses of which shall be paid out of the county road fund in the same manner as other charges against said fund are paid.

Civ. '12, § 958; Civ. '02, § 774; 1893, XXI, 486.

(1080) § 23. Municipal Convicts.—The municipal authorities of any city or town shall diet and provide suitable and efficient guards and appliances for the safe-keeping of all convicts sentenced to labor on the high-

ways, streets and other public works of such city or town, and shall provide all necessary tools, implements and road machines for performing the work required of said convicts, and shall pay all costs and expenses of the same.

Civ. '12, § 959; Civ. '02, § 775; 1896, XXII, 245.

(1081) § 24. Supervisors May Hire Convicts to Other Counties.—Whenever in the judgment of the Board of County Commissioners of any county of this State, there shall not be a sufficient number of convicts sentenced to work on the public works of such county to warrant the expense of maintaining a county chaingang, the Supervisor of such county shall be authorized to contract with the Supervisor of any other county in the State for the placing of said convicts into the custody of and upon the chaingang of said other county, for such a period and upon such terms and conditions as may be mutually agreed upon by said Supervisors so contracting: *Provided*, That said contract shall require payment of a reasonable price therein to be stipulated, for the work of said convicts, or shall provide for an equal exchange of convict labor between the counties so contracting.

Civ. '12, § 960; Civ. '02, § 776; 1899, XXIII, 11.

(1082) § 25. Supervisors May Exchange Convict Labor.—The Supervisor of any county in this State is hereby authorized to contract with the Supervisor of any other county of this State, desiring to hire out convicts or to exchange convict labor as herein provided, upon such terms as may be mutually agreed upon; and to this end said Supervisors are hereby vested with all the necessary powers as if said convicts were convicted and sentenced in their own counties, respectively: *Provided*, That all contracts entered into by any Supervisor hereunder for the hire or exchange of convicts hereunder be approved by a majority of the Board of County Commissioners of his county.

Civ. '12, § 961; Civ. '02, § 777; 1899, XXIII, 11.

(1083) § 26. Regulation as to Board, Etc.—Any county in this State maintaining a chaingang and hiring convicts of another county, or exchanging convict labor with such other county, as herein provided, shall at its own expense board, clothe, and securely keep such convicts while in the custody of its officers.

Civ. '12, § 962; Civ. '02, § 778; 1899, XXIII, 11.

(1084) § 27. Hire of Convicts to Be Paid Into County Treasury.—Any money due any county under any contract herein authorized shall be collected by the Treasurer of such county and turned into the County Treasury, to aid in defraying the current and ordinary expenses of such county, and any money due by any county under any contract herein authorized shall be paid by the Treasurer of such county upon the warrant of the Supervisor thereof, as other county funds are disbursed.

Civ. '12, § 963; Civ. '02, § 779; 1899, XXIII, 11.

(1085) § 28. County Chaingangs May Be Utilized to Promote Public Health.—The County Board of Commissioners shall have power and authority, in their discretion, to utilize the county chaingang in whole or in part in any kind of work calculated to promote or conserve public health in the county or in any community thereof, in which the sentences of the convicts on such gang were pronounced.

Civ. '12, § 964; Civ. '02, § 780; 1899, XXIII, 13.

(1086) § 29. Fees for Dieting Prisoners.—The County Supervisors and County Boards of Commissioners of the several counties of this State shall diet all prisoners while in their care and custody outside of the jails at actual cost.

Civ. '12, § 965; Civ. '02, § 781; R. S. 2561; 1896, XXII, 226.

(1087) § 30. Clothing of Prisoners Regulated.—The said County Supervisors and Boards of Commissioners shall furnish suitable covering and clothing, when necessary to all prisoners sentenced to chaingang in the various counties of this State at actual cost, to be paid by the various counties, respectively: *Provided*, The provisions of this Section shall not apply to the Counties of Beaufort, Marion, Charleston, Chesterfield, Colleton, Barnwell, Richland, Berkeley, Sumter, Anderson, Pickens, Williamsburg, Newberry, Union, Georgetown, Aiken, Lexington, Laurens, Oconee, York and Darlington.

Civ. '12, § 966; Civ. '02, § 782; 1896, XXII, 226; Amd. 1899, XXIII, 12.

(1088) § 31. Surrender of Convicts.—In case any convict or convicts so employed by the County Supervisor shall become ungovernable or unfit for the labor required of such convict or convicts, the said Supervisor may commit such convict or convicts to the State Penitentiary or County Jail. And it shall be the duty of the Superintendent of the Penitentiary, or the Sheriff of the County, as the case may be, to receive any such convict or convicts so committed, when said chaingang is not employed, or when convenient and practicable, they shall be confined in the County Jail for safe-keeping under direction of said Supervisor.

Civ. '12, § 967; Civ. '02, § 783; R. S. 665; 1896, XXI, 484.

(1089) § 32. Health of Convicts—Fees and Expenses.—The County Board of Commissioners shall be authorized and required to employ a physician or physicians whenever necessary to render medical aid to sick convicts and to preserve the health of the chaingang. The fees and expenses of the same, as well as for medicines prescribed, to be paid out of the road fund as other claims are paid against said funds.

Civ. '12, § 968; Civ. '02, § 784; R. S. 666; 1896, XXI, 485.

(1090) § 33. Paupers and Poor House.—The County Board of Commissioners shall have general supervision over the paupers and the Poor House and Farm of the County, and the said Board shall provide all necessary buildings for the accommodation of the poor of the county, with

sufficient tillable land to give employment to all paupers able to work, and said buildings and lands shall be designated as the Poor House and Farm of the county.

Civ. '12, § 969; Civ. '02, § 785; R. S. 667; 1896, XXI, 485.

Superintendent of Poor House public office; appointment; tenure Sanders v. Belue, 78 S. C. 173, 85 S. E. 762.

(1091) § 34. Regulations for Poor House—Superintendent and Assistants—Physicians.—Said Board shall be empowered to make all necessary rules and regulations for the government of the County Poor House and Farm, to appoint a superintendent, with such assistants as may be needed, to provide means for the employment as may be best suited to the inmates of the Poor House, to see that every pauper able to work is employed, and to appoint one or more physicians to the Poor House, who shall furnish medical aid to the indigent sick.

Civ. '12, § 970; Civ. '02, § 786; R. S. 668; 1896, XXI, 485.

Sanders v. Belue, 78 S. C. 173, 85 S. E. 762. Superintendent of County Poor House appointed by Board of County Commissioners is public officer and remedy for possession of such office is quo warranto. Sanders v. Belue, 78 S. C. 171, 176, 85 S. E. 762.

(1092) § 35. Control of Property for the Poor.—The County Board of Commissioners shall have power to demand, sue for and receive all such gifts, legacies, fines, forfeitures and all other moneys or things which may be given or coming to the use of the poor.

Civ. '12, § 971; Civ. '02, § 787; R. S. 669; 1896, XXI, 485.

(1093) § 36. Houses of Correction for Female Convicts.—The County Board of Commissioners of the several counties in this State may provide and maintain, in connection with the poor farm, a suitable house of correction to which female convicts may be sentenced, except convicts for capital offenses, wherein such convicts shall be employed in useful occupations.

Civ. '12, § 972; 1911, XXVII, 147.

(1094) § 37. Apprenticeship of Poor Children—Illegitimate Children.—In case any poor child or children shall be, or become, chargeable to the county, the County Board of Commissioners may bind out any such child or children as an apprentice to some person of good moral character until such child, if he be male, shall arrive at the age of sixteen years, and if it be a female, until she arrive at the age of fourteen years or shall marry. The said Board shall have power to bind out to service, under some person of good moral character, any illegitimate child or children likely to become chargeable to the county, or liable to be demoralized by the immoral conduct or evil example of their mother or other persons having them in charge, in the manner and for the time prescribed for pauper children, and they shall have power to issue all necessary writs to enforce the provisions of this Section.

Civ. '12, § 973; Civ. '02, § 788; R. S. 670; 1896, XXI, 485.

(1095) § 38. Moneys Paid by Fathers of Bastards.—Any moneys becoming due on any recognizances given for the maintenance of any illegitimate child or children, if such child or children shall be bound out to

service, shall be paid to and received by the Supervisor, to be invested and expended by him under the order of the Probate Court for the benefit of such illegitimate child.

Civ. '12, § 974; Civ. '02, § 789; R. S. 671; 1896, XXI, 486.

(1096) § 39. Contracts as to Poor House.—The County Board of Commissioners shall have power to make all contracts in reference to supplying the Poor House and inmates thereof, repairing buildings and other necessary expenses incident to the care and maintenance of said Poor House and Farm. Where any contracts shall exceed the sum of twenty dollars, they shall advertise and receive bids for same, and shall accept the lowest bid from a responsible person.

Civ. '12, § 975; Civ. '02, § 790; R. S. 672; 1896, XXI, 486.

(1097) § 40. Claims in Reference to Poor House and Farm—How Proven and Paid.—All accounts, claims and demands, of whatever nature, against the county in reference to the Poor House or Farm for the maintenance and support of paupers shall be presented, duly attested, to the County Board of Commissioners, and be by them audited, allowed or rejected; and for the amount of any claim so audited or allowed the County Supervisor shall draw his warrants, under the seal of the Board, upon the County Treasurer, countersigned by the Secretary of Board, who shall pay the same out of the pauper fund of the county.

Civ. '12, § 976; Civ. '02, § 791; R. S. 673; 1896, XXI, 242.

(1098) § 41. Report to Court as to Poor House.—The County Board of Commissioners shall, at the last term of the Court of General Sessions in each year make a report to the presiding Judge, to be by him submitted to the Grand Jury, of all their actings and doings for the fiscal year, containing an itemized statement of all amounts ordered to be paid by them, with a list of inmates and the condition of the Poor House Farm and inmates.

Civ. '12, § 977; Civ. '02, § 792; R. S. 674; 1893, XXI, 486.

Grand jury may employ expert accountant to examine County books. See Section (5480).

(1099) § 42. Seal of County.—The County Supervisor shall procure and adopt a seal, and, when so adopted, shall cause a description thereof, with an impression therefrom, to be filed in the office of the Clerk of Court and of the Sheriff, Treasurer, and Secretary of State, and the same shall thereupon be the seal of the Supervisor, and all orders or other papers signed by said Supervisor shall be authenticated by the official seal.

Civ. '12, § 978; Civ. '02, § 793; R. S. 675; 1896, XXI, 242.

(1100) § 43. Fees to Be Paid by County.—Each county shall pay:

1. The fees of the grand and petit jurors while in attendance upon the Circuit Court.
2. Witnesses' fees in the State cases for actual attendance upon the Circuit Courts as provided by law.
3. Fees of physicians and surgeons testifying as experts before a Coroner's jury or the Circuit Court.
4. Fees of Sheriffs and Clerk of Court as provided by law.
5. Fees of County Coroners as allowed by law.

6. Fees or salaries of Magistrates and Constables.

7. The compensation of Auditors, Treasurers and County Supervisors as provided by law.

8. Accounts heretofore accrued or hereafter to accrue for dieting prisoners confined in the State Penitentiary pending their trial or committed thereto for safe-keeping, and not for service of any sentence imposed by law.

Civ. '12, § 979; Civ. '02, § 794; R. S. 676; 1893, XXI, 489.

The defendants' witnesses are only to be paid by the County in case of felonies. 1896, XXII, 102; *Henderson v. Evans*, 51 S. C. 331, 29 S. E. 5; *Eustace v. Greenville Co.*, 42 S. C. 190, 20 S. E. 88.

Fees are regulated. See Section (5411).

The Sheriff cannot be paid for serving subpoena writs on witnesses for defendant in cases of misdemeanor. *Whittle v. Saluda County*, 59 S. C. 554, 38 S. E. 168.

(1101) § 44. Court Fees to Be Paid—Certificates Receivable for Taxes.

—The fees allowed jurors, constables and witnesses shall be paid by the Treasurer of the counties, on the presentation to them of certificates signed by the presiding Judge and countersigned by the Clerk of Court, or be received by him in the payment of all county taxes when duly approved by the County Supervisor.

Civ. '12, § 980; Civ. '02, § 795; R. S. 677; 1893, XXI, 489.

Witness fees need not be proved by affidavit before payment of certificate. *State v. Bullock*, 54 S. C. 300, 32 S. E. 424. Nor need they be approved by the County Supervisor unless presented in payment for taxes. *Id.*

(1102) § 45. County Commissioners to Deduct from Constables' Salaries Amounts Paid to Certain Persons in Certain Cases.—In all counties of the State wherein Magistrates are allowed by law to appoint a Constable, such constable so appointed receiving a salary from the county in lieu of all costs and fees in criminal cases, it shall be the duty of the Board of County Commissioners to deduct from the salary of such Constable all sums paid to any other person or persons for service rendered the county in criminal cases while acting under appointment by such Magistrates on a particular occasion, unless it is proven to the satisfaction of the Board of County Commissioners that such services were rendered in an emergency wherein it was impossible for the Constable entitled to the salary to perform the said services.

Civ. '12, § 981; Civ. '02, § 796; 1899, XXIII, 10.

APPROVAL OF OTHER FEES—PAYMENT.—The accounts of the Coroners and Sheriffs and Supervisors, and physicians' or surgeons' fees for *post mortem*, shall be approved by County Board of Commissioners, and the Supervisor, on their approval, shall draw an order upon the County Treasurer for the payment of the same, countersigned by the Secretary of the Board.

Civ. '12, § 981; Civ. '02, § 796; R. S. 678; 1893, XXI, 489.

(1103) § 46. Duty of Sheriffs, Constables, Etc. — Sheriffs, Deputy Sheriffs, Coroners and Constables shall execute all legal orders to them directed by the Boards herein provided for, or the Chairman thereof, and shall receive therefor the same fees and costs allowed in other cases.

Civ. '12, § 982; Civ. '02, § 797; R. S. 679; XXI, 489.

(1104) § 47. **Reports by County Officers—Settlements.**—The reports of the County Treasurer and other officers now required by law to be made to the Board of County Commissioners, unless otherwise provided, shall be made to the County Supervisor, and all settlements by any of the county officers now required to be made with the Board of County Commissioners or its Chairman shall be made with the County Supervisor.

Civ. '12, § 983; Civ. '02, § 798; R. S. 680; XXI, 489.

(1105) § 48. **Estimate of County Expenses—Submission to General Assembly.**—The County Board of Commissioners shall prepare an estimate of the amount of money necessary to pay the expenses incurred by said Boards and for ordinary county expenses, and report the same to the Comptroller General of the State, on or before the 5th day of January of each year, to be by him submitted to the General Assembly, in order to provide the necessary taxation for county purposes.

Civ. '12, § 984; Civ. '02, § 799; R. S. 681; 1896, XXII, 206; 1893, XXI, 489

This Section does not repeal a special levy for railroad bonds. *Rice v. Shealey*, 71 S. C. 161, 50 S. E. 868. Board of County Commissioners may be required by mandamus to include item in estimate to General Assembly. *Bank v. Goodwin*, 81 S. C. 419, 62 S. E. 1100.

This Section was clearly intended to embrace past indebtedness. *People's Bank of Greenville v. Goodwin*, 81 S. C. 419, 424, 62 S. E. 1100.

Purpose of the "estimate" is to enable the General Assembly "to provide the necessary taxation for county purposes." *People's Bank of Greenwood v. Goodwin*, 81 S. C. 419, 424, 62 S. E. 1100.

(1106) § 49. **Penalty for Defaults by County Supervisor.**—In case of the failure of the County Supervisor to faithfully perform the duties of his office or the conditions of his bond, it shall be the duty of the Solicitor of the Circuit in which such Supervisor shall reside to bring an action upon the bond of said Supervisor in the name of the county, and any amount realized from said suit shall be deposited in the treasury to the credit of the road fund, and shall receive therefor such fees as the Court shall designate.

Civ. '12, § 985; Civ. '02, § 800; R. S. 682; 1893, XXI, 489.

State v. Fidelity & Deposit Co. of Maryland et al, 114 S. C. 511; 104 S. E. 182.

(1107) § 50. **Salaries to Be Paid Quarterly—Proviso as to Richland County.**—The salaries of the Supervisors in the several counties shall be paid quarterly by the County Treasurer out of the county funds in the same manner as other claims against the county are paid: *Provided*, That the salary of the Supervisor for Richland County be paid monthly.

Civ. '12, § 986; Civ. '02, § 801; R. S. 683; XXI, 489; 1911, XXVII, 65.

(1108) § 51. **Record and Minutes Open to Inspection.**—It shall be the duty of the County Supervisor to cause a record to be kept of all the proceedings of the Board of which he is herein made chairman, as well as a record of all contracts entered into with said Boards, as provided in this Article, which said records shall be open to public inspection, and all necessary books and materials for keeping same shall be paid out of the funds herein provided for the respective Boards in the same manner as other charges are paid.

Civ. '12, § 987; Civ. '02, § 802; R. S. 684; XXI, 489.

(1109) § 52. County Funds Raised by Taxation Not Subject to Levy.—

No funds raised by taxation for any county purposes whatsoever shall be subject to levy under the process of any Court of this State.

Civ. '12, § 988; Civ. '02, § 803; G. S. 617; R. S. 688; 1875, XV, 997.

(1110) § 53. Fiscal Year—Time and Notice of Annual Meeting.—

The fiscal year shall commence on the first day of January of each year. The annual meeting of the County Board of Commissioners of each county shall be on the first Thursday after the first Monday of January and the Clerk of the Board shall give notice of the time of holding said annual meeting by inserting the same at least once a week for four weeks previous to such meeting in any newspaper published in the county; and if there be no newspaper published in the county, then he shall post said notice on the court house door. Said notice shall require all persons holding demands of any kind against the county, not previously presented to the Board, to file the same with the Clerk on or before the first day of January, so that they may be examined and ordered to be paid at the annual meeting; and it shall be the duty of all persons holding such accounts or claims, not paid, to deposit them with the Clerk of the Board, as required in the notice.

Civ. '12, § 989; Civ. '02, § 804; Const., Art. 10, § 10; G. S. 621; R. S. 689; 1875, XV, 993; 1878, XVI, 459; 1890, XX, 710.

(1111) § 54. Provisions as to Magistrates' and Other Officers' Fees.—

All fees and accounts of Magistrates and other officers for criminal proceedings, including cases of vagrancy, when not recovered from the defendant or party complaining, at the rates allowed by law, shall be paid by the county wherein the offense shall have been committed: *Provided*, Said fees and accounts do not exceed the sum of five hundred dollars per annum, and all accounts rendered for such proceedings shall state when such offense was committed. The provisions of this Section shall not apply to the counties where, by special legislation, such fees and accounts have been otherwise provided for.

Civ. '12, § 990; Civ. '02, § 805; R. S. 690; 1875, XV, 991.

Not inconsistent with Section (1100). *Rogers v. Marlboro County*, 32 S. C. 551, 11 S. E. 383.

(1112) § 55. Claims Against County—How Made Out and Verified.—

No accounts shall be audited and ordered to be paid by the County Board of Commissioners for any labor performed, fees, services, disbursements, or any other matter, unless it shall be made out in items and accompanied with an affidavit attached thereto, and made by the person or officer presenting or claiming the same, that the said items are correct, and that the labor, fees, disbursements, services or other matters charged therein have been in fact done, made, rendered or are due, and that no part of the same has been paid or satisfied. And the Clerk of the Court, the Sheriff and Magistrates shall declare further on oath that the costs in such cases have not been recovered out of the defendants' and that the defendants are unable to pay costs; and also that the fines and penalties heretofore collected by them have been faithfully and fully paid over to the County Treasurer. In every case the Magistrates shall exhibit the original papers in which costs have accrued. Nothing in this Section shall be construed to prevent the Board from disallowing any account, in whole or in part, when so ren-

dered and verified, if it appears that the charges are incorrect or that the services or disbursements have not, in fact, been made or rendered, nor from requiring any other or further evidence of the truth or propriety thereof. No allowance or payment beyond legal claims shall ever be allowed. And the Board may refuse to audit or allow any claim or demand whatsoever, unless made out and verified in the manner herein specified. No fees shall be paid by the County Commissioners for the proof of any claim or claims presented to them against their respective counties. All public officers are required to probate without compensation all claims against their respective counties.

Civ. '12, § 991; Civ. '02, § 806; G. S. 623; R. S. 691; 1875, XV, 992, 945; 1878, XVI, 412; 1879, XVII, 175; 1893, XXI, 406.

Where the original affidavit is insufficient, the Board may allow additional affidavit filed to cure the defect. *Maxwell v. Saluda County*, 55 S. C. 382, 33 S. E. 457.

A salary fixed by law need not be audited. *State v. Starling*, 13 S. C. 264. As to witness fees see *State v. Bullock*, 54 S. C. 300, 32 S. E. 424. Method of auditing. *State v. Appleby*, 25 S. C. 100; *Green v. County Commissioners*, 27 S. C. 9, 2 S. E. 618; *Tinsley v. Union Co.*, 40 S. C. 276, 18 S. E. 794. Board cannot review action of predecessor on claim. *County of Richland v. Miller*, 16 S. C. 236. *State v. Kirby*, 17 S. C. 565. Mandamus against Board. *Hunter v. Mobley*, 26 S. C. 192, 1 S. E. 670; *State v. County Commissioners*, 28 S. C. 258, 5 S. E. 622. Appeal from action of Board. *Green v. County Commissioners*, 27 S. C. 9, 2 S. E. 618; *Tinsley v. Union Co.*, 40 S. C. 276, 18 S. E. 794; *Maxwell v. Saluda Co.*, 55 S. C. 382, 33 S. E. 457. Action of Board on a claim properly presented is an adjudication. Board has no jurisdiction to audit and approve claim unless itemized and sworn to. Form of affidavit, etc. *State ex rel. Bank v. Goodwin*, 81 S. C. 419, 62 S. E. 1100. Only remedy is by appeal. *Cunningham v. Clarendon County*, 81 S. C. 201, 62 S. E. 212.

Best v. Barnwell County, 114 S. C. 123; 103 S. E. 479.

(1113) § 56. Claims — How Entered — “File Book.”—The Commissioners shall keep in their office a “File Book,” in which all claims presented for their consideration shall be entered by their Clerk, designating the date of filing, by whom presented, to whom such claim belongs, and the character and amount thereof. The Clerk shall number said claims in the order in which they are filed, audited and allowed, from number one upwards.

A memorandum of the time of presenting such claims and the names of the persons in whose favor they are made out, and by whom presented, shall be entered in the minutes of the Board. No account when presented, audited and ordered to be paid shall be withdrawn from the custody of the Board or their Clerk for any purpose whatever, except to be used in evidence upon a judicial trial or proceeding, in which case it shall, after being so used, be forthwith returned to such custody.

Civ. '12, § 992; Civ. '02, § 807; G. S. 692; R. S. 692; 1875, XV, 993; 1882, XVII, 891.

(1114) § 57. Claims Against Counties — When Barred. — No claim against any county of this State shall be valid and payable unless the same be presented to and filed with the County Board of Commissioners of such county during the fiscal year in which it is contracted or the next thereafter; and all claims not so presented and filed shall be barred; and no claim audited and allowed by the County Board of Commissioners or Clerk of Court for fees of witnesses and jurors shall be paid by the County Treasurer unless the same is presented to him for payment within five years from the date it is audited and allowed. This provision shall not affect the law now of force as to the bonded debt of any county.

Civ. '12, § 993; Civ. '02, § 808; G. S. 625; R. S. 625; 1898, XXII, 737.

Gruber v. County Commissioners, 31 S. C. 81, 9 S. E. 692.

A claim against a County for the expenses of a trial is not barred if presented within the next year after the completion of the trial. *Colleton County v. Hampton County*, 52 S. C. 589, 30 S. E. 484.

Claim must show year in which it arose. *State ex rel. Bank v. Goodwin*, 81 S. C. 419, 62 S. E. 1100.

(1115) § 58. **When and How Orders on County Treasurer to Be Drawn.**—The County Supervisor shall draw orders on the County Treasurer, under the seal of the Board, countersigned by the Secretary or Clerk of the Board, for all accounts against the county which they have allowed, but he shall draw no orders until after the monthly report of the Treasurer treasury to pay the same; and the County Supervisor shall inform the has been received by them, and unless he has reported the funds in the County Treasurer of the orders drawn, in whose favor, the amount, and the order in which they are drawn.

It shall not be lawful for any County Treasurer to pay an order of the Board of County Commissioners unless drawn in conformity with this Section; and it is made the duty of the Comptroller General, in case of any violation of the provisions of this Section which may come or be brought to his notice, to report the offender to the Attorney General for prosecution, or to the Governor for dismissal, as the case may be.

Civ. '12, § 994; Civ. '02, § 809; G. S. 626; R. S. 694; 1878, XVI, 364.

State ex rel. Bank v. Goodwin, 81 S. C. 419, 62 S. E. 1100.
Under provisions of § (763) and this section mandamus will not lie to compel County Supervisor to draw his warrant against County Treasurer for indebtedness contracted in a previous fiscal year, especially when the County Treasurer is without funds to pay such claim nor to require such officer to levy a special tax to pay such claim. Peoples Bank of Greenville v. Goodwin, 81 S. C. 419, 421, 62 S. E. 1100.

(1116) § 59. **Must Give Certified Copies of Accounts Audited to Persons Demanding Them.**—It shall be the duty of the County Supervisor to designate every account upon which any sum shall be audited and allowed by the Board, the amount so audited and allowed, and the charges for which the same was allowed; and he shall also deliver to any person who may desire it a certified copy of any account on file in his office, on receiving from such person ten cents for every folio of one hundred words contained in such copy; and the Supervisor shall endorse on every account allowed and ordered to be paid words indicating that it has been audited above the signature of the County Supervisor.

Civ. '12, § 995; Civ. '02, § 810; G. S. 629; R. S. 695; 1875, XV, 994.

(1117) § 60. **Comptroller to Prescribe Forms and Systems of Bookkeeping.**—The County Commissioners shall keep an account of claims audited and allowed by them against the several funds appropriated for county purposes, in accordance with a form to be prescribed by the Comptroller General; and they shall conform to any system of bookkeeping that may be prescribed for use in their office by the Comptroller General.

Civ. '12, § 996; Civ. '02, § 811; R. S. 96; 1886, XIX, 656.

(1118) § 61. **County Officers to Be Furnished Certain Things by County.**—It shall be the duty of the Commissioners to furnish the Probate Judge, Auditor, School Commissioner, Clerk of Court, Sheriff, Treasurer, and Master in Equity, of their respective counties, office room, together with necessary furniture and stationery for the same, which shall be kept at the Court House of their respective counties; and they shall supply the offices of the said officials with fuel, lights, postage and other incidentals as are necessary to the proper transaction of the legitimate business of the said offices: *Provided*, That in the Counties of Abbeville and Union no postage shall be furnished to any of the said officers, except the Auditor,

Probate Judge, Treasurer, and Superintendent of Education, which shall each be allowed postage to the amount of three dollars: *Provided, further*, That in the County of Berkeley the postage allowed officers shall not exceed the following amounts: Treasurer, twelve dollars; Auditor, five dollars; Clerk of Court and Sheriff, four dollars each; Superintendent of Education, three dollars; Supervisor, Judge of Probate and Master in Equity, two dollars and fifty cents each.

Civ. '12, § 997; Civ. '02, § 812; R. S. 699; 1900, XXIII, 291; 1903, XXIII, 29; 1909, XXVI, 27.

This section imposes upon County Board of Commissioners duty to designate offices occupied by particular officers. *Werts v. Feagle*, 83 S. C. 128, 134, 65 S. E. 226.

(1119) § 62. When to Furnish Rooms for Courts and Officers.—If at any time the Court House of any county in this State shall be in course of reconstruction or repair, or from any other cause shall not be in condition to be occupied, the County Board of Commissioners of such county must furnish suitable rooms for the accommodation of the Courts and public officers.

Civ. '12, § 998; Civ. '02, § 813; G. S. 634; R. S. 700; 1875, XV, 996; 1893, XXI, 181, § 1.

(1120) § 63. Extra Allowance to Salaried Officers Forbidden.—No member of the County Board of Commissioners shall vote for an extra allowance to any person who is paid by salary, nor shall the Treasurer of said county knowingly pay to any such person any extra allowance.

Civ. '12, § 998; Civ. '02, § 813; G. S. 634; R. S. 700; 1875, XV, 996; 1893, XXI, 481, § 1.

(1121) § 64. May Change Name of Townships—Notice.—The Commissioners may change the name or names of any or all of the townships in their respective counties. They shall give notice of such change of names as they may make, within fifteen days thereafter, by publication in a public gazette published in their respective counties, or by notices posted in at least three public places in the county if no gazette is published therein.

Civ. '12, § 1000; Civ. '02, § 815; G. S. 641; R. S. 702; 1878, XVI, 365.

(1122) § 65. May Borrow Money in Certain Counties—Obligation to Be Given for Loan.—The County Supervisor, with the approval of the County Board of Commissioners in each of the counties of Greenville, Greenwood, Lee, Pickens, Laurens, Orangeburg, Abbeville, Hampton, Berkeley, Anderson, Sumter, Chester, Richland, Cherokee, and Georgetown, and Florence, Williamsburg, Clarendon, Edgefield, and Chesterfield, and Charleston, is authorized and empowered, for any fiscal year, to borrow, upon faith and credit of the county, a sufficient sum or sums of money to pay, in advance of the collection of taxes therefor, ordinary county expenses, school claims and past due claims against the county, and as security for the repayment of said loans, with interest to pledge the taxes to be collected and applicable to the claims for the payment of which said money shall have been borrowed: *Provided*, That the amount borrowed in any year for any of said purposes shall not exceed the tax levy therefor for that year, and that the rate of interest shall not exceed seven per cent. per annum: *Provided, further*, That in the county of Greenville the sum borrowed for the payment of school claims shall not exceed five thousand

dollars in any year: *Provided, further*, That no part of the money so borrowed in Greenville County shall be applied to the payment of past due claims against said county: *Provided*, That the money so borrowed in Charleston County shall be borrowed after advertisement therefor twice in a newspaper published in the City of Charleston: *Provided*, That in Chesterfield County any loan that may be made to said county shall be approved by the County Treasurer of said county, and the Supervisor and Treasurer of said county shall jointly execute the note or notes for such money borrowed and the amount borrowed shall not exceed for any one year in the aggregate twenty-five thousand dollars.

Civ. '12, § 1001; Civ. '02, § 816; 1894, XXI, 794; 1903, XXIII, 28; 1904, XXV, 392; 1905, XXV, 416, 833; 1911, XXVII, 53; 1913, XXVIII, 27; 1914, XXVIII, 502; 1915, XXIX, 95; 1916, XXIX, 734.

FORM OF OBLIGATION.—The obligation for the repayment of said loan shall be substantially in the following form:

\$.....

OFFICE OF COUNTY SUPERVISOR

.....County, S. C.

....., S. C., ..., 19..

On or before the.....day of....., 19.., the County of promises to pay to.....or order the sum of.....dollars, with interest at.....per cent. per annum from....., money borrowed to pay (here insert the purposes of loan) for the fiscal year beginning January 1, 19.., under authority of the Act of Assembly passed at regular session, 1894. To secure the payment of said sum and interest the taxes of said county to be collected and applicable to claims for the payment of which this money is borrowed as aforesaid for the said fiscal year are hereby pledged to the payee hereof or order.

Witness the hand and official seal of the County Supervisor of said county, attested by the Clerk of the Board, the day and year first above written.

Attested by (Seal.)

.....,

Supervisor of.....County.

Secretary of Board.

Countersigned by.....

Treasurer of.....County.

Civ. '12, § 1001; Civ. '02, § 817; 1894, XXI, 794.

VALID DEBT.—That an obligation substantially in the above form shall constitute a valid debt against the county so borrowing, and the same shall be a prior and preferred lien upon the taxes pledged for the payment thereof.

Civ. '12, § 1001; Civ. '02, § 817; 1894, XXI, 794.

(1123) § 66. **Duty of Supervisor and Treasurer.**—The County Supervisors and Treasurers shall keep the money so borrowed on the tax levies for their respective counties for the specific purpose of such levies, according to the terms of the Act to raise supplies for the year in which the loan is effected.

Civ. '12, § 1002; Civ. '02, § 818; 1894, XXI, 794.

(1124) § 67. **Money to Be Paid to Treasurer.**—That the money so loaned as aforesaid shall be paid by the lender to the Treasurer of the county for whose benefit it is borrowed. The said Treasurer shall thereupon countersign said obligation, and his signature thereto shall be deemed sufficient evidence of the receipt of said money by him.

Civ. '12, § 1003; Civ. '02, § 819; 1894, XXI, 794.

County Supervisor and Board of County Commissioners are prohibited to sell to County. See Criminal Code.

SPECIAL PROVISIONS IN CERTAIN COUNTIES AS TO COUNTY GOVERNMENT AND HIGHWAYS.

ABBEVILLE COUNTY.

(1125) § 1. **Records to Be Kept—Payment of Principal of Notes.**—That the County Board of Commissioners of Abbeville County shall keep a book called "File Book of Claims," in which shall be entered all claims as presented. This book shall be printed and ruled, with appropriate columns, showing: (1) Claim number; (2) date of filing; (3) by whom presented; (4) to whom claim belongs; (5) nature of claim; (6) date of action; (7) amount of claim; (8) amount allowed; (9) amount disallowed; (10) item number in supply Act to which chargeable; (11) remarks. The number of the claim shall not be entered upon the book until the claim shall have been allowed and entered on the "Claims Classification Book," hereinafter provided for, and shall then be made to conform to the number thereon. A separate claim must be filed for each account chargeable to any particular item in the County Supply Act or to any subdivision thereof. The principal of each note for money borrowed in anticipation of the collection of taxes shall be paid directly by the County Treasurer, the said Treasurer holding said note as his voucher for the principal thereof and the lender filing claims with County Board of Commissioners in the usual form for the interest, but not for principal except where a specific appropriation shall have been made for the payment of a particular note.

1916, XXIX, 841.

(1126) § 2. **Record of Claims Allowed—Publication of Statement.**—The County Board of Commissioners shall keep a book called "Classification of Claims Allowed," in which shall be entered all claims allowed in numerical order. This book shall be printed and ruled with appropriate columns, showing: (1) Line number; (2) claim number; (3) warrant number; (4) item number in Supply Act to which chargeable; (5) claimant; (6) nature of claim; (7) amount allowed; (8) amount paid; (9) date paid; (10) amount unpaid; (11) columns headed and numbered, "Items Number 1" and upwards, with a tabulated statement at head of each column showing: (a) The amount of the appropriation made for the particular item; (b) the amount of claims allowed to date chargeable to such item; (c) the balance of the appropriation subject to future claims which may be allowed or the balance of overallowed; (12) total, with similar tabulation. Within the first ten days of each and every month or quarter, the County Board of Commissioners shall publish one time in a newspaper of the county selected by them as calculated to give full publicity thereto, the statement, under

their hands, attested by the Clerk of the Board, and approved by the County Auditor, showing the exact financial condition of each item at the end of the preceding month or quarter, as the same may appear upon this book, subdivision 11, briefly describing the item by title as in the County Supply Act. The advertising charges therefor shall not exceed four (\$4.00) dollars for each insertion.

1916, XXIX, 841.

(1127) § 3. Record of Bills Payable.—The County Board of Commissioners shall keep a book of "Bills Payable" in which they shall enter, as and when made, all notes for loans in anticipation of collection of taxes. The entries thereon shall show: (1) note number; (2) date of note; (3) date due; (4) payee; (5) amount; (6) rate of interest; (7) date paid. Said notes shall be numbered in the order in which they may be executed.

1916, XXIX, 841.

(1128) § 4. Entries to Be in Ink—Balancing Required.—All entries footings and amounts carried forward in the books hereinbefore provided for, shall be made in ink. Each page shall show perfect balancing of all columnar additions, and of all footings carried forward.

1916, XXIX, 841.

(1129) § 5. Warrants to Be Drawn Only Upon Specific Appropriation—Not to Exceed Appropriation—Penalty.—The County Supervisors constituting the County Board of Commissioners are hereby prohibited from drawing any warrant upon the County Treasurer to be paid out of any of the several funds specifically appropriated for any other purpose other than that for which the same shall have been so appropriated, and it shall be unlawful for the County Treasurer to pay any such inhibited warrant. It shall be unlawful for the County Board of Commissioners, or any member thereof, to create, by contract, express or implied, any obligation against the county which, with the obligations then existing and chargeable to any particular item of appropriation, shall exceed the amount specifically appropriated therefor. Should the County Board of Commissioners or any member thereof, violate the provisions of the paragraph next preceding in this Section, the claim resulting therefrom shall be declared null and void as against the county, and the officer offending shall be held responsible to the claimant therefor upon his official bond.

1916, XXIX, 841.

(1130) § 6. Entries on Warrant.—The County Board of Commissioners shall state upon each warrant drawn by them upon the County Treasurer the item of the appropriation in the County Supply Act on account of which it shall have been drawn; they shall, also, in a tabulated form upon said warrant, state the amount of such appropriation, the amount theretofore drawn against it, the amount of the warrant then drawn, the balance against which future warrants may be drawn. No warrant shall be paid by the County Treasurer or be allowed as a credit to him in his settlement unless it conforms with this requirement.

1916, XXIX, 841.

(1131) § 7. How Claims for Excess Indebtedness Handled.—That whenever the appropriation for any specific item of county expenses, as provided for in the County Supply Act of any year shall have been exhausted by warrants of the County Board of Commissioners upon the County Treasurer, the payment of further claims chargeable to the amount of such items shall be immediately suspended. Such claims in excess of the appropriation, after having been audited, allowed and entered upon the book of "Classifications of Claims Allowed," for the year to which they belong, shall be transferred in red ink to the same book for the succeeding year, numbered with the claims for that year; the number endorsed upon said claims in red ink, the amounts distributed in the item column for past indebtedness; and in the column headed "Nature of Claims," shall be entered, "Past Indebtedness of 19...., No....." Upon the book from which the claim shall have been transferred, opposite the claim, shall be noted "Transferred to 19—, No.—." In the County Supply Act for the succeeding year these claims shall be provided for by an appropriation in the item "Past Indebtedness Claims," wherever they shall be classified by numbers, nature and amount. A certified schedule of these claims, itemized and classified, shall be furnished by the County Supervisors to the County Delegation during the first week in January of every year. At the annual settlement with the Comptroller General all cash balances to the credit of the revenue of the county for all county purposes and all uncollected assets, for the fiscal year to which said past indebtedness claims belong, shall be passed to credit of the revenue of the county for all county purposes for the fiscal year to which said past indebtedness claims shall have been transferred, to the extent of the amount of the same and of any other indebtedness of the preceding year provided for in the budget for the succeeding year; the balance, if any, shall be deposited by the County Treasurer in some reliable savings institution, at interest, for the purpose of accumulating a fund with which to put the county upon a cash basis: *Provided*, That this section shall not apply to obligations incurred in violation of Section 5, but is intended to apply only to such obligations of the county as are not within the control of the County Board of Commissioners.

1916, XXIX, 841.

(1132) § 8. Filing of Claims.—Every claim against the county must be entered in "File Book of Claims," for ten days before it can be paid. The Clerk of the Board shall notify the County Auditor ten days before the Board meets to pay claims, and the Auditor or his deputy shall thereupon make a notation in the "File Book of Claims" over his signature on the line immediately following the last claim filed, and no claim thereafter filed can be paid at the ensuing meeting of the Board.

1916, XXIX, 841.

(1133) § 9. Form of Claims.—The County Board of Commissioners shall obtain and keep on hand a supply of forms upon which all claims against the county shall be made as now required by law, and upon which shall also appear a certificate of the members of the Board to sign to the effect that the claim is either for a salary or fees allowed by law, and that

claimant has filed all reports required by law, or for work, material or supplies furnished the county, and that he personally has examined the work, or knows that the material or supplies were furnished, and that the claim is just and reasonable and a proper charge against the county; and also a certificate for the County Attorney to sign, to the effect that the claim has been entered in "File Book of Claims," as required by law, is properly itemized and verified, authorized by law or provided for in the County Supply Act, and properly certified to by one of the Supervisors.

1916, XXIX, 841.

(1134) § 10. County Attorney—Duties.—The County Board of Commissioners shall annually elect a County Attorney at a salary of one hundred dollars per annum, who shall be the legal adviser of the Board and who shall meet with the Board on every day that it meets, to approve claims, and every claim presented against the county shall be examined by him, and if it has been entered in "File Book of Claims," is properly itemized and verified by the claimant, is authorized by law or provided for in the County Supply Act, and certified to by one of the Supervisors, he shall make a certificate to this effect thereon over his signature, and thereupon the Board may consider the claim and allow or disallow same. He shall examine all claims for salaries, but no such claim shall be approved by him unless the claimant shall have filed such reports as may be required of them. No claim shall be allowed by the Board, and warrant issued therefor, until it shall have the approval of the County Attorney.

1916, XXIX, 841.

(1135) § 11. Advertisement for Supplies — Purchase.—Every three months the County Board of Commissioners shall advertise for at least three weeks in at least three issues of one or more of the newspapers published in the City of Abbeville for bids, based on delivery at the Court House, unless otherwise specified, for all implements and supplies of whatever kind may be desired by the county and each and every officer thereof, including all supplies, equipment and all purchases whatsoever for the Commissioners, Sheriff, Clerk of Court, Treasurer, Auditor, Judge of Probate, Magistrates, for Poor House, chaingang, roads and bridges, and for every other purpose which advertisement shall set forth the articles and approximately the amounts thereof to be purchased, and the contracts of purchase shall be awarded to the lowest bidder for the period of three months: *Provided, however*, in case of emergency the County Board of Commissioners may make purchase for the county where the cost thereof does not exceed twenty-five (\$25) dollars, and for such purpose a majority of the Supervisors shall certify on the claim therefor the necessity therefor: *And provided, further*, In case of emergency an advertisement, as hereinbefore provided for, may be inserted at any time, but all contracts for purchases of supplies shall be in accordance with the provisions of this section, and no bill, account or claim of any kind whatsoever against the county shall be paid unless previously contracted for by such competition or by the County Board of Commissioners in cases of certified emergency.

1916, XXIX, 841.

(1136) § 12. **Advertisement for Bids on Construction—Award.**—The County Board of Commissioners shall advertise for at least two weeks in at least two issues of a newspaper published in the county, or post, in three or more conspicuous places likely to give the most publicity thereof, for bids on new or repair work on the roads and bridges of the county, or any of the public buildings of the county, where the cost thereof will exceed twenty-five (\$25) dollars, and the contract therefor according to plans and specifications, a duplicate of which shall be kept on file in the office of the Board, shall be awarded to the lowest responsible bidder. No work for the county shall be paid for until it has been completed, inspected and accepted.
1916, XXIX, 841.

(1137) § 13. **Advertisement for Loans—Terms.**—Should the County Board of Commissioners find it necessary to borrow money for any year for county expenses in advance of the collection of taxes therefor, as provided and authorized by law, they shall insert an advertisement in a county and State newspaper for at least three weeks in at least three issues thereof, setting forth the amount wanted and when the same will be repaid, and asking for competitive bids on terms and the rate of interest, and all money borrowed shall be at the best terms and lowest rate of interest the Board can get.

1916, XXIX, 841.

(1138) § 14. **May Employ Road Engineer — Duties.**—The County Board of Commissioners may employ the services of a road engineer annually or for such lesser time as they may deem best, who shall be a graduate in civil engineering, or a man experienced in bridge engineering, road engineering, building and repairing and drainage, whose salary and expenses in no year shall exceed five per cent. of the amount provided in the County Supply Act for the maintenance of the chaingang and roads and bridges, and if one is employed he shall have general and exclusive authority in laying out plans and specifications for all bridge, drainage, building and repair work of the county, and all such work let to contract shall be inspected and approved by him before it is accepted and paid for.

1916, XXIX, 841.

(1139) § 15. **Apportionment of Appropriations.**—It is hereby made the duty of the County Board of Commissioners to so apportion the appropriations for the maintenance of the chaingang, for roads and bridges and other similar appropriations, as to cover the total expenses of the county for these items for the entire fiscal year for which they may be respectively appropriated.

1916, XXIX, 841.

(1140) § 16. **Regulating Use of Traction Engines on Highways in Abbeville County.**—Any person, firm or corporation using any traction engine on the public highways and bridges of Abbeville County, shall, when crossing any bridge, place upon the surface of said bridge a piece of large timber, not less than two (2) inches thick and twelve (12) inches wide on which said engine may roll, so as to protect the bridge from injury.

1913, XXVIII, 185.

(1141) § 17. Liability for Violating Law.—Any person who shall violate the provisions of the preceding Section shall be liable to the county for all damage done to any bridge.

1913, XXVIII, 185.

AIKEN COUNTY.

(1142) § 1. County Government for Aiken County—County Commissioners — Term — Removal. — The county government of Aiken County shall be administered by three Commissioners, to be known as the "County Commissioners of Aiken County," each of whom shall hold office for a term of six years (except as hereinafter provided for those first elected to such office), unless sooner removed for incapacity, neglect, or other sufficient cause, by the Governor.

Civ. '12, 1005; 1908, XXV, 1186; 1911, XXVII, 61; 1913, XXVIII, 131; 1915, XXIX, 224; 1918, XXX, 842; 1920, XXXI, 1055.

(1143) § 2. Election Districts for County Commissioners—Terms of First Incumbents—Vacancies.—That the said County Commissioners shall be elected one from each of the following districts, composed as follows: No. 1—Hammond, Shaws, Gregg, Langley and Shultz Townships. No. 2—Aiken, Silvertown, Sleepy Hollow, Windsor and Millbrook Townships. No. 3—Wards, Chinquapin, Rocky Spring, McTier, Biddy Swamp, Hopewell, Rocky Grove and Tabernacle Townships. The Commissioners from each of the aforesaid districts shall be elected by the voters of the district which he is to represent, and each of said Commissioners shall reside in the district from which he is elected, and likewise shall any successor or successors thereof. The three Commissioners first elected hereunder, at their first meeting, draw lots for terms of two years, four years and six years, and the term of the Commissioner who draws the term of two years shall expire at the end of two years, and the term of the Commissioner who draws the term of four years shall expire at the end of four years, the Commissioner drawing for the term of six years serving for the full term of six years. Should any vacancy occur in the office of any such Commissioners, a temporary Commissioner may be appointed by the Governor, upon the recommendation of the Legislation Delegation of Aiken County, who shall serve until the next general election, at which time the vacancy shall be filled for the unexpired term.

Civ. '12, § 1004; 1908, XXV, 1186; 1911, XXVII, 61; 1912, XXVII, 852; 1913, XXVIII, 131; 1914, XXVIII, 696; 1918, XXX, 842; 1920, XXXI, 1055.

(1144) § 3. Bonds — Meetings — Salaries to Be Determined by Election.—That each Commissioner shall give bond in the sum of one thousand (\$1,000.00) dollars for the faithful performance of his duties (the premium on said bond to be paid by the county), and shall receive the sum of one hundred (\$100.00) dollars per annum as his salary. The Commissioners shall be required to meet at the Court House on the first Monday of each month, beginning with the first Monday of December, 1920,

when they shall take office, for the purpose of transacting business: *Provided*, That at the same time the question of adopting this Article is submitted, the question of whether the salary of the Commissioners shall be as provided herein, or five hundred dollars per annum, payable as herein provided, monthly, shall also be submitted, and if a majority of the votes cast be in favor of the greater salary, that shall be the compensation of said Commissioners.

Civ. '12, § 1014; 1912, XXVII, 852; 1913, XXVIII, 131; 1914, XXVIII, 696; 1918, XXX, 842; 1920, XXXI, 1055.

(1145) § 4. District Commissioners—Duties and Powers.—Each District Commissioner shall have jurisdiction and control over the township road fund for his district, subject to the provisions herein, and with the supervision hereinbefore provided for, shall spend the same for the maintenance and improvements of the public roads of the townships in his district. Said District Commissioners shall also have control of the construction and repair of such bridges as shall not cost more than twenty-four dollars. They shall personally inspect all work done under their respective jurisdiction, and shall vouch for and attest every claim before it shall be submitted to the County Board of Commissioners for approval. No District Commissioner shall spend more than the amount apportioned to his district; and no District Commissioner shall present any claim for approval for any material, or hands or mules, horses or wagons, furnished by him, or in which he is interested, either directly or indirectly.

Civ. '12, § 1010; 1908, XXV, 1186.

(1146) § 5. Custody of County Property.—That the said Commissioners, when elected and qualified, shall have supervision of all highways, public roads, bridges and ferries of the county, all convicts, chaingangs, road tolls, wagons, mules, carts, traction engines, prisoners, steel cages, tents, and all other property of every kind and description, in the possession of the now existing system of County Commissioners, giving their receipt to the present Commissioners, who are required to immediately turn over the same to the Commissioners holding under this Article; and the now existing Commissioners shall cease to exercise further the duties conferred upon them as such county officials.

1912, XXVII, 852; 1913, XXVIII, 131; 1914, XXVIII, 696; 1918, XXX, 842; 1920, XXXI, 1055.

(1147) § 6. Organization—Powers.—That the said Commissioners shall have power to organize by the election of a chairman, who shall have power to call extra meetings for the transaction of business; said Commissioners shall have the supervisory management and control of the highways of Aiken County; all bridges and other property pertaining to said highways and bridges, including the chaingang and the stock and vehicles and other property of Aiken County connected therewith; also the County Poor Farm, and they shall supervise and superintend the maintenance, repair and improvement of all of said properties, and shall have other general powers usually conferred upon the County Commissioners, and not repugnant to the special provisions of this Article.

Civ. '12, § 1011; 1908, XXV, 1186; 1912, XXVII, 852; 1913, XXVII, 131; 1914, XXVIII, 696; 1915, XXIX, 224; 1918, XXX, 842; 1920, XXXI, 1055.

(1148) § 7. **Further Duties.**—The Board of County Commissioners shall have charge of the chaingang and all other business of a general character, such as electing Superintendent of the Poor House; purchasing machinery, mules, wagons, supplies, etc., fixing salaries of all township overseers and overseers and guards for chaingang, etc. They shall apportion the county road fund among the various townships of the county in proportion to the number of miles of public roads in each township, the same so apportioned to be expended by the District Commissioners as herein provided; and they shall keep in the office a book of the county road fund by townships, in like manner as the County Superintendent of Education keeps accounts of school funds by districts, and this book shall be a record of the Commissioners' office accessible to the public; they shall perform all other duties devolving upon the Supervisor and Board of County Commissioners for Aiken County, at the time the said offices of Supervisor and Board of County Commissioners were abolished by the Act of 25th day of February, A. D. 1908.

Civ. '12, § 1008; 1908, XXV, 1186; 1913, XXVIII, 133; 1915, XXIX, 224.

(1149) § 8. **Road Builder—Compensation—Duties — Term — Distribution of Road Funds.**—That said Commissioners shall employ a competent Road Builder, and pay him for his services twenty-four hundred (\$2,400.00) dollars per annum, payable in monthly installments, and they shall allow him an expense account, not exceeding six hundred (\$600.00) dollars per annum, which he shall use in transacting the necessary business for the county pertaining to the county's said properties, and which he shall not draw except upon itemized statement, itemizing specifically each item of expenditure, which shall first be approved by the Commissioners, a majority thereof governing this matter, as in all other matters to be transacted with the Board. The Road Builder so appointed by said Board shall give his entire time to the performance of his duties, which shall be prescribed by said Board, and shall hold said position for two years unless removed for incapacity or for other cause by said Board, and shall have direct control and superintendence of the road force and road building and the repairs of the roads in Aiken County, with authority to maintain the county chaingang, and to employ guards or bosses therefor: *Provided*, That all funds available for road work and the time of the chaingang shall be distributed each year amongst the several districts, in proportion to mileage in highways contained therein.

1912, XXVII, 852; 1913, XXVIII, 131; 1914, XXVIII, 696; 1918, XXX, 842; 1920, XXXI, 1055.

(1150) § 9. **Further Duties of Road Builder.**—It shall be the duty of the Road Builder to ascertain the names of all persons living in the county who are liable for road duty, and to file with the Commissioners, an alphabetical list of the same. The Commissioners shall compare this list with the commutation tax list as filed by the County Treasurer, and shall report back to the Road Builder not later than March 1, of each year, the names of all persons in the respective districts who have not paid the commutation tax and are liable for road duty for that year. The Road Builder shall direct the overseer of the free labor force, while working in the respective

districts (and it is hereby made the duty of said overseer so to do), to summon out these road hands at such time or times as he thinks most beneficial to the public service, and shall work them upon the roads for three days each year.

Civ. '12, § 1011; 1908, XXV, 1186; 1913, XXVIII, 134.

(1151) § 10. **Duty of Road Builder as to Road Duty.**—It shall be the duty of the Road Builder to swear out warrants before a Magistrate against persons who shall fail or refuse to perform road duty, after being summoned thereto.

Civ. '12, § 1012; 1908, XXV, 1186; 1913, XXVIII, 134.

(1152) § 11. **Claims — Accounts.**—That the aforesaid Commissioners shall be charged with the duty of passing upon all claims against the County of Aiken which are presented to them, duly itemized and sworn to, and no claims against said county shall be paid unless so itemized and sworn to, and duly approved by a majority of the Commissioners. The said Commissioners shall keep proper books of account of all expenditures, and shall publish each month a statement of such expenditures in one of the newspapers published in said county.

Civ. '12, § 1015; 1908, XXX, 1186; 1912, XXVII, 852; 1913, XXVIII, 131; 1914, XXVIII, 696; 1918, XXX, 842; 1920, XXXI, 1055.

(1153) § 12. **Commissioners to Publish Certain Statement.**—The County Board of Commissioners of Aiken County shall publish monthly within ten days after each monthly meeting, in one or more newspapers published in the county, an itemized statement showing the expenditures for the previous month for roads, bridges, chaingang and Poor House, and all other work performed in the discretion or under the direction of the Board, by contract or otherwise, said statement to show the name or names of each person in whose favor any warrant has been drawn and the work performed by each, and shall further show in condensed tabulated form the whole amount of money spent during the fiscal year and the balance on hand for said purposes, and shall give a brief outline of work contemplated for the succeeding month.

Civ. '12, § 952, 1009; 1910, XXVI, 671; 1916, XXIX, 791.

(1154) § 13. **Prerequisites to Approval of Bills.**—Before any bill is approved for payment the District Commissioner shall certify in writing that he has personally inspected the work for which such bill is rendered, and that same has been done in accordance with contract or instruction of the Board.

1916, XXIX, 791.

(1155) § 14. **Salaries Not to Be Paid Until Complied With.**—The County Treasurer of Aiken County is hereby forbidden to pay monthly salary of any member of the County Board of Commissioners until written proof has been filed with him showing a compliance with the provisions of the preceding Section.

1916, XXIX, 791.

(1156) § 15. Appropriation for Publication.—The said County Board of Commissioners are hereby authorized to pay not exceeding one hundred dollars per annum for the publication of the statements as required, and if they are unable to contract with any newspaper for the same at said sum, they shall be relieved of the obligation of said publication as required.

1916, XXIX, 791

(1157) § 16. Clerk — Compensation.—That the said Commissioners shall have power to employ a clerk, who shall keep the office open every day except Sunday. He shall keep the books for said office, and shall keep the minutes of each meeting of said Board, and shall perform such other work as shall be required of him by the Board; the said clerk shall receive for his services the sum of one thousand (\$1,000.00) dollars per annum, payable in monthly installments.

1912, XXVII, 852; 1913, XXVIII, 131; 1914, XXVIII, 696; 1918, XXX, 842; 1920, XXXI, 1055; 1921, XXXII, 88.

(1158) § 17. Attorney—Compensation.—That the said Board shall have power to employ the services of an attorney at law, who shall attend all meetings of the Board, and shall advise the said Board at all times when called upon, and shall represent said county in all suits affecting it; such attorney shall receive the sum of four hundred (\$400.00) dollars per annum for his said services, payable monthly.

1912, XXVII, 852; 1913, XXVIII, 131; 1914, XXVIII, 696; 1918, XXX, 842; 1920, XXXI, 1055.

(1159) § 18. Road Fund.—The road fund shall consist of (a) the sum apportioned by the County Board of Commissioners to each township; (b) the commutation tax for said township; (c) any special local tax in any township for improvement; (d) the portion of the general road fund allowed to the respective townships.

Civ. '12, § 1013; 1908, XXV, 1186; 1913, XXVIII, 134.

(1160) § 19. Receipt of Road Funds.—That said Board shall receive the road fund provided by law, and shall have power to receipt therefor, whether from the county, State or National Government.

1912, XXVII, 852; 1913, XXVIII, 131; 1914, XXVIII, 696; 1918, XXX, 842; 1920, XXXI, 1055.

(1161) § 20. County Commissioners May Contract for Road Repairs.—The County Board of Commissioners of Aiken County shall have power to contract for the repairs of any sections of the public highways in said county as hereinafter provided: *Provided*, No person or persons shall have more than five miles let to him or them.

1912, XXVII, 850, 852; 1916, XXIX, 895.

(1162) § 21. Letting of Contracts.—That any section of highway as aforesaid shall be let out by the County Board of Commissioners upon its own initiative or upon petition as hereinafter provided to a responsible party or parties upon a contract to the lowest bidder or bidders, who shall

enter into sufficient bond conditioned for keeping in proper repair his or their section of highway during the term of the contract, under the supervision and instructions of the County Board of Commissioners, the security of such bond to be approved by the Chief Commissioner or a majority of the District Commissioners: *Provided*, The said County Board of Commissioners shall have the right to reject any and all bids therefor: *Provided, further*, The term of contract shall not be longer than three years nor less than one year: *Provided, further*, That it shall be the duty of said County Board of Commissioners in the manner hereinbefore set out, and without petition, by the first day of March annually, to let out, in five miles sections, the repair by dragging and otherwise of that highway or road which was constructed during the years 1914 and 1915, under the supervision of an engineer furnished by the United States Government and partially by funds furnished by said government; said road extending from Barnwell County line, near White Pond, to the Edgefield County line, near Eureka.
1912, XXVII, 850; 1916, XXIX, 895.

(1163) § 22. **Advertisement.**—The Chief Commissioner shall advertise in a newspaper of the county for at least two weeks the section to be let and the time and place of the letting of such contracts.
1912, XXVII, 850; 1916, XXIX, 895.

(1164) § 23. **Commutation Tax in Aiken County.**—That a commutation tax of one (\$1.00) dollar shall be assessed on all able-bodied male citizens between the ages of twenty-one and fifty years, both inclusive, of Aiken County, in lieu of all road work heretofore provided for by law, and it shall be the duty of the Auditor of said county to assess the said taxes and the duty of the Treasurer to collect the same in the manner that all other taxes are now collected by law.
1921, XXXII, 192.

(1165) § 24. **Use of Proceeds—Labor on Roads in Lieu of Payment Not Permitted.**—That the commutation tax so levied and collected shall be expended on the roads and bridges of the said county in the same manner as now provided by law, and it shall not be permissible for any person to perform labor on the public roads of said county in lieu of the tax herein set forth.
1921, XXXII, 192.

(1166) § 25. **Penalty for Evasion.**—That any person failing or refusing to pay the said commutation tax shall be fined in the sum of not more than twenty-five (\$25.00) dollars, or imprisonment for not more than thirty days by any Court of competent jurisdiction.
1921, XXXII, 192.

(1167) § 26. **Petition for Letting of Section.**—Whenever a majority of the taxpayers residing on or whose lands adjoin, any five mile section of highway, shall petition the Board of Commissioners to let such section, the Board of Commissioners shall proceed to do so under the provisions of this Article: *Provided*, In all cases the contractor or contractors shall

reside within two miles of the section let to him or them: *Provided, further*, This Section shall not be construed to prevent the Commissioners from letting any section on their own initiative.

1912, XXVII, 850; 1916, XXIX, 895.

(1168) § 27. Division of Work or Labor.—That whenever two or more sections of the highway so let out lies within a township or between adjoining townships, the said commutation tax or labor shall be equally proportioned between said sections.

1912, XXVII, 850; 1916, XXIX, 895.

(1169) § 28. Elections on Special Road Tax in Townships or School Districts of Aiken County.—That in order to provide further funds for road work in the County of Aiken, in the State of South Carolina, any school district or township in said county may issue bonds and sell the same and apply the proceeds thereof to road work in the following manner: Upon receipt of a petition signed by one-third (1-3) of the freeholders of any school district or township in the said county, an election shall be ordered by the County Board of Commissioners of said county in the said district or township at which the qualified voters of such school district or township shall be allowed to vote for bonds or against bonds. The County Board of Commissioners of said county shall issue the said bonds and dispose of the same to the highest bidder, not below par.

1920, XXXI, 954.

(1170) § 29. Petition—Notice of Election.—The said petition shall state the total amount of the proposed bond issue, the rate of interest, the time such bonds are to run and the date of the election therefor, which election shall not be held without first giving at least thirty days' notice of the same, in at least one newspaper published in the said county.

1920, XXXI, 954.

(1171) § 30. Conduct of Election—Petitions—Results—Appeals.—The said County Board of Commissioners shall appoint three managers for each polling precinct in said school district or township, and if there is any regular voting precinct in the said school district or township, the notice of election shall name the managers and place, as well as the day and hour, for voting. The said managers shall tabulate the ballots cast at said election and shall certify the results of said election to the County Board of Commissioners, together with the ballots cast. The said managers and the Board of County Commissioners shall meet and declare the result of said election within one week from the date of the holding of the same, at which time the said County Board of Commissioners shall hear and determine any and all protests as to the validity or legality of said election, and any party interested therein may appeal from the decision of the Board to the Circuit Court, and to the Supreme Court of South Carolina, as appeals to the said Courts are now provided for by law.

1920, XXXI, 954.

(1172) § 31. **Oath of Voter—As in General Elections.**—Each voter before casting the said ballot shall subscribe to the oath of qualification now provided for by law in general elections and the manner of voting shall be the same as is now provided for by law for general election.

1920, XXXI, 954.

(1173) § 32. **Title of Bonds—Execution.**—Should the majority of the ballots cast at said election be in favor of issuing said bonds, the said Board of County Commissioners are hereby authorized to issue the same, the title to the same being “Coupon Bonds for Road Improvement in School District No. or Township No.,” and shall be signed by the County Supervisor, attested by the Clerk, and shall have the seal of the office of County Supervisor attached thereto: *Provided*, That the signatures of said Supervisor and Clerk may be lithographed or engraved on the coupon of said bond.

1920, XXXI, 954.

(1174) § 33. **Levy for Interest, Etc.**—That the Auditor of Aiken County is hereby authorized and directed to levy a sufficient amount of taxes to pay the interest on the said bonds annually, which shall not exceed six (6) per cent. per annum; and, also, an amount sufficient to create a sinking fund, to pay an amount each year proportionately with the time that the said bonds are to run, so as to retire said bonds at the maturity thereof, which amount shall be deposited in one of the banks of Aiken County, at a rate of interest not less than four (4) per cent. per annum.

1920, XXXI, 954.

ALLENDALE COUNTY

(1175) § 1. **County Board of Commissioners in Allendale County.**—The county government of Allendale County shall be administered by a Board of County Commissioners, hereinafter called the County Board, which shall be composed of a Chief Commissioner and two District Commissioners, who shall be appointed and hold office as hereinafter provided.

1921, XXXII, 109.

(1176) § 2. **Chief Commissioner and District Commissioners—Appointment—Term.**—The Chief Commissioner and said District Commissioners shall be appointed by the Governor upon the recommendation of the County Delegation in the General Assembly and each of said Commissioners shall take and return the usual oath of office, give bond as hereinafter provided and hold office for the term of two years, and until their successors are appointed and qualified.

1921, XXXII, 109.

(1177) § 3. **Districts of County—Bond of Commissioners.**—For the purpose of appointing said District Commissioners, the county of Allendale is hereby divided into two districts, designated and numbered one and two. District No. 1 shall comprise the townships of Allendale, Sycamore

and Wilson. And District No. 2 shall comprise the townships of Baldock, Bull Pond and Millett. One Commissioner, who shall be a *bona fide* resident of his district, shall be appointed for each of said districts, and shall, before entering upon the discharge of his duties, give bond for the faithful performance thereof, in the sum of one thousand (\$1,000.00) dollars. The Chief Commissioner shall be appointed from the county at large and shall, before entering upon the discharge of his duties, give bond for the faithful performance thereof in the sum of two thousand (\$2,000.00) dollars.

1921, XXXII, 109.

(1178) § 4. Duties of Chief Commissioner.—The Chief Commissioner shall be the Chairman of the Board of County Commissioners; shall have general supervision and jurisdiction over all public highways, roads, bridges and ferries; shall consult with and advise the District Commissioners as to the maintenance and improvement thereof; shall supervise generally such maintenance and improvements; and perform in general all the duties usually performed by supervisors in those counties where such office exists. He is required to attend with the respective District Commissioners the letting out and the receiving of any contract for public work, in any district, of the value of more than twenty (\$20.00) dollars. He shall also examine all claims against the county and shall submit the same to the County Board with his recommendation thereon. He is specially charged with seeing that the laws pertaining to the county government are faithfully observed and carried out, and he shall devote his entire time and attention to the duties of his office.

1921, XXXII, 109.

(1179) § 5. Duties of County Board—Apportionment of Road Fund—Records — Reports — Meetings — Quorum — Approval of Claims.—The County Board shall have charge and control of the chaingang and are specially charged with the conduct of all business of a general nature, such as the purchasing of machinery, mules, wagons, supplies, etc., electing and fixing salaries of overseers and guards for the chaingang. They shall apportion the county road fund, except the commutation road tax and any other special local revenue in any township, among the various townships of the county as nearly as practicable in proportion to (a) the assessed property value in each township; (b) the number of miles of public highway in each township; (c) the population of each township, and (d) the use required of the public highways in each township; and shall, except when employing the same in work done in connection with the State Highway Department, assign the chaingang for work in the respective townships upon the same basis. They shall keep in the Chief Commissioner's office a book showing the assignments of the county road fund in a like manner as the County Superintendent of Education keeps accounts of school funds by districts, and such books shall be a record of the Chief Commissioner's office, at all times accessible to the public; and they shall prepare and file quarterly with the County Treasurer, for publication by him in connection with any report required of his office, an itemized sworn statement of all moneys received by the Board, the sources from which the same were received and each and every claim or bill against the

county which shall have been approved or paid, or ordered paid, by the said Board, such statement to be totaled and to show what balance, if any, remains to the credit of said office or what deficit, if any, exists therein. They shall hold regular meetings at the county seat on the first Tuesday in each month, and such special meetings as may be necessary: *Provided*, That the presence of all three members of said County Board shall be necessary to constitute a quorum for the transaction of any business involving more than one hundred (\$100.00) dollars in any one case, or for the consideration and approval of claims against the county other than claims for the payment of the salaries of county officials fixed by law. Whenever the presence of all three members is not required to constitute a quorum, the Chief Commissioner and one District Commissioner shall constitute a quorum, in which event they must agree in order that their action may be binding.

1921, XXXII, 109.

(1180) § 6. Duties of District Commissioners—Board Not to Be Interested in Any Contract—Lists for Road Tax.—Each District Commissioner shall consult with and advise the Chief Commissioner in regard to any and all work done by the chaingang or by contract in his district: *Provided*, Said District Commissioners may be assigned active control and jurisdiction over all contract, repair work on roads and bridges in their respective districts that shall not exceed an expenditure in any one case of more than twenty (\$20.00) dollars, subject, however, to the general supervision and approval of the Chief Commissioner. They shall personally inspect all work done by contract in their respective districts, and shall vouch for and attest every claim therefor before it shall be submitted to the County Board; but neither of said District Commissioners, nor the Chief Commissioner, shall present any claim for approval, nor shall the County Board entertain, approve or order paid any claim, for any material, labor, hands, mules, horses, wagons or other things furnished by them, or either of them, or in which they, or either of them, are interested, either directly or indirectly. It shall be the duty of the District Commissioners to ascertain the names and postoffice address of all persons living in their respective districts who are liable for commutation road tax, and to file a list thereof with the Chief Commissioner not later than August 1 in each year. The Chief Commissioner shall compare such lists with the commutation tax list as prepared by the County Auditor and filed with the County Treasurer, and report to the District Commissioners not later than April 15 in each year, the names of all persons in the respective districts who have not paid the commutation road tax, and it shall be the duty of such District Commissioners to have warrants issued against all such persons who have failed or refused to pay such commutation tax.

1921, XXXII, 109.

(1181) § 7. Road Funds.—The road fund shall consist of (a) the sum apportioned by the County Board to each township; (b) the commutation tax for said township; (c) any special local tax in any township for road improvement; (d) the portion of the general road fund allotted to the

respective townships: *Provided*, The commutation tax received from each township shall, as nearly as practicable, be apportioned to and expended upon the roads of such township.

1921, XXXII, 109.

(1182) § 8. Quorum of Board.—In all matters to be decided by the County Board, including the payment of claims against the county, a majority of the three members thereof shall determine the matter and be binding, and any one of said District Commissioners with the Chief Commissioner shall constitute a quorum for the transaction of business, except the payment of claims against the county (other than claims for the payment of the salaries of county officials fixed by law) and the passing upon matters involving more than one hundred (\$100.00) dollars in any one case.

1921, XXXII, 109.

(1183) § 9. Clerk of Board.—The County Board may employ a clerk at an annual salary not exceeding four hundred (\$400.00) dollars, payable monthly: *Provided*, No member of said Board shall be elected as such clerk.

1921, XXXII, 109.

(1184) § 10. Compensation of Commissioners.—Each District Commissioner shall receive an annual salary of three hundred (\$300.00) dollars, payable monthly. The Chief Commissioner shall receive an annual salary of twelve hundred (\$1,200.00) dollars, payable monthly, and such actual necessary traveling expenses as he may incur, not exceeding twenty-five (\$25.00) dollars per month. None of said officers shall receive any further or additional salary, compensation, fees or expense money, either directly or indirectly, and the payment of any claim therefor is hereby declared to be unlawful and prohibited.

1921, XXXII, 109.

(1185) § 11. Board May Borrow—Form of Note.—The County Board in anticipation of the collection of taxes in any year may, with the written approval of the County Delegation in the General Assembly, borrow upon the faith and credit of the County of Allendale a sufficient sum or sums of money to pay, in advance of the collection of taxes therefor, the current ordinary county expenses, school claims and past due claims against the county, and, as security for the repayment of such loans, with interest, may pledge the taxes to be collected and applicable to the claims for the payment of which said money shall have been borrowed. The obligation for the repayment of such loans shall be substantially as follows: \$.....
Office of Board of County Commissioners, Allendale, S. C.,.....192....
On or before the.....day of 192...., the County of Allendale promises to pay unto....., or order, the sum of \$.....dollars with interest from.....at per cent. per annum; for money borrowed to pay (here insert the purpose of the loan) for the fiscal year beginning January 1, 192...., under authority of the Act of the General Assembly, passed at the regular session of 1921. To secure the payment of said sum, with inter-

est, if any be due, the taxes of said county to be collected and applicable to claims for the payment of which this money is borrowed as aforesaid for said fiscal year, are hereby pledged to the payee hereof, or order. Witness the hand and official seal of the Chairman of the said Board of County Commissioners, attested by the Clerk of said Board, the day and year first above written.

.....(L. S.)
Chairman, Board of County Commissioners.

.....(L. S.)
Clerk, Board of County Commissioners.

Countersigned :(L. S.)
County Treasurer.

Approved :

.....
Senator.

.....
Member House of Representatives.

That an obligation substantially in the above form shall, when duly executed and attested, constitute a valid claim against the County of Allendale, and the same shall be a prior and preferred lien upon the taxes pledged for the payment thereof: *Provided*, That no contracts shall be made, accounts approved or warrants drawn in excess of the appropriation made for any item in the annual supply Bill without the written approval of the County Delegation in the General Assembly first obtained.
1921, XXXII, 109.

(1186) § 12. **Commutation Road Tax in Allendale County.**—All able-bodied male persons of the age of twenty-one to fifty-five years, both inclusive, in the County of Allendale, shall be required annually to pay commutation or road tax of three dollars, except ministers of the gospel actually in charge of a congregation, teachers actually employed in teaching in the public schools, and persons permanently disabled in the military service of this State and citizens who served in the late War Between the States, and all students who may be attending any school or college at the time the commutation tax hereinabove provided for shall become due.

1919, XXXI, 90, 293; 1920, XXXI, 854.

(1187) § 13. **Nonpayment a Misdemeanor—Penalty.**—Any person or persons failing or refusing to pay said tax or perform labor on said roads as hereinabove provided shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than five dollars nor more than fifty dollars, or imprisonment for not more than thirty days.

1919, XXXI, 90, 293; 1920, XXXI, 854.

(1188) § 14. **Return—Lists—Penalty for Nonreturn.**—Any person in said county liable for said road tax shall return himself for taxation for such tax to the County Auditor of said county between the first day of January and the twentieth day of February of each year, and the County Auditor is hereby authorized and directed to solicit and take such returns. That

after the said returns have been made the County Auditor shall make out and deliver to the Township Board of Assessors of the respective townships of said county, lists of the names of the persons who have returned themselves for taxation for such tax in their townships. The said Township Board of Assessors shall add to the list the names of all persons in their respective townships liable for said tax, but who have not returned themselves to the County Auditor. Said County Auditor in each and every year, on or before the 15th day of October, shall make out and deliver a list of the names of all persons liable for said road tax in said county, alphabetically arranged by townships, to the County Treasurer of said county: *Provided*, That the Auditor shall add a penalty of fifty cents to each person liable for said commutation tax who has not returned himself for such tax as hereinabove required.

1919, XXXI, 90, 293; 1920, XXXI, 854.

(1189) § 15. **Collection of Tax—Use of Proceeds.**—The County Treasurer of Allendale County is hereby authorized and directed to collect said tax and turn the same over to the road fund for the said county, the same to be expended for road purposes in the townships from which it is collected.

1919, XXXI, 90, 293; 1920, XXXI, 874.

(1190) § 16. **Record of Payments.**—The said County Treasurer shall keep a book in which shall be recorded by townships the names of those paying said commutation or road tax.

1919, XXXI, 90, 293; 1920, XXXI, 874.

BAMBERG COUNTY.

(1191) § 1. **Supervisor to Keep File Book of Claims—How Claims Filed.**—The Supervisor of Bamberg County shall keep a book, called "File Book of Claims," in which shall be entered all claims as presented. This book shall be printed and ruled with appropriate columns, showing: (1) Number of claim. (2) When presented. (3) In whose favor. (4) Nature of claim. (5) Amount claimed. (6) Amount disallowed. (7) Amount allowed. (8) Item number in Supply Act to which chargeable. (9) Remarks. The number of the claim shall not be entered upon the book until the claims shall have been allowed and entered on the "Claims Classification Book," hereinafter provided for, and shall then be made to conform to the number thereon. A separate claim must be filed for each account chargeable to any particular item in the County Supply Act, or to any subdivision thereof. The principal of each note for money borrowed in anticipation of the collection of taxes shall be paid directly by the County Treasurer, the said Treasurer holding said note as his voucher for the principal thereof and the lender filing claims with Supervisor in the usual form for the interest, but not for principal; except where a specific appropriation shall have been made for the payment of a particular note.

1917, XXX, 230.

(1192) § 2. **Book for "Classification of Claims Allowed"—Publication of Monthly Statement.**—The County Supervisor shall keep a book called "Classification of Claims Allowed," in which shall be entered all claims

allowed, in numerical order. This book shall be printed and ruled with appropriate columns, showing: (1) Number of claim. (2) When presented. (3) In whose favor. (4) Nature of claim. (5) Warrant number. (6) Amount claimed. (7) Amount disallowed. (8) Amount allowed. (9) Columns headed as in the County Supply Act for Bamberg County, with a statement of the amount appropriated, the balance of the amount appropriated subject to future claims which may be allowed or the balance of overallowed for each of said items in the County Supply Act, at the head of each column. (10) Total. Within the first ten days of each and every month the County Supervisor shall publish one time in a newspaper of the county, selected by him as calculated to give full publicity thereto, a statement under his hand, attested by the Clerk of the Board, and approved by the County Auditor, showing the exact financial condition of each item at the end of the preceding month, as the same may appear from this book, Subdivision 9, briefly describing the item by title as in the County Supply Act. The advertising charges therefor shall not exceed \$2.00 for each insertion: *Provided*, That under Subdivision 9, above, for the item "Roads and Bridges," in the County Supply Act, there shall be five subdivisions, or distributions, as follows: (a) Repairs to roads. (b) Lumber, terra cotta, etc. (c) Machinery, tools, etc. (d) Stables (which shall include stock, stock feed and harness). (e) Convict maintenance (this item to include only convict food, clothing and guarding salaries).

1917, XXX, 230.

(1193) § 3. **Entries to Be in Ink—Balancing.**—All entries, footings and amounts carried forward, in the book hereinbefore provided for, shall be made in ink. Each page shall show perfect balancing of all columnar additions, and of all footing carried forward.

1917, XXX, 230.

(1194) § 4. **Regulation as to Drawing of Warrants—No Debts to Exceed Appropriation—Proviso.**—The County Supervisor is hereby prohibited from drawing any warrant upon the County Treasurer to be paid out of the several funds specifically appropriated for any purpose other than that for which the same shall have been so appropriated; and it shall be unlawful for the County Treasurer to pay any such inhibited warrant. It shall be unlawful for the County Supervisor, County Board of Commissioners, or any member thereof, to create by contract, express or implied, any obligation against the county which, with the obligation then existing and chargeable to any particular item of appropriation, shall exceed the amount specifically appropriated therefor: *Provided*, Should the County Supervisor, County Board of Commissioners or any member thereof violate the provisions of the paragraph next preceding in this Section, the claim resulting therefrom shall be declared null and void as against the county, and the officer offending shall be held responsible to the claimant therefor upon his official bond. It is hereby made the duty of the County Supervisor and County Board of Commissioners to so apportion the appropriation for maintenance of convicts and road working organization as to cover the total expenses on account of these items for the entire fiscal year for which they may be respectively appropriated.

1917, XXX, 230.

(1195) § 5. Warrant to State Item on Account of Which Drawn.—

The County Supervisor shall state upon each warrant drawn by him upon the County Treasurer the item of the appropriation in the County Supply Act, on account of which it shall have been drawn; he shall also, in a tabulated form upon said warrant, state the amount of such appropriation, the amount theretofore drawn against it, the amount of the warrant then drawn and the balance against which future warrants may be drawn. No warrant shall be paid by the County Treasurer or be allowed as a credit to him in his settlement unless it conform with this requirement.

1917, XXX, 230.

(1196) § 6. Procedure Where Appropriation Exceedd—Procedure as to Past Indebtedness.—

That whenever the appropriation for any specific item of county expenses, as provided in the County Supply Act of any year, shall have been exhausted by warrants of the County Supervisor upon the County Treasurer, the payment of further claims chargeable to the account of such item shall be immediately suspended. Such claims in excess of the appropriation, after having been audited, allowed and entered upon the book of "Classification of Claims Allowed" for the year to which they belong, shall be transferred in red ink to the same book for the succeeding year; numbered with the claims for that year; the number endorsed upon said claims in red ink; the amounts distributed in the item column for past indebtedness; and in the column headed "Nature of Claim" shall be entered, "Past Indebtedness of 19—, No.—." Upon the book from which the claim shall have been transferred, opposite the claim, shall be noted, "Transferred to 19—, No.—." In the County Supply Act for the succeeding year these claims shall be provided for by an appropriation in the item "Past Indebtedness Claims," wherein they shall be classified by numbers, nature and amount. A certified schedule of these claims, itemized and classified, shall be furnished by the County Supervisor to the County Delegation during the first week in January of every year. At the annual settlement with the Comptroller General all cash balances to the credit of the revenue of the county for all county purposes, and all uncollected assets, for the fiscal year to which said past indebtedness claims belong, shall be passed to credit of the revenue of the county for all county purposes for the fiscal year to which said past indebtedness claims shall have been transferred: *Provided*, That this Section shall not apply to obligations incurred in violation of Section 4, but is intended to apply only to such obligations of the county as are not within the control of the County Supervisor or County Board of Commissioners.

1917, XXX, 230.

(1197) § 7. Unappropriated Income to Be Applied to Certain Claims.

—All income to the county from fines, fees, costs, licenses, commutation road tax, Register of Mesne Conveyances' office, and from all other sources, not otherwise appropriated by law, shall be paid to the County Treasurer and be applicable to all claims for the payment of which the appropriations for the year on account of county expenses shall have been made.

1917, XXX, 230.

(1198) § 8. Auditor to Examine Books.—It shall be the duty of the County Auditor, on or before the 10th of each and every month, to personally examine the several books herein prescribed for the County Supervisor, such inspection covering the transactions for the preceding month, and to verify, by actual count of cash and certificates of deposit, the cash reported on hand by the County Treasurer. If, upon inspection, he shall find that they are correct, and conform with the requirements of this Article, he shall endorse upon each one so found the word "Approved," and sign and date the same; and he shall report to the Grand Jury at its next session any delinquencies or failure upon the part of either of said officers to comply with the requirements of this Article.

1917, XXX, 230.

(1199) § 9. Statement to Be Made Up by Auditor.—In the annual settlements with the County Treasurer, supervised by the Comptroller General, the County Auditor shall make up a full statement of the receipts and disbursements of county taxes and other income for the fiscal year ending December 31 preceding. Each fiscal year, beginning January 1 and ending December 31, shall be kept separate and distinct at whatever time of the year said settlement may be made.

1917, XXX, 230.

(1200) § 10. Auditor to Keep "Fines and Licenses" Book—Clerk and Magistrates to Present Books.—The County Auditor shall keep a book called "Fines and Licenses," in which shall be entered all fines, fees, costs and licenses reported to him as having been collected by the Clerk of the Court and Magistrates of the county. To this end, it is hereby made the duty of the Clerk of Court and of the Magistrate in Bamberg County, within the first ten days of each of the months of January, April, July and October, to present to the County Auditor their books, showing the collections made by them during the preceding quarter on account of fines, fees, costs and licenses, from which the Auditor shall enter upon his books the several items of collection. He shall thereupon check up the same with the County Treasurer's Daily Cash Receipts Book. The County Auditor, after the expiration of the ten days hereinbefore fixed for such reports, shall mail a notice to the officer failing to comply with this Section, requiring him within three days thereafter to submit his books as herein provided; and upon his failure to do so, the said officer shall be reported by the County Auditor to the Grand Jury at the next session thereafter for such action as the Court may deem proper.

1917, XXX, 230.

(1201) § 11. Publication of Certain Reports by Supervisor of Bamberg County Required.—The County Supervisor of Bamberg County shall publish quarterly in some newspaper published in the County of Bamberg during the first week in April, July, October and January a full statement of the claims audited by the Board of County Commissioners during the quarter next preceding said publication. The said statement shall show, as published, the file number of the claim, the amount claimed, the amount allowed, the nature of claim or service rendered, and the name of the claim-

ant. The Supervisor shall also publish monthly a verified statement showing total expenditures for the month, what balance, if any, remains to the credit of said office, or what deficit, if any.

1914, XXVIII, 621.

BARNWELL COUNTY.

(1202) § 1. **Offices of County Supervisor and County Commissioners Abolished in Barnwell County.**—That the offices of County Commissioners and County Supervisor in and for Barnwell County, as at present constituted, be, and they are hereby, abolished.

1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1203) § 2. **Board of Three Commissioners—Appointment and Term.**—That a Board of County Commissioners of Barnwell County to consist of three members is hereby created, to be appointed by the Governor as hereinafter provided for a term of two years, to be coterminal with the office of Governor, and until their successors are appointed and qualified.

1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1204) § 3. **Two Commissioners to Be Appointed on Recommendation of Legislative Delegation—Salaries—Appointment and Salary of Supervisor of Roads and Bridges.**—Two of said Commissioners shall be appointed solely upon the recommendation and nomination of a majority of the Legislative Delegation for said county, and shall each receive as compensation an annual salary of five hundred (\$500.00) dollars, to be paid in monthly installments. The third member shall be appointed by the Governor as now provided by law; shall be known as the Supervisor of Roads and Bridges, and shall receive as compensation a salary of eighteen hundred (\$1,800.00) dollars per annum, payable in monthly installments.

1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1205) § 4. **Chairman—Duties—Bond.**—The said Board of Commissioners shall elect from their number a Chairman, upon whom shall be devolved by the Board, in its discretion, such executive and official duties as it may deem advisable, and shall each enter into bond in the sum of one thousand (\$1,000.00) dollars, conditioned for the faithful discharge of his duty.

1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1206) § 5. **Duties of Board.**—The duties of said Board of Commissioners shall be as now provided by law with reference to the affairs of said county for the Supervisor and Board of County Commissioners.

1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1207) § 6. **Clerk—Duties—Compensation.**—The said Commissioners are empowered to employ a competent person as Clerk thereof, who shall be required to keep the office of the Commissioners open daily for the transaction of business with the public, and who shall keep an accurate account of all the actings and doings of the Commissioners, and shall perform such

other duties as may be imposed by said Commissioners. The compensation of the Clerk shall be fixed by said Commissioners and shall be as low as may be consistent with efficient service; and shall be required to enter into such bond as in the judgment of the Commissioners may seem proper.

1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1208) § 7. Powers and Duties of Supervisor of Roads and Bridges.—The said Supervisor of Roads and Bridges shall have in charge and manage the construction and repair of all public roads and bridges of the county, under the general direction of the full Board. He shall also have charge and control of the convicts sentenced to work upon the public works of the county; and said convicts shall not be required to perform more than a reasonable day's work which is required of other laborers working for wages, and shall be fed as other laborers are fed and humanely treated.

1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1209) § 8. Expert Advice.—The said Board of County Commissioners shall have the power to employ such professional or technical advice or service as they, in their judgment, deem advisable: *Provided*, That they shall not exceed the appropriation made for such service.

1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1210) § 9. Purchase of Supplies.—The said Board of County Commissioners shall, immediately upon qualifying and entering upon the discharge of their duties, make an estimate of the amount of supplies necessary to and for the needs of the county for the first ensuing month thereafter, and shall continue every thirty days to make such estimate, and shall advertise and let to the lowest bidder who is willing to furnish said supplies: *Provided*, That said Board shall have the right to let out the said contract to more than any one bidder, so that exclusive dealers in any one article shall have the right to bid thereon.

1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1211) § 10. Payment of Claims.—It shall be unlawful for the said Board of Commissioners, as a whole or individually, to approve any claim against said county without due proof thereof, or to pay any claim out of any fund other than what has been specifically appropriated therefor.

1917, XXX, 234; 1919, XXXI, 201; 1920, XXXI, 757.

(1212) § 11. County Attorney.—The said Board of County Commissioners shall have the power to employ counsel at an annual salary of two hundred (\$200.00) dollars; whose duty it shall be to advise the said Board in all matters where legal advice is necessary, and to defend all suits brought against said county, and to bring all actions for said county whenever a cause may arise in favor of said county: *Provided*, That said Board shall have the right to pay any extra expense that counsel may incur by reason of additional services other than the usual legal services hereinbefore required.

1919, XXXI, 201.

(1213) § 12. Commissioners to Keep Record and Publish Statement.—

It shall be the duty of the County Board of Commissioners of Barnwell County to keep on file in their office, open to public inspection, a complete record of all expenditures of the county, and all funds devoted to the building or improvement of roads and bridges in the county arising out of special levies, commutation tax, local bond issues or other sources, and of all moneys and other property of the county, including live stock, machinery, working tools, wagons and carts, the said record to show the dates of receipt and disposal and disbursement of the same, the sources of receipt, the amount or amounts paid for personal property, dates of purchase and sale, by whom sold, name of purchaser, amount sold for, date and manner of loss, if any; and the said County Commissioners shall publish quarterly a complete statement of the same in one of the county newspapers; the said statement to contain a list of all expenditures paid or approved by them during the quarter next preceding such publication, and a statement of all moneys expended in the county for road improvements and other purposes, either by the county or out of the proceeds of local bond issues, special levies or commutation tax; and the custodians of all funds devoted to the improvement or building of roads and bridges in the county are hereby required to file quarterly with the County Board of Commissioners a full statement of all their expenditures in time for the publication of accounts herein required: *Provided*, That the said County Commissioners shall not be required to publish any items now required by law to be published by the County Treasurer.

1916, XXIX, 847.

(1214) § 13. To Keep Record of Prisoners.—It shall be the duty of the said County Commissioners to keep a record in their office at all times, open to public inspection, a complete list of prisoners in the county jail, showing the respective dates of their confinement and discharge or removal from said jail; also a complete record of all convicts confined on the public works of the county, showing the respective dates of their confinement and discharge, release or escape, length of sentence of each, and amounts of fines imposed or collected. Such record shall be kept in a book provided therefor by the Board of County Commissioners.

1916, XXIX, 847.

(1215) § 14. To Procure Books.—The said County Board shall procure and keep on hand suitable books necessary for keeping a systematic record of the matters and things set forth in this Article.

1916, XXIX, 847.

(1216) § 15. County Officers to Supply Written Information.—It shall be the duty of all county officers to furnish in writing, whenever requested, all such information pertaining to their respective offices as will enable the County Commissioners to carry into effect the provisions of this Article.

1916, XXIX, 847.

(1217) § 16. To Establish Mess Hall at Poor House.—The County Board of Commissioners, upon the approval of the members of the Senate

and House of Representatives from Barnwell County, shall be authorized to establish mess hall for the inmates of the county Poor House, the same to be operated and conducted in conformity with diet lists to be furnished by the County Physician; and to employ such help as the County Physician may need in caring for the sick inmates of the said Poor House. The management of the Poor House, securing of water supply, and other necessary conveniences shall be conducted subject to the approval of the Senator.

1916, XXIX, 847.

(1218) § 17. Diet List of Prisoners' Food.—The food of all prisoners and convicts shall be in conformity with diet lists to be furnished the County Commissioners by the County Physician.

1916, XXIX, 847.

(1219) § 18. Inspection of Convicts—Report.—The Chairman of the County Board of Commissioners is hereby required to appoint one of the Commissioners to visit the chaingang monthly and inspect the convicts, cages, tents, kitchens, clothing and general conditions as to health of convicts, and the condition of live stock and other county property, and to report monthly his findings as to the matters herein contained, the said report to be filed in the office of the County Commissioners as a permanent public record.

1916, XXIX, 847.

(1220) § 19. Disposition of Appropriation—Condition of Contracts—Penalty.—That the appropriation made annually can only be used for the purpose designated, and any surplus remaining at the end of the fiscal year, shall be carried over to the same account the next year, and to this end the County Treasurer shall not pay any warrants, unless to be plainly written thereupon the account for which it is drawn: *Provided*, That no contract shall be made, account approved, nor warrant drawn in excess of the appropriation, without the approval of the Senator and a majority of the members of the House of Representatives of Barnwell County being first obtained. Any person or officer violating this Section shall be subjected to the penalty imposed by Section — of the Code of Laws of South Carolina, 1922, Vol. I (Criminal Code): *Provided, further*, That in the disbursement of the general or contingent fund, the consent of the Senator and majority of the members of the House of Representatives shall first be obtained.

1916, XXIX, 847.

(1221) § 20. Violation Punishable by Suspension.—Any violation of the preceding Section by any member of the County Board of Commissioners or Supervisor shall be punished by suspension from office by the Governor.

1916, XXIX, 847.

(1222) § 21. List of Expenditures of Barnwell County Published—Exceptions.—The County Treasurer of Barnwell County shall be required to publish quarterly in one of the county newspapers a list of all the expenditures of said county paid out from his office, excepting such claims

and expenditures as are required by law to be published by the County Board of Commissioners, which said claims and expenditures, so required by law, to be published by said County Board, the Treasurer shall not publish.

1915, XXIX, 430.

(1223) § 22. Commissioners to Let Contracts for Road Work and Supplies—Claims.—The County Commissioners of Barnwell County shall make all contracts for all improvements of public roads and bridges or buildings and for the purchase of supplies or employment of labor or service of any kind or the expenditure of any public funds of Barnwell County for any purpose whatsoever and shall not audit or pay any claim filed against said county unless the same be fully itemized and verified, and in no case shall they audit or approve claims in excess of the appropriations without the written consent of the entire delegation to the General Assembly first had and obtained.

1916, XXIX, 896.

(1224) § 23. Supplies to Be Weighed.—The County Board of Commissioners are hereby authorized and required to place at the county warehouse in Barnwell and at each chaingang, located in the county, scales upon which shall be weighed all provisions and feedstuffs delivered by the county to the chaingangs or any other person in the service of the county, and the chaingang superintendent shall report to the County Commissioners once each week the amount received by him from the warehouse, which said report shall be filed in the office of the County Supervisor for comparison with the purchases made by the county and the delivery books of the warehouse.

1916, XXIX, 896.

(1225) § 24. Road Repairs.—The County Supervisor under the direction of the County Board of Commissioners shall cause all roads and bridges to be worked and kept in good repair by a section of the county chaingang: *Provided*, That the Supervisor shall be required to look after all roads and bridges in the different townships in Barnwell County, and have any and all roads and bridges worked when so directed by the County Board of Commissioners, the same to be paid for by the County Board of Commissioners out of the commutation tax fund held by the County Treasurer to the credit of the township in which such repairs have been made: *Provided, however*, The County Commissioners shall have full control of chaingang and shall direct where and when they shall work.

1916, XXIX, 896.

(1226) § 25. Disposition of Funds in Certain Towns.—All funds collected as commutation tax in the Township of Williston and Blackville shall be under the supervision and control of the Township Commissioner elected in said townships respectively, the same to be expended in the improvement and repair of roads and bridges in their respective townships.

1916, XXIX, 896.

(1227) § 26. **Statement to Be Filed by Supervisor.**—Provided further that the Supervisor shall file in the office of County Board of Commissioners every Monday morning an itemized statement of his doings as Supervisor, roads and bridges inspected, number of hours spent with chaingang, name of road in township worked, character of work, number of miles worked, number of miles clayed, the amount of clay and method of putting down on roadbed.

1916, XXIX, 896.

(1228) § 27. **Commutation Road Tax in Barnwell County.**—That all able-bodied male persons in the County of Barnwell, between the ages of twenty-one and fifty-five years, inclusive, shall be required to pay a commutation tax of three (\$3.00) dollars per annum to the County Treasurer, at the same time State and county taxes are payable, the same to be expended for road purposes in the townships from which it is collected; and such persons failing or refusing to pay such commutation tax shall be required to perform in lieu thereof five days, work upon the public roads in the township in which they reside, subject to the order of the Supervisor of roads: *Provided*, That the provisions of this Section shall not apply to ministers of the gospel actually in charge of a congregation, teachers actually employed in teaching in the public schools, and students who may be attending any school or college at the time when the commutation tax hereinbefore provided for shall become due.

Civ. '12, § 1983; 1911, XXVII, 183; 1920, XXXI, 852.

(1229) § 28. **County Auditor to Prepare List of Those Liable.**—It shall be the duty of the County Auditor for said county to make out a list of all persons liable to road duty in his county, alphabetically arranged by townships, and deliver said list to the County Treasurer on or before the 15th day of October in each year, and it shall be the duty of such rural policemen as may be in office and the Board of Assessors of said county to aid the County Auditor in the preparation of such list, by furnishing him the names of persons who are liable for said commutation tax.

Civ. '12, § 1984; 1911, XXVII, 183.

(1230) § 29. **Returns.**—Every person in said county liable for said road tax, shall return himself for taxation to the County Auditor for the payment of such tax, before the first day of May, and the County Auditor is hereby authorized and directed to solicit and take such returns. Hereafter the County Auditor shall make out and deliver to each member of the Board of Accessors and such Rural Policemen or other county police officers as are in office, lists of the names of the persons who have returned themselves for taxation in the respective townships of such officers. Said officers shall furnish the County Auditor with the names of all persons liable to road duty in their respective townships who have not returned themselves for such taxation. The County Auditor in each year hereafter, on or before the 15th day of October, shall make out and deliver a list of the names of all persons liable to road tax in said county, alphabetically arranged by townships, to the Treasurer of the said county: *Pro-*

vided, That the Auditor shall add a penalty of fifty cents to the amount of taxes due by each person who had not returned himself as herein provided.

Civ. '12, § 1985; 1911, XXVII, 183.

BEAUFORT COUNTY.

(1231) § 1. **County Commissioners of Beaufort County to Be Members of Board of Equalization.**—The County Commissioners of Beaufort County shall be *ex officio* members of the County Board of Equalization for said county, and shall have all the duties, powers, privileges and compensations as are now devolved upon the County Board of Equalization of said county, so far as said duties, powers and privileges relate to the assessment and valuation of property in the County of Beaufort, and that said County Commissioners shall be required to act in conjunction with the said County Board of Equalization in the performance of such duties as are now by law required of the County Board of Equalization.

1917, XXX, 114.

(1232) § 2. **Duties of Township Commissioners of St. Helena as to Drainage Devolved on Special Commission.**—The duties of the Township Commissioners of Saint Helena Township, in so far as they include the duties of Drainage Commissioners of Saint Helena Township, in so far as they include the duties of Drainage Commissioners, are hereby devolved on a special Drainage Commission, which shall be composed of three members, to wit: Wm. Keyserling, W. P. Gibbes and W. P. Roberts.

1917, XXX, 114.

(1233) § 3. **Certain Claims Not to Be Paid—Penalty.**—The Supervisor of the County of Beaufort shall not draw his warrant on the County Treasurer to pay any claim which may be approved by a Board of County Commissioners, any of whom have been appointed without the recommendation and approval of the Senators and members of the House of Representatives of said county. Any violation of this provision by the Supervisor of Beaufort County is hereby declared to be a misdemeanor, and, on conviction thereof, the Supervisor shall be punished by a fine of not exceeding two hundred dollars or by imprisonment not exceeding one year, or by both, in the discretion of the Court.

1912, XXVII, 560.

BERKELEY COUNTY.

(1234) § 1. **Persons Liable for Commutation Tax in Berkeley County—Exemptions.**—All able-bodied male persons from the age of twenty-one to fifty years, both inclusive, in the County of Berkeley, shall be liable to road duty, except ministers of the gospel actually in charge of a congregation, teachers employed in the public schools, school trustees, and all persons actually employed in the quarantine service of the State, and all students who may be attending any school or college at the time when the commuta-

tion tax hereinafter provided for shall become due: *Provided*, That any person claiming exemption from the provisions of this Section on the ground of physical disability, where such disability is not apparent, shall be required to produce a certificate of disability from a regular physician, dated within twelve months.

Civ. '12, § 1986; 1911, XXVII, 175.

(1235) § 2. Persons Required to Pay Tax.—All persons who are liable to road duty in said county as fixed by preceding Section in lieu of performing or causing to be performed, labor upon the public highways of said county, shall be required to pay to the County Treasurer of said county an annual commutation or road tax of three dollars per head, which shall be expended upon the public roads of the county, and as nearly as possible in the township from which collected; said tax to be paid at the same time and subject to the same penalties as attached to other State and county taxes: *Provided, however*, That if any one liable to road duty in the county of Berkeley, as provided for in this Section, performs or causes to be performed, six days work of eight hours each, on the public roads of the county, under the supervision or direction of the County Commissioners, or the Road Overseer and presents a certificate from either of them to the County Treasurer, that he has well and truly performed such duty, then the County Treasurer shall accept such certificate in lieu of the road tax, and place the certificate to the credit of the parish in which the work has been done.

Civ. '12, § 1987; 1911, XXVII, 175; 1913, XXVIII, 25; 1920, XXXI, 961.

(1236) § 3. Returns.—Every person in said county liable for said road tax shall return himself for taxation for such tax to the County Auditor of said county in each and every year between the first day of January and the twentieth day of February, and the County Auditor is hereby authorized and directed to solicit and take such returns. Thereafter the County Auditor shall make out and deliver to the Parish Commissioners of the several parishes of said county, lists of the names of the persons who have returned themselves for taxation for such tax in their parishes. Said Parish Commissioners shall add to said lists the names of all persons in their respective parishes liable for said tax, but who have not returned themselves to the County Auditor. Said County Auditor in each and every year, on or before the fifteenth day of October, shall make out and deliver a list of the names of all persons liable for said road tax in said county, alphabetically arranged by parishes, to the County Treasurer of said county.

Civ. '12, § 1988; 1911, XXVII, 175.

(1237) § 4. County Treasurer to Keep Record—Failure to Pay Tax a Misdemeanor.—Said County Treasurer is hereby authorized and directed to collect said tax, and to turn the same into the road fund for said county. Said County Treasurer shall keep a book in which shall be recorded by parishes the names of those paying said commutation or road tax. Any person liable to road duty in said county failing to pay said commutation tax shall be deemed guilty of a misdemeanor, and, upon conviction thereof, fined not less than five dollars nor more than twenty dollars, or be confined at hard labor for a period of twenty days.

Civ. '12, § 1989; 1911, XXVII, 175.

(1238) § 5. **Overseers—Statements to Be Approved.**—Said overseer shall make a sworn itemized statement showing to whom the money is paid and the kind and extent of the work done. Said statement shall be presented to the Board of County Commissioners, and, upon their approval, a check upon the County Treasurer issued. The County Treasurer shall pay for said check out of the funds appropriated for that purpose.

Civ. '12, § 1990; 1911, XXVII, 175; 1913, XXVIII, 26; 1920, XXXI, 962.

(1239) § 6. **Misdemeanor for Overseer to Fail to Perform Duties.**—Any one who accepts the position of overseer and when directed by the Commissioners shall fail or refuse to perform his duties as overseer, shall be guilty of a misdemeanor, and, upon conviction, be sentenced to pay a fine of not less than ten dollars nor more than fifty dollars, or be confined at hard labor upon the public works of the county for a period of thirty days.

Civ. '12, § 1992; 1911, XXVII, 175.

(1240) § 7. **Contract or Overseer Plan.**—As a supplement to the chain-gang work in said county, the Board of County Commissioners are hereby authorized, whenever practicable, to have the roads worked by contract or by the overseer plan.

Civ. '12, § 1993; 1910, XXVI, 656; 1920, XXXI, 961.

(1241) § 8. **Board of County Commissioners and County Treasurer of Berkeley County to Publish Monthly Reports.**—The Board of County Commissioners and County Treasurer of Berkeley County be, and they are hereby, required to publish a monthly statement of their acts and doings in the said county and show an itemized statement of all moneys paid out and moneys received by them. That said publication shall appear in a newspaper published in Berkeley County, the week following the first Monday of each month. That the said Board of County Commissioners and County Treasurer are hereby authorized and empowered to pay the sum of not exceeding one hundred (\$100.00) dollars per annum for the said publication.

1919, XXXI, 100; 1920, XXXI, 961.

(1242) § 9. **County Highway Commission for Berkeley County—Personnel—Term.**—That a Highway Commission for Berkeley County is hereby created. Said Commission shall be composed of three members to be appointed by the Governor, upon the recommendation of a majority of the members of the General Assembly, together with the foreman of the Grand Jury and the County Chairman of Berkeley County, their term of office shall be for two years, and until their successors have qualified, unless sooner removed by the Governor, upon the recommendation of a majority of the members of the General Assembly of Berkeley County; and the members of the said Commission shall be selected one from the eastern, one from the middle, and one from the western portions of the County of Berkeley.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1243) § 10. **Chairman—Bonds.**—The said Highway Commission, as soon as appointed and qualified, shall elect one of their number as Chairman, each member of said Commission shall give bond in the sum of two thousand (\$2,000.00) dollars, to be approved by the Clerk of Court in and for Berkeley County.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1244) § 11. **Duties.**—The said Commission shall at once arrange for a systematic working of the roads and bridges in the several townships of the county; said Commission shall appoint one or more overseers in each township whose duty shall be to supervise and work roads, and build and repair bridges in their several townships, subject to the approval of that member of the Commission in charge of said township; said overseers, or overseer, shall not work less than ten men in each gang, and shall not pay more than two (\$2.00) dollars per day for ten hours' work, said overseer to receive for his services not more than three (\$3.00) dollars per day. All work must be done in a workmanlike manner and to the satisfaction of the Highway Commissioners.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1245) § 12. **Powers—Contracts—Road Equipment—Chaingang.**—The said Highway Commission shall have the same powers that are now possessed and exercised by the Supervisor and County Board of Commissioners over the public highways and bridges in each township of the county; no Commissioner, however, shall have the right to give or let a contract for road building or bridge work to cost more than twenty-five (\$25.00) dollars without having another Commissioner from the nearest district present at the time of letting such contract and inspecting and receiving such work, the said Commission shall have exclusive management of the chaingang, trucks, and all equipment of the county now being used by the Supervisor for work upon the public roads, highways and bridges of the county, that the chaingang, together with the other equipment, shall be delivered to, and managed by, the respective members of the Highway Commission herein provided for, each member to have charge of the same for four months during each year, and to work the same forty days in each parish in his district.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1246) § 13. **Road Districts.**—The said County of Berkeley shall be divided into three districts, to be known as District No. 1, District No. 2, and District No. 3, and the following townships shall compose District No. 1, namely: St. Thomas and St. Dennis, St. James, Santee, and Second St. Stephens; and the following townships shall compose District No. 2, namely: First St. Johns, Second St. Johns, and First St. Stephens; and the following townships shall compose District No. 3, namely: Eutaw, and First and Second Goose Creek. The eastern portion of the county shall be known as District No. 1, the middle portion of said county shall be known as District No. 2, and the western portion of said county shall be known as District No. 3.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1247) § 14. **Commutation Road Tax—Use of Tax Funds.**—All moneys that are derived by taxation from the special road tax and the commutation tax, which is hereby fixed at three (\$3.00) dollars per capita, for the building and repairing of public highways and bridges, shall be expended as nearly as is practicable in the township from which the same is derived, except that the funds derived from taxes on railroads, timber and other sources shall be equally divided among and expended in the respective townships of the County of Berkeley.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1248) § 15. **Engineer.**—That whenever, in the judgment of the Highway Commission, it is necessary, they may employ a Civil Engineer, whose fees and expenses shall not exceed six hundred (\$600.00) dollars per annum.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1249) § 16. **Office of Road Supervisor Abolished.**—The office of Road Supervisor for Berkeley County is hereby abolished, the duties of Supervisor now being devolved upon the Highway Commission herein provided for. Said Highway Commission is hereby authorized and empowered to borrow all moneys necessary for general county purposes, with all the powers and privileges heretofore possessed and exercised by the Road Supervisor and County Board of Commissioners, with full power to pledge the taxes of the county as collateral for said loans.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1250) § 17. **Meetings.**—That said Commission shall meet on the first Monday in each month at the Court House to approve, audit and issue vouchers for claims against the County of Berkeley, and may meet at such other and further times, at the Court House, or elsewhere, as the business of the said Commission may require.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1251) § 18. **Tax Returns—Duties of Auditor.**—That the members of the said Highway Commission shall take tax and timber returns in their respective districts and the Auditor shall not take returns or make abatements or alterations in such returns as taken and filed by said Highway Commissioners unless authorized and directed so to do by the Board of Equalization for the County of Berkeley.

Any violation in this provision shall be considered as a breach of the condition of the official bond of the said Auditor.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1252) § 19. **Compensation.**—That the said Highway Commission shall receive as a salary for services, as herein provided for, the sum of one thousand (\$1,000.00) dollars each per annum, payable monthly, except the Chairman of the Commission, who shall receive ten hundred and fifty (\$1,050.00) dollars per annum.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1253) § 20. **Clerk—Attorney.**—That the said Highway Commission shall have, and the right is hereby granted to it, to employ a Clerk to said Commission at a salary of three hundred and fifty (\$350.00) dollars per annum, and a legal adviser at a salary of three hundred (\$300.00) dollars per annum.

1914, XXVIII, 137; 1916, XXIX, 966; 1917, XXX, 263, 371; 1920, XXXI, 961.

(1254) § 21. **When Effective.**—This Article shall go into effect March 11, 1920, provided the present Road Supervisor and Highway Commissioners resign; otherwise it shall go into effect at the expiration of the present terms of said officials or at such time as they may resign.

1920, XXXI, 961.

BERKELEY AND CLARENDON COUNTIES.

(1255) § 1. **How Township Commissioners Appointed.**—The Governor upon the recommendation of the delegation in the General Assembly, shall appoint three Township Commissioners in each township in the Counties of Berkeley and Clarendon, whose duty it shall be to appraise and value all the taxable property in their respective townships for any and all purposes, and to receive the returns for taxation.

Civ. '12, § 1016; 1911, XXVII, 53.

(1256) § 2. **Duties.**—The said Board of Township Commissioners, for the purpose of taking said returns and appraising and valuing the property, shall attend at a convenient point in their respective townships as many days as may be necessary, not exceeding ten, and shall receive as compensation for their services two (\$2.00) dollars per day each for not exceeding ten days in any one year. The said Board of Township Commissioners shall annually, at the time of taking the list of the personal property, also take the list of all real property in their respective townships subject to taxation, and of all new structures and previously listed, and of all old structures which were destroyed during the previous year, and shall fix a value thereto, with a description of the land or lot on which the same was or is situated. It shall further be the duty of the said Township Commissioners to add any amount which they believe ought to be added to the valuation of the property returned or listed by any taxpayer within their respective townships. No reduction shall be made that will reduce the existing aggregate.

Civ. '12, § 1017; 1911, XXVII, 53.

(1257) § 3. **Landowners Required to Furnish Description of Property Upon Request.**—Whenever the said Board of Township Commissioners shall deem it necessary to obtain an accurate description of any separate tract or lot in their respective townships they may require the owner or occupier thereof to furnish the same, with any title papers he may have in his possession, and if such owner or occupier, upon demand made for the same, shall neglect or refuse to furnish a satisfactory description of such parcel of real property, the said Board of Commissioners may employ a competent surveyor to make out a description of the boundaries and loca-

tion thereof and a statement of the quantity of land therein contained; to the expense of such survey the Treasurer and Auditor shall add the tax assessed upon such real property and it shall be collected by the Treasurer, and for the purpose of enabling the said Board of Township Commissioners to determine the value of buildings and their improvements, and also of any personal property in their respective townships, they are authorized to enter and fully examine all buildings and structures of personal property of whatever kind which are not by law expressly exempt from taxation.

Civ. '12, § 1018; 1911, XXVII, 53.

(1258) § 4. Report to County Auditor.—The said Board of Township Commissioners shall, on or before the first day of May in each year, make up and complete, and shall transmit to the County Auditor the aggregate value of the property of their respective townships, in which they shall set forth: 1. The number of acres, exclusive of town lots returned and appraised by them, with such addition as shall have been made thereto by the said Commissioners. 2. The aggregate value of such property, other than town lots, as returned by the taxpayer, with and inclusive of such additions as shall have been made thereto by the said Board of Commissioners. 3. The aggregate value of the real property in each town, city and village in their respective townships, inclusive of such additions as shall have been made thereto by the said Board of Commissioners: *Provided*, That the provisions of this Section shall apply only to Berkeley County.

Civ. '12, § 1019; 1911, XXVII, 53; 1912, XXVII, 611.

(1259) § 5. Taxpayer May Appeal.—The appraisal and valuation of property shall be deemed and held to be a step in the collection of taxes, and the foregoing Sections shall be construed to mean as giving full and complete power to the Board of Township Commissioners, independent of any right conferred upon County Auditors or other officers as to securing a full and complete collection and a correct value thereof for taxation in all cases, whether fraudulently or otherwise, improperly or incompletely made, and the action of said Board of Township Commissioners under and by virtue of this Article shall not be interfered with by any Court of this State by mandamus, summary process, or any other proceeding, but the taxpayer shall have the right, and no other, to appeal from the decision and appraisal of the Board of Township Commissioners to the County Board of Equalization, which said County Board of Equalization shall consist of the Chairman of each of the Township Commissioners, and the decision of the said County Board of Equalization shall be final and conclusive: *Provided*, Nothing in this Article contained shall in any manner abridge the powers and duties of County Auditors except in the appraisal and valuation of property and the taking of tax returns: *Provided, further*, That the County Auditors shall list and take tax returns at their respective offices at the usual time as now provided by law, which said returns must be referred to the Board of Township Commissioners, and must be passed on by the said Township Commissioners hereinbefore provided.

Civ. '12, § 1020; 1911, XXVII, 53.

CLARENDON COUNTY.

(1260) § 1. Commutation Road Tax.—All able-bodied male persons between the ages of twenty-one and sixty (60) years, inclusive, in the County of Clarendon, shall be required annually to pay a commutation tax of three (\$3) dollars in lieu of six days' work on the public roads of said county on or before the first day of December of each year, which tax must be paid by the person subject thereto, to the County Treasurer, and on payment of which he shall receive a receipt showing the date, amount and purpose for which paid and signed by the County Treasurer.

1914, XXVIII, 723; 1917, XXX, 277; 1919, XXXI 78; 1920, XXXI, 879; 1921, XXXII, 59.

(1261) § 2. Attorney to Prosecute.—That the County Board of Commissioners shall have the power to employ an attorney to prosecute those failing to work the roads or pay the commutation road tax.

Civ. '12, § 1935; 1909, XXVI, 146.

(1262) § 3. Collection of Road Tax.—The said commutation road tax shall be due and payable on or before the first day of December of each year and shall be charged against the persons liable therefor by the County Auditor, the same as poll taxes are now charged. All persons who refuse or fail to pay their commutation road tax on or before the first day of November of each year, shall be required to perform six full days' labor on the public highways in the district in which said person or persons reside, said work to be done under the supervision and direction of an overseer appointed by the District Road Commissioners of Clarendon County.

1919, XXXI, 78; 1920, XXXI, 879; 1921, XXXII, 59.

(1263) § 4. Evasion of Road Tax a Misdemeanor — Penalty.—Any person herein made liable to the payment of said road tax, who shall fail to make such payment when due, or who shall fail or refuse to work on the said roads, after having been warned by the said overseer, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five (\$5.00) dollars and not more than twenty-five (\$25.00) dollars, or by imprisonment of not less than ten nor more than thirty days.

1919, XXXI, 78; 1920, XXXI, 879; 1921, XXXII, 59.

(1264) § 5. Board of Assessors to Furnish List.—It shall be the duty of the Chairman of the Township Board of Assessors, between the first day of January and the twentieth day of February in each year, to furnish to the County Auditor of said county a list of the names of the persons in their respective townships liable for the said road tax, and said Auditor shall arrange the same alphabetically by townships and deliver the said list to the County Treasurer on or before the 15th day of October of each year.

1914, XXVIII, 723.

(1265) § 6. Road Commissioners to Expend Money in Township Collected.—That every person in said county liable for the said commutation or road tax shall return himself for taxation for such tax to the County Auditor of the said county, between the first day of January and the 20th day of February, and the County Auditor is hereby authorized and directed to solicit and take such returns. That thereafter the County Auditor of said county shall make out and deliver to the County Supervisor a list of the names of the persons who have returned themselves for taxation for each township, alphabetically arranged. The said Road Commissioners shall expend the taxes hereinbefore provided for as nearly as practicable in each of the townships in which it is collected.

1914, XXVIII, 723.

(1266) § 7. Treasurer to List Payers of Tax and Report to Supervisor.—It shall be the duty of the County Treasurer to keep in his office a separate account with each township, listing the names of each person in the several townships that pays his commutation tax: *And provided, further,* That the County Treasurer shall, prior to April 1 of each year, make a report in duplicate to the County Supervisor of the total amount of commutation tax received from each township and the names of each person who has paid said tax.

1917, XXX, 277.

(1267) § 8. Division of Road Working Forces—Substitutions—Ten Hours a Day's Work.—It shall be the duty of the County Supervisor and Board of Road Commissioners to divide the townships of Clarendon County into suitable sections in each of the several townships in said county, and shall appoint an overseer of roads for each of said sections. They shall also assign the persons liable to road duty into convenient and suitable squads or companies, and assign a squad or company to each overseer of a section, assigning the road hands, as far as practicable, to the nearest roads. They shall require the overseer of roads to call out the hands assigned to their respective sections, and work the roads, and repair and build bridges of same, whenever they may deem it necessary, after twelve hours' notice. The Supervisor shall cause overseers, when working sections in which there are bridges, to preserve and keep them in order, as are in their opinion of such character as not to require to be given out under contract, and can conveniently be done by the road hands: *Provided,* Any person liable to perform labor hereunder shall have the right to furnish instead a competent substitute, or, with the consent of the overseer, instead of labor to furnish stock, wagons or machinery, the use of which is of equal value: *Provided, further,* Ten hours a day shall be a day's work.

Civ. '12, § 2010; 1917, XXX, 277.

(1268) § 9. Public Highways Only to Be Worked.—It will be unlawful for any overseer to perform or cause labor to be performed on any roads not public highways.

1917, XXX, 277.

(1269) § 10. **Duty of Person Warned to Labor.**—Any person warned to perform any labor upon the public roads and highways under any provisions of this Chapter, shall by himself or suitable substitute, who shall not be under the age of sixteen years, appear at the time and place appointed by the overseer at the hour of seven o'clock in the forenoon, and shall bring with him such necessary tools and implements used on a farm as the overseer may direct.

1917, XXX, 277.

(1270) § 11. **How Residence Determined.**—For the purpose provided for in the preceding Section, the residence of any person who has a family shall be held to be where his family resides, and the residence of any person without a family shall be held to be where he boards or may be found.

1917, XXX, 277.

(1271) § 12. **Procedure in Case of Removal.**—In case any person shall remove from one county to another, or from one township in the same county, or one district to another in the same township, who has prior to such removal performed the whole or any part of the labor aforesaid, or in any other way has paid the whole or any part of the amount aforesaid in lieu of such labor, and shall produce a certificate of the same from the overseer of the proper district, such certificate shall be a complete discharge for the amount therein specified.

1917, XXX, 277.

(1272) § 13. **Duty of Overseers to Warn—Compensation—Proviso.**—It shall be the duty of the overseers to warn out the hands liable to road duty, and to superintend the work of said hands; and for superintending said work the said overseers shall be paid at the rate of not exceeding one dollar and fifty cents per day: *Provided*, That said overseers shall not work the public roads with less than ten hands at any one time; that said overseer may warn the road hands in person, or appoint some suitable person liable to road duty on his road as a warner, and such person so acting be exempt from road duty for the time he acts as warner.

1917, XXX, 277.

(1273) § 14. **Penalty for Violation Thereof.**—Any person liable to road duty under this Article and refusing to perform such work under the requirements of this Chapter shall be guilty of a misdemeanor, and, upon conviction thereof by any Court of competent jurisdiction, shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, or be confined at hard labor upon the public works of said county for not less than ten days nor more than thirty days.

1917, XXX, 277.

(1274) § 15. **Residents of Towns Exempt From Road Tax.**—Any person who is a *bona fide* resident of any incorporated city or town in said county, paying the regular assessed street taxes of such city or town, is exempt from the provisions of this Article.

1919, XXXI, 78; 1920, XXXI, 879; 1921, XXXII, 59.

(1275) § 16. Neglect of County Treasurer to Collect Road Tax a Misdemeanor—Penalty.—The County Treasurer shall collect and receipt for the tax herein provided for, and his failure, refusal or neglect to do so shall be deemed a misdemeanor and punishable by fine or imprisonment, in the discretion of the Court, in addition to the penalties now provided by law.

1919, XXXI, 78; 1920, XXXI, 879; 1921, XXXII, 59.

(1276) § 17. Registry of Vehicles in Clarendon County.—That all vehicles now owned or hereafter to be owned by any person, firm or corporation in Clarendon County shall be registered by such person, firm or corporation in the office of the Supervisor for Clarendon County on or before the first day of May, 1920, and annually thereafter in the month of January.

1920, XXXI, 922.

(1277) § 18. Registry of New Vehicles.—All vehicles purchased after the time for registering herein provided, shall be registered within ten days from the date of said purchase: *Provided*, That if same are registered after July 1 of any year, the fee shall be one-half the amount above fixed.

1920, XXXI, 922.

(1278) § 19. Licenses and Markers.—The said Supervisor shall issue a license to each and every person, firm or corporation applying for such registration, together with a sign or marker for each vehicle, bearing a number beginning at the number "1" and serially thereafter, such sign or marker being in a different color for each year, said license to be in force and effect during the year in which issued.

1920, XXXI, 922.

(1279) § 20. License Fees.—The following license fees shall be collected for each vehicle: Each one-horse buggy, road cart, wagon or ox cart, one dollar; two-horse and two-ox vehicle, two-dollars; each log cart, three dollars; each automobile trailer, five dollars; such fees to be collected by the Supervisor, who shall retain ten cents as his compensation for each license issued, and the remainder shall be placed to the credit, by the County Treasurer, to the school district from which it is collected, and shall be known as the vehicle road and bridge maintenance fund.

1920, XXXI, 922.

(1280) § 21. Use of Funds from Fees.—The funds arising from such license fees shall be used for the expense of building and repairing roads and bridges on the public roads of the county, and the County Treasurer is hereby authorized and directed to pay out said funds for the purposes herein stated, only upon warrants signed by the District Commissioner and countersigned and approved by the Supervisor.

1920, XXXI, 922.

(1281) § 22. Purchase of Markers.—The Supervisor is hereby authorized and directed to purchase signs or markers, made of substantial material, bearing the words "Clarendon, S. C." and "number," such sign or marker to be paid out of said vehicle bridge fund.

1920, XXXI, 922.

(1282) § 23. **Record of Licenses.**—The Supervisor shall keep a book showing the serial number of license, the name of owner and the make and color of the vehicle.

1920, XXXI, 922.

(1283) § 24. **License on Vehicles Transferred.**—Upon transfer of ownership of vehicle, the purchaser or person to whom same is transferred, within ten days thereafter, must either obtain a new license and new marker for same, or may have transfer on license book and obtain new license, paying fifty cents therefor and retain old number and marker.

1920, XXXI, 922.

(1284) § 25. **Violation a Misdemeanor—Penalty.**—Any person operating a vehicle required to be registered under the provisions of this Article upon any road of said county, without having obtained a license therefor, or without having a sign or marker, as herein provided, displayed in the rear of said vehicle, shall be deemed guilty of a misdemeanor, and shall be subject to a fine not exceeding twenty-five dollars or imprisonment not exceeding thirty days.

1920, XXXI, 922.

(1285) § 26. **Officers to Enforce Act.**—It shall be the duty of the rural Policemen, Sheriff, Constables and Magistrates of said county to report any person who shall be seen operating upon the highway any vehicles which have not displayed on them the sign or marker.

1920, XXXI, 922.

(1286) § 27. **How Supplies Are to Be Purchased, and Work Ordered by Supervisor of Clarendon County.**—That at the time the Supervisor purchases any supplies, machinery, material or any other property or orders same, or directs any work to be done or contracts for same, he shall issue an order therefor which shall show what property is purchased or what work to be done or material furnished, and if a price be fixed for said property, materials or work, same shall be stated thereon. Said Supervisor shall file as part of the records of the Board of County Commissioners a duplicate thereof, and in case no definite price has been fixed for the said property, materials or work, the said Supervisor shall put on the said duplicate filed by him his estimate of the amount of the probable obligation thereunder of the county. At each regular meeting of the County Board of Commissioners all of these duplicates not previously considered shall be passed upon by the Board and approved or disapproved by them, but such disapproval shall not effect the legality of any contract otherwise legal.

1918, XXX, 687.

(1287) § 28. **No Claim Valid Until Accompanied by Order—Proviso.**—No claim for property furnished or work done shall be audited or allowed unless accompanied by an order issued by the said Supervisor as herein directed: *Provided*, This shall not apply to claims for salaries or other claims against said county, the amount of which is fixed by law, or to claims for property furnished, work done or contracted for, or ordered prior to May 1, 1917.

1918, XXX, 687.

(1288) § 29. Form of Order.—The said order shall be substantially in the following form, and they shall be numbered serially:

“No., 19....

To.....

Please furnish following property or do following work for Clarendon County: Price.

.....	
.....	
.....	
.....	

Supervisor, Clarendon County, S. C.”

“This order must be attached to claim and presented to County Board of Commissioners within thirty days after compliance with above order.”

1918, XXX, 687.

(1289) § 30. Purchased Over \$25.00 to Be on Bids—How Advertised—Provisos.—That no office or chaingang supplies or machinery, materials or equipment, amounting to more than \$25.00, shall be purchased except after advertising for bids on same for two weeks by posting notices thereof at the Court House door, and when deemed advisable by the said County Board of Commissioners, also in such newspapers as will be most likely to give notice to persons likely to submit bids thereon: *Provided*, This shall not be construed to require the said Board to buy from persons submitting bids: *Provided, further*, That in case of emergency the said Board of Commissioners may dispense with said advertisement, but in such case the full details of such purchase shall be published with the next quarterly statement published, as required by this Article.

1918, XXX, 687.

(1290) § 31. Statements to Be Published.—That during the months of January, April, July and October of each year, the County Board of Commissioners shall publish in a newspaper of said county a statement containing the following information to wit: Amounts appropriated respectively for “Roads, Bridges and Chaingang,” “Public Buildings,” “Poor and Poor Farm,” “Court Expenses,” “Books, Stationery and Printing,” “Salaries,” “Contingent Expenses,” “Back Indebtedness,” and also total amount of claims approved from January first to the first day of the month in which said report is made, payable out of the respective appropriations, and also in another column as near as can be ascertained the amount of obligations of the county contracted for, incurred or chargeable to the respective appropriations, but for which claims have not been audited by said Board. Said statement shall also contain a statement of the number of convicts in the chaingang on the first day of each of the preceding months of the same year. Each of the said statements shall also show number of mules and horses owned by the county and number of employees of the county connected with the chaingang. The statement published in January of each year shall also show average cost of maintenance per day of

each of the convicts on the county chaingang. Each of the said statements shall also show the amount owing for borrowed money and the rate of interest paid for same. The statement published in January shall also show the amount of bonded indebtedness of the county, when due, and the amount of the sinking funds to retire same.

1918, XXX, 687.

(1291) § 32. Inventories, How Kept and Checked.—That an inventory of the county machinery, tools, equipment and live stock be kept on record in the office of the Board of County Commissioners and copy thereof filed with the Grand Jury at each session of Court with a statement of what has been bought since the last Court and prices paid for same, what has been lost or destroyed in the said period, with an explanation of said loss or destruction. It shall be the duty of the Grand Jury to, from time to time, check up said inventory and ascertain the truth of the explanations of loss and destruction of any so reported.

1918, XXX, 687.

(1292) § 33. Any Supervisor, Not Obtaining Receipt from Successor, to Be Liable on His Official Bond.—That any Supervisor going out of office do obtain a receipt from his successor for said machinery, tools, equipment and live stock and shall be liable on his official bond for any not produced and delivered to his successor unless the Grand Jury shall accept his explanation of the loss thereof and excuse him from liability therefor.

1918, XXX, 687.

(1293) § 34. No Claims for Road Work Over \$10.00 to Be Approved Until Personally Inspected.—That no claims exceeding ten (\$10.00) dollars for work on roads or bridges shall be approved until said work shall have been personally inspected and approved after the completion thereof by the Supervisor and his certificate thereof entered upon said claims.

1918, XXX, 687.

(1294) § 35. No Member of County Board of Commissioners to Contract for Work or Materials.—No member of the County Board of Commissioners shall contract with the county or be paid for any work performed or materials furnished for county, except his regular salary or per diem and mileage, as fixed by law.

1918, XXX, 687.

(1295) § 36. Record of Prisoners, Where and How Kept.—That there shall be kept in the office of said Board of County Commissioners a book in which shall be entered the date each prisoner begins work on the chaingang, crime for which convicted, length of his sentence and time and method of release.

1918, XXX, 687.

(1296) § 37. Disbursements for Poor.—That in disbursing money appropriated for the poor, the Board of County Commissioners use such amount in their hands as will relieve the necessities of the several cases,

within the appropriation therefor: *Provided*, That if, in the opinion of the Board, more should be spent for this purpose than the appropriation, they may do so, not exceeding, however, twice the amount appropriated.

1918, XXX, 687.

(1297) § 38. **"Bills Payable" Book to Be Kept—What to Show.**—The County Board of Commissioners shall keep a book of "Bills Payable," in which they shall enter as and when made all notes for loans in anticipation of collection of taxes. The entries thereon shall show: (1) Note number. (2) Date of note. (3) Date due. (4) Payee. (5) Amount. (6) Rate of interest. (7) Date paid. Said notes shall be numbered in the order in which they may be executed.

1918, XXX, 687.

(1298) § 39. **Entries to Be Made in Ink—Each Page to Balance.**—All entries, footings and amounts carried forward in the books hereinbefore provided for, shall be made in ink. Each page shall show perfect balancing of all columnar additions, and all footings carried forward.

1918, XXX, 687.

(1299) § 40. **Appropriations Not to Be Exceeded.**—The County Supervisors constituting the County Board of Commissioners are hereby prohibited from drawing any warrant upon the County Treasurer to be paid out of any of the several funds specifically appropriated for any other purpose other than that for which the same shall have been so appropriated, and it shall be unlawful for the County Treasurer to pay such inhibited warrant. It shall be unlawful for the County Board of Commissioners, or any member thereof, to create, by contract, express or implied, any obligation against the county which, with the obligations then existing and chargeable to any particular item of appropriation, shall exceed the amount specifically appropriated therefor. Should the County Board of Commissioners, or any member thereof, violate the provisions of the paragraph next preceding in this Section, the said claim resulting therefrom shall be declared null and void as against the county, and the officer offending shall be held responsible to the claimant therefor upon his official bond.

1918, XXX, 687.

(1300) § 41. **How Office Supplies, Etc., Bought, Stored and Issued.**—All office supplies, forms, books and blanks to be furnished by the county for the Clerk of Court, Sheriff, Probate Judge, Treasurer, Auditor, Superintendent of Education, Magistrates or other officers shall be purchased, procured and furnished by the County Board of Commissioners and requisitions shall be made in writing to said Board for the same by such officers, who shall receipt for same when delivered to them. The Board of County Commissioners shall provide for the purchase, storage and delivery of such office supplies, forms, books and blanks and the keeping of definite, accurate records of receipts and distribution thereof, and for periodical inventories thereof and shall submit definite reports to the Grand Jury at each session of same.

1918, XXX, 687.

(1301) § 42. Contracts for Road Work and Building Repairs—How to Be Advertised and Let.—The County Board of Commissioners shall advertise for at least two weeks in at least two issues of a newspaper published in the county, or post, in three or more conspicuous places likely to give the most publicity thereof, for bids on new or repair work on the roads and bridges of the county, or any of the public buildings of the county, where the cost thereof will exceed \$25.00, and the contract therefor, according to plans and specifications, a duplicate of which shall be kept on file in the office of the Board, shall be awarded to the lowest responsible bidder. No work for the county shall be paid for until it has been completed, inspected and accepted.

1918, XXX, 687.

(1302) § 43. Money to Be Borrowed on Best Terms Obtainable by Advertising for Bids.—Should the County Board of Commissioners find it necessary to borrow money for any year for county expenses in advance of the collection of taxes therefor, as provided and authorized by law, they shall insert an advertisement in a county and State newspaper for at least three weeks, in at least three issues, setting forth the amount wanted and when the same will be repaid, and asking for competitive bids on terms and the rate of interest, and all moneys borrowed shall be at the best terms and lowest rate of interest the Board can get.

1918, XXX, 687.

(1303) § 44. Chaingang to Be Inspected—Reports to Be Kept and Inspected by Grand Jury.—The Supervisor shall appoint at each regular monthly meeting a member of the Board of County Commissioners to visit the chaingang and inspect the convicts, cages, tents, kitchens, clothing and general conditions as to health of convicts and the condition of live stock and other county property, and to make a report of his findings, which shall be entered upon the minutes of the following regular meeting or a written report shall be submitted, which shall be kept as a permanent public record. Said reports shall be inspected by the Grand Jury, or a committee thereof, at each regular term of Court.

1918, XXX, 687.

(1304) § 45. Presiding Judge to Explain Act to Grand Jury.—The purport of this Article shall be explained to the Grand Jury by the presiding Judge at each regular term of Court, who shall instruct them as to their duty to examine and see if the provisions thereof have been followed.

1918, XXX, 687.

CHARLESTON COUNTY.

(1305) § 1. County Board of Commissioners—How Composed in Charleston County.—In the County of Charleston the County Board of Commissioners shall be composed of the County Supervisor and the Chairmen of the Township Boards of Commissioners in the several townships appointed by the Governor.

Civ. '12, § 939; 1893, XXI, 483; 1912, XXVII, 679; 1914, XXVIII, 622, 628; 1918, XXX, 817.

Carolina Grocery Co. v. Burnet, 61 S. C. 205, 39 S. E. 381.

(1306) § 2. **Chairmen of County Boards.**—The County Supervisor shall be the Chairman of the County Board of Commissioners.

Civ. '12, § 940; Civ. '02, § 758; XXI, 488; XXIII, 666.

(1307) § 3. **Township Commissioners — How Appointed — Term of Office.**—In the County of Charleston the Governor shall appoint, upon the recommendation of the Senator and members of the House of Representatives from the said county, three discreet qualified electors in each township, who shall be known as the Board of Township Commissioners, whose term of office shall be coterminal with that of the Governor by whom such Commissioners shall have been appointed and until their successors are appointed and qualified. In case of a vacancy, or in case of the refusal of any person so appointed to serve as such Commissioner, the Governor shall fill the same as hereinabove provided: *Provided*, That in the appointing of said Commissioners the Governor shall furnish a duplicate list of said appointees to the Secretary of State, one list to be filed in the office of the Secretary of State, the other to be sent by the Secretary of State to the Clerk of the Court of the county and put on file in the office of the Clerk of the Court. The Clerk of Court shall notify and take the oath of each appointee and file the same. The Commissioners may take the oath before any officer authorized to administer an oath. No person shall be required to serve more than once in every four years, and said Commissioners shall, during the term of their office, be exempt from all road and jury duty: *And provided, further*, That in all cases where the General Assembly has established or shall establish, in pursuance of Article VII, Section 11, of the Constitution of 1895, of this State, a township government for any of the townships of said counties, and in doing so has provided for the appointment of a Board of Township Commissioners for said township, that the said Board of Township Commissioners as established by the General Assembly for said township, in pursuance of said Section of the Constitution, shall be in lieu and stead of the Board of Township Commissioners as provided for in this Section, and shall have all the powers, rights and privileges and be charged with all the duties, obligations and responsibilities as are now provided for by law for the Board of Township Commissioners provided for in this Section, except as same may be amended by said Act forming said township government or any amendment thereof.

Civ. '12, § 943; Civ. '02, § 1349; 1896, XXII, 227; 1907, XXV, 623; 1910, XXVI, 684; 1912, XXVII, 679; 1914, XXVIII, 622, 623.

(1308) § 4. **Organization, Meetings and Membership.**—Immediately after the appointment of the Board of Township Commissioners for the counties mentioned in the last preceding Section and the election and qualification of the County Supervisor, or as soon thereafter as may be practicable, the said Supervisor shall call a meeting of said Board for the purpose of organization. And the County Board of Commissioners shall meet thereafter on the first Monday in January, April, July and October of each year at the county Court House, for the transaction of business, and a majority of said Board shall constitute a quorum: *Provided*, That the Chairman of said Board may call an extra meeting at any time, and shall

be required to do so upon the written request of three members of the Board. At the first meeting of said Board they shall elect one of their number who shall be a member of the State Board of Equalization and who shall perform all the functions of said office as now provided by law.

Civ. '12, § 944; Civ. '02, § 765; 1891, XXI, 488; 1897, XXI, 507.

(1309) § 5. Legislative Delegation of Charleston County May Require Annual Audit of Books of County—Payment of Expenses.—That the Legislative Delegation for Charleston County shall have the power and authority to require the auditing of the books of the various county officers for Charleston County once each year, if it is desired by such Legislative Delegation that the same be done, and such Delegation is further vested with the power and authority to employ such expert accountants as such Delegation may desire for such purposes, and that the expenses incurred by such audits and the employment of such auditor or expert accountant shall be paid by the County Treasurer on a warrant signed by the members of the General Assembly from such county.

1920, XXXI, 1061.

CHEROKEE COUNTY.

(1310) § 1. County Board of Commissioners of Cherokee County—Election—Term of Office—Salaries.—That the County Government of Cherokee County shall be administered by a County Board of Commissioners, consisting of a Supervisor, whose term of office shall be two years, to be elected by the people, as now provided by law, and who shall receive a salary of one thousand and eighty dollars per annum, and two Commissioners to be elected as other county officers are, and to receive a salary of two hundred (\$200.00) dollars per annum, paid quarterly.

1913, XXVIII, 122; 1914, XXVIII, 628; 1918, XXX, 817.

(1311) § 2. Duties.—That the duties of the said County Board of Commissioners shall be to have charge of the ordinary affairs of the county, maintain all or any portion of the public roads and highways of Cherokee County not actually improved permanently by the Cherokee County Highway Commission, pass upon all claims against the county and to perform such other duties as are now required of the County Board of Commissioners of Cherokee County. The Supervisor and Commissioners each shall have authority to have work done towards improving the roads and bridges, where the cost of the work to be done does not exceed the sum of one hundred dollars, and when the cost exceeds that sum, a majority of said Board shall approve the work to be done, as well as the cost of same. Whenever any work is done under the direction of any member of the Board, or a majority of said Board, same shall be itemized and approved by the Commissioners at the monthly meeting succeeding the time said work was done, but nothing therein shall authorize an expenditure of any amount exceeding the sum provided for that purpose, and the said Board of Commissioners shall keep an itemized statement of all funds expended in said

county and for what purpose, and shall furnish to the members of the General Assembly for Cherokee County a copy of same before the convening of the General Assembly of each year.

Civ. '12, § 946; 1908, XXV, 1209; 1913, XXVIII, 122; 1914, XXVIII, 628; 1918, XXX, 817; 1919, XXXI, 61.

(1312) § 3. Meetings—Approval of Claims—Reports.—That the said County Board of Commissioners shall meet in the office of the Supervisor on the first Monday in each month for the purpose of attending to the general business of the county; that no claim shall be paid unless same has been passed on by the said Board of County Commissioners, who shall make reports at the end of each quarter as now required by the law.

1913, XXVIII, 122; 1914, XXVIII, 628; 1918, XXX, 817.

(1313) § 4. Road Work.—That the said Board of County Commissioners are hereby required to see that all public roads of Cherokee County, except the portions that are improved by the Cherokee County Highway Commission, are maintained in reasonably good repair, holes filled up, properly drained and widened where necessary, and dragged and scraped regularly, and shall make such contracts and purchase such machinery as is absolutely necessary to accomplish this purpose; same to be on a competitive basis: *Provided*, That the machinery and the expenses of the work, including work contracted, shall not exceed the amount appropriated for road and bridge maintenance.

1913, XXVIII, 122; 1914, XXVIII, 628; 1918, XXX, 817.

(1314) § 5. Clerk—Bonds of Commissioners and Clerk.—That the said County Board of Commissioners shall elect a Clerk, who shall keep the records of the said Board, and the books of same in proper condition for inspection at any time, the said Commissioners each to give a bond to the County of Cherokee for the faithful performance of his duties in the sum of one thousand dollars, the premiums to be paid as ordinary expenses of the county, the Clerk to give bond for five hundred dollars as now provided by law.

1913, XXVIII, 122; 1914, XXVIII, 628; 1918, XXX, 817.

(1315) § 6. Duty to File Itemized Statement.—The said Board of Commissioners shall, at the end of each month, file with the Clerk of Court of said county for the inspection of the Grand Jury an itemized sworn statement in writing of all expenditures for the chaingang for road work, for the Poor House Farm and poor, and all other expenditures within their jurisdiction, showing every item and its costs, from whom purchased, which statement shall at all times be open to inspection of the public.

1913, XXVIII, 122; 1914, XXVIII, 628; 1918, XXX, 817.

(1316) § 7. Misdemeanor to Violate Provisions.—Any County Commissioner, the Supervisor or other officer herein mentioned, who shall violate any of the provisions of this Article, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine of not less than one hundred dollars or to imprisonment not over thirty days, and, upon the

recommendation to do so by a majority of the County Delegation in the General Assembly, such Township Commissioner shall be removed from office by the Governor.

1913, XXVIII, 122; 1914, XXVIII, 628; 1918, XXX, 817.

(1317) § 8. Treasurer of Cherokee County Required to Make Itemized Statement of Receipts and Disbursements.—That the County Treasurer of Cherokee County shall at the close of the fiscal year make and file with the Clerk of Court of Common Pleas for Cherokee County and with the Foreman of the Grand Jury of the county an itemized, detailed statement under oath, of all receipts and disbursements made by him as such Treasurer during the year, and he shall not make or publish any other or further report.

1914, Spec. Session, XXIX, 15.

(1318) § 9. Age Limit for Road Duty in Cherokee County.—That all able-bodied male persons between the ages of twenty-one and fifty years, residing in Cherokee County, shall be liable for road duty as now provided by law.

Civ. '12, § 1977; 1914, Sp., XXIX, 27.

(1319) § 10. Commutation Tax in Cherokee County.—Any person so liable for road duty may, on or before March 18 of any year, pay to the County Treasurer the sum of one dollar as a commutation tax. In the event any person shall reach the age of twenty-one years after the fifteenth day of March, he shall pay said tax to the Township Commissioner of the township in which he resides, for the use of the road fund in said township, and the Township Commissioners and Clerk are required to keep an accurate account of all moneys so received, and turn the same over quarterly to the County Treasurer.

Civ. '12, § 1978; 1914, Sp., XXIX, 27.

(1320) § 11. Township Road Election—Conduct.—That upon the petition of one-third of the qualified electors in any township of Cherokee County, the County Board of Commissioners of Cherokee County shall order an election to be held in the said township, at the regular voting precincts, after thirty days' notice of said election, to be published in one or more newspapers published in Cherokee County. The County Board of Commissioners shall appoint managers for said election, and shall canvass and declare the result of such election within one week after such election shall be held. The expenses of said election shall be paid out of any funds apportioned for roads, bridges, chaingang or other road funds in the township in which such election shall be held; and the Managers and Clerk shall receive the same compensation now provided for managers and clerks in a general election. In the petition herein referred to, the amount of bonds proposed to be issued by said township, and the purpose for which they are proposed to be issued shall be definitely stated, and the amount of the same and the purpose thereof shall be stated in the notice of election hereafter provided for.

1916, XXIX, 899.

(1321) § 12. **Form of Ballot.**—At such elections the question of issuing an amount of bonds which shall conform to the amount stated in the notice or advertisement of election shall be submitted to the qualified electors of said township on two sets of ballots—on one of which shall be printed or written the words: “For \$. . . Road Improvement Bonds, Yes,” and on the other, the words “For \$. . . Road Improvement Bonds, No.”

1916, XXIX, 899.

(1322) § 13. **Form of Bonds.**—If a majority of votes cast in said election be in favor of the issuance of such bonds for said township in such denominations as may be advisable, to run not longer than twenty years from the date of issue, and to bear a rate of interest not exceeding five per centum per annum, payable semiannually on the first day of January and the first day of July each year. Said bonds and interest may be made payable in any legal tender of the United States, to the bearer or holder or otherwise, and at such places as may be convenient. Such bonds shall be designated as “Permanent Road Improvement Bonds of. . . . Township,, Cherokee County, S. C.”

1916, XXIX, 899.

(1323) § 14. **Highway Commissioners.**—That thirty days prior to any election to be held in any township under the provisions of this Article for issuing bonds for road improvement the Governor, upon the recommendation of the Delegation in the General Assembly, shall appoint three good and successful business men in such township or townships proposing to issue bonds hereunder, but who shall not be commissioned or hold office hereunder in case such township shall fail or refuse to vote bonds. In the event such township or townships shall vote bonds, then said persons shall be duly commissioned, and shall constitute the Township Highway Commission. The Highway Commissioners shall be appointed for a term of two and four and six years respectively, and shall continue in office until the appointment and qualification of their successors; and as each term of office expires the Governor, by the recommendation of the Cherokee County Delegation in the General Assembly, shall appoint a successor for a period of six years, in such manner that a Highway Commissioner will have to be appointed every two years. Should bonds be voted and issued in any township under the provisions of this Article, before receiving the proceeds of such bonds, each of the said Highway Commissioners shall enter into a good and sufficient bond in the sum of five thousand (\$5,000) dollars, to be approved by the Board of County Commissioners, and conditioned for the faithful performance of their duties, the premiums on said bonds to be paid out of the proceeds of the sale of any bonds issued under the provisions of this Article. Should a vacancy occur in the office of Highway Commissioner in any township, by death, resignation, removal from the township, or any other cause, the Governor, by the recommendation of the Cherokee County Delegation in the General Assembly, shall appoint a successor for the unexpired vacant term. At the first meeting of said Commission, they shall organize

by electing one of their number as Chairman and one as Clerk, and all moneys paid out as herein directed shall be upon warrant signed by the Clerk and countersigned by the Chairman.

1916, XXIX, 899.

(1324) § 15. Sale of Bonds.—The County Board of Commissioners of Cherokee County may sell all of the said bonds of such townships as may vote to issue bonds hereunder before proceeding with the road for which said bonds are issued, or County Board of Highway Commissioners may sell said bonds as the funds may be needed: *Provided*, The said bonds shall not be sold for less than par, and said County Board of Commissioners shall have the right to reject any and all bids.

1916, XXIX, 899.

(1325) § 16. Tax Levy.—Upon the issuing of said bonds, the same shall be registered in a book to be kept by the Board of County Commissioners, in which shall be stated the amount of the bonds, the name of the township issuing same, the date of each series of bonds issued serially, the date of maturity, the rate of interest, and the name of the purchaser. The County Auditor shall thereupon and annually thereafter levy upon all the taxable property in said township a tax sufficient in amount to pay the interest on said bonds as same shall become due and create a sinking fund to retire said bonds at maturity, which tax shall be collected, and the tax so levied and collected shall be sufficient to equal one-twentieth of the amount of bonds issued.

1916, XXIX, 899.

(1326) § 17. Deposit of Funds—Road Engineer—Condemnation.—The proceeds of the sale of such bonds shall be deposited in some banking institution in the county to be used as herein directed; and it shall be the duty of said Township Highway Commissioners to expend said funds in the improvement of the public roads in said township. Said Township Highway Commissioners shall employ a competent Road Engineer to lay out, change, grade and supervise the building of permanent roads, build and construct bridges along such highways and pay out of such funds all necessary expenses of such Engineer and for all labor and materials that may be necessary, including earth or other material for surfacing said roads; and wherever necessary to change the location of any such public road or to open any new road or roads, the right of way therefor may be obtained in the same manner as now provided in the general law, in which proceeding before the Board of County Commissioners the said Highway Commissioners shall be the actors; and all sums of money assessed as damages shall be paid out of the said funds: *Provided*, Nothing herein shall prevent the said Highway Commissioners acquiring right of way by agreement, purchase, gift or otherwise, or for agreeing with and paying to landowner whose lands are affected, such compensation as may be agreed upon for right of way or for surface for road building.

1916, XXIX, 899.

(1327) § 18. **Work May Be by Contract.**—That all work done under the provisions of this Article shall be of a permanent nature and the said Highway Commissioners may work independently or in conjunction with the chaingang or County Commissioners, they shall have the power and authority to let such work or any part of the same to any competent contractor; but no contract exceeding one hundred dollars shall be made except after due notice published in one of the county newspapers once a week for three weeks calling for bids for such work, as now applied to the County Commissioners; and all contractors shall be required to give a bond to the Highway Commissioners in such amount as they may require, and conditioned for the faithful performance of such contracts.

1916, XXIX, 899.

(1328) § 19. **Width and Grade of Roads.**—The roads and bridges to be built, laid out and constructed by or under the authority of the Highway Commissioners shall be of such width and grade as the Road Engineer shall determine.

1916, XXIX, 899.

(1329) § 20. **Use of Funds — Township Commissioners Abolished.**—That in the event any township or townships vote bonds as herein provided all moneys thereafter collected as now provided by law shall be turned over to the said Highway Commission, who shall receipt for the same, and shall use the same for the construction, upkeep, and maintenance of the roads and bridges within said township; and all the powers now conferred by law upon the Township Commissioners for said township shall cease and determine, and the office of Township Commissioner shall be abolished and the duties and authority shall devolve upon the Chairman of the said Highway Commission, and he shall be the member of the County Board of Commissioners from his township.

1916, XXIX, 899.

(1330) § 21. **Compensation of Highway Commission.**—The members of the Township Highway Commission shall receive as compensation for their services the sum of three dollars per day while in the actual discharge of the duties of the office; and shall pay from moneys coming into their hands all necessary expenses for stationery, stamps, salaries for the members, attorneys' fees, and other necessary expenses or obligations.

1916, XXIX, 899.

(1331) § 22. **Disposition of Tax Levy.**—That the Treasurer, when he has collected the taxes for interest and sinking funds herein provided, shall turn same over to the County Sinking Fund Commissioners, who shall give a receipt for same showing what funds said money shall be applied to, and said County Sinking Fund Commissioners shall pay all interest on said bonds when due and invest the funds so arising so as to increase same each year and to pay the bonds when they fall due.

1916, XXIX, 899.

(1332) § 23. **Qualifications of Engineer.**—The engineer herein employed shall be a Road Engineer of experience and qualifications.

1916, XXIX, 899.

(1333) § 24. **Townships Independent.**—That should the first election under the provisions of this Article fail to carry in any one township for the issuance of bonds said failure shall not mitigate against or in nowise prevent the issuing of bonds for any township which may vote in favor thereof, and upon petition of one-third of the qualified electors of any township wherein said election for bonds should fail another election may be ordered at any time thereafter within twelve months after the first election, provided thirty days' notice be given by advertising in one or more of the newspapers published in Cherokee County.

1916, XXIX, 899.

(1334) § 25. **One Mill Tax — Repairs.**—The Auditor of Cherokee County shall annually levy a tax of one mill on all the property of such township or townships, respectively, as may vote bonds under the provisions of this Article. The proceeds of the said one mill levy shall be used by the Highway Commissioners of such township exclusively for the upkeep and maintenance of such roads as may be built as a result of the issue of bonds, and said Commission shall let out by contract to some competent person by sections, the work of keeping in repair such roads, such contract to be let to the lowest responsible bidder, and such contractor shall be provided with a split log drag or some similar device, and shall drag or work such road at least once per month—in a satisfactory manner, same to be done under the supervision of the Highway Commissioners of such township, and the said Highway Commissioners are hereby given authority to set apart a definite portion of said bonds or the proceeds of same, which said amount shall be for the maintenance of roads only.

1916, XXIX, 899.

(1335) § 26. **Bonds Exempt from Taxation.**—That all bonds issued under the provisions of this Article are exempt from all taxes, State, county and municipal.

1916, XXIX, 899.

(1336) § 27. **Cherokee County Highway Commission — Vacancy — Removal—Chairman to Give Bond.**—The persons hereinafter named shall constitute a Board of Commissioners, to be known as the Cherokee County Highway Commission—and shall have charge of constructing permanent or improved highways in Cherokee County, as provided in this Article. In case of a vacancy on said Commission by death, resignation or otherwise, such vacancy shall be filled by appointment by the Governor, upon recommendation of a majority of the members of the General Assembly of the said county; and the Governor shall have power to remove any member for cause to fill the vacancy as above provided for. The Commission shall serve for a term of four years. The Chairman shall give bond in some approved chartered company in the sum of twenty thousand dollars, and the Com-

mission may require bonds of its employees, in its discretion, the premium of all said bonds to be paid from the funds derived from the said bond issue.

1917, XXX, 266.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1337) § 28. Secretary—Attorney—Engineer May Accept Service of Federal Road Experts—May Work With State Highway Commission.—The Commission shall have power to elect a Secretary, with such duties as the Commission may impose, and to employ an attorney and any other person whose services may be required, compensation to be fixed by the Commission, and shall employ an Engineer or Engineers, with such Superintendents and assistants as may be deemed advisable, who shall be skilled and experienced in scientific road construction, and who shall be paid such salaries as may be fixed by the Commission. No one of same to be related to any member of Highway Commission within the sixth degree. All compensation herein provided for to be paid from the proceeds of said bonds: *Provided*, That the Commission may accept the services of road experts tendered by the Federal Government: *Provided, further*, That the Cherokee County Highway Commission be, and they are hereby, authorized to work with State Highway Commission, if created, wherever and whenever same may be practicable, so that Cherokee County may have the benefit of Federal funds for permanent road work and engineers of same.

1917, XXX, 266.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1338) § 29. Duties of Commission—Roads to Be Considered in Location of Highways—Further Provisions as to Location of Roads.—The duties of the said Commission shall be to use the proceeds arising from the sale of said bonds for the purpose of constructing permanent, improved highways throughout Cherokee County, including bridges and culverts on same where other bridge funds of county are insufficient, the same to be laid out and constructed along such routes and of such material and in such order and in such manner as the Commission shall deem most advisable and best for the interest of the county: *Provided*, That in the location of said highways the Commission shall consider first the needs of the roads most prominently used as follows: National Highway from the North Carolina line near Grover to the Spartanburg County line; the Mill Gap Road from the Spartanburg line near Chesnee to the town of Gaffney, and thence by Pondfield, Wilkinsville, to the Irene Bridge, at Broad River; thence by Sunnyside School to Skull Shoals; Smith's Ford Road to and thence with road traveled by R. F. D. carrier to Wilkinsville; road leading from Union Road by Corinth Church to road leading from Star Farm to Wilkinsville; Metal Road from Chesnee Road to Spartanburg County line; the Union Road from Gaffney, by Dawkins Mill to J. G. Kendrick's; road leading from Gaffney by Goucher Creek Church to Spartanburg County line near Pacolet River; road from Mills Gap Road to Maud; road from Gaffney by Grassy Pond to North Carolina line; also road across Cherokee Township at right angles to National Highway through Blacksburg, Kings Creek to York County line; road from Mills Gap Road through Robb's section to North

Carolina line; road from National Highway to Cherokee Falls; also such public crossroads as the Highway Commission may determine: *Provided*, That said permanent work shall begin in each township within six months after money is received from bonds: *Provided*, That said Commission shall expend the funds provided for permanent road improvement on the roads named in this Section in such order as said Commission may determine, due regard being had to the importance of said road, the travel thereon and number of people to be accommodated thereby. The said Commission is required to see that every section of the county receive benefit from the improved system of highways to be constructed as soon as such work can be done. That in said construction the said Commission is specifically authorized and empowered to make such changes and relocations of any road or roads as may be necessary and advisable, having due regard for cost of same, travel, grade and road material. In case said Commission shall decide to relocate that portion of National Highway from Gaffney to Spartanburg County so as to adopt White Plains Road, then the present National Highway from Gaffney to Spartanburg County line shall be included in the roads to be permanently improved under the terms of this Article. That in case said Commission shall leave same as located at present, then the road from Gaffney to White Plains by way of Thickety, shall be included in the roads to be improved under the terms of this Article. That the said Highway Commission shall have the right to use any of the public highways of said county now in use, or to lay out new roads or relocate old roads, as they may deem best. They shall have the same authority and power to condemn lands from the location of new roads or the relocation of old roads as is now vested by law in the Board of County Commissioners; the said power to be exercised in the manner and under the same regulations as are prescribed by law for the exercise of the same by the Board of County Commissioners.

1917, XXX, 266; 1918, XXX, 1086.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1339) § 30. Election—Notice—Ballots.—It shall be the duty of the Cherokee County Highway Commission, and they are hereby directed, to call an election immediately after this Act shall have been ratified by the Governor, for the purpose of submitting to the voters of Cherokee County a bond issue, not to exceed two hundred and twenty-five thousand dollars, on the sixth day of March, 1917, or as soon thereafter as practicable, and the publishing in the *Gaffney Ledger* and the *Cherokee News* of not less than two weekly issues of said papers, which are published in the town of Gaffney, Cherokee County, shall constitute sufficient notice to the voters of said county of said election. The said Cherokee County Highway Commission shall appoint three managers for each election precinct in the county to hold the said election; said election to be held under the rules and regulations of the general election, as prescribed by law. The said Highway Commission shall prescribe two ballots to be voted by the said qualified electors; those voting in favor of the said bonds to vote a ballot on which shall be printed the words, "For Bonds;" those voting against the proposed issue of bonds voting a ballot on which shall be printed the words,

“Against Bonds,” the result of which election shall be declared by the said Highway Commission. There shall be no further registration of voters other than that now prescribed by law. The expenses of said election to be paid out of the ordinary county funds on warrant issued by County Supervisor of Cherokee County.

1917, XXX, 266.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1340) § 31. Sale of Bonds—Form.—The Commission shall have authority to sell said bonds at not less than par, if the election provided for is declared favorable to said issue. Said bonds shall be sold as in the discretion of the said Commissioners is to the best interest of the county, at not to exceed five per cent. interest per annum, by public sale after due advertisement. Said bonds shall be signed by the Chairman of the Cherokee County Highway Commission, and shall be countersigned by the Clerk of the County Board of County Commissioners, under the seal of the county, and shall be numbered consecutively from one upward. There shall be lithographed or engraved upon the coupons attached to the bonds the *facsimile* signatures of the County Supervisor and the Clerk of the County Board of Commissioners. The delivery of such bonds so executed at any time thereafter shall be valid, notwithstanding any changes in such officers or seal occurring after such execution. Said bonds shall bear interest payable semi-annually, and the bonds shall be serial bonds, and shall mature within thirty years, maturities to be determined by the Cherokee County Highway Commission. Said bonds are to be in such form, and payable at such place or places as the Commission shall determine and shall be exempt from State and county taxation.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.
1917, XXX, 266.

(1341) § 32. Registration May Be Provided For.—That the said County Highway Commission may provide for the registration of the principal of any or all of said bonds upon the registration books to be provided by the county, a notation of such registry to be made upon the reverse side of the bonds so registered, after which the principal thereof shall be payable only to the registered holder, but such registration shall not affect the payment of interest, which shall be continued to be paid upon the presentation and surrender of coupons.

1917, XXX, 266.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1342) § 33. Deposit of Proceeds—Interest—Disbursements.—The proceeds from the sale of said bonds shall be deposited in the chartered banks in the County of Cherokee in proportion to the capital stock and surplus of said banks as nearly as practicable: *Provided*, That such banks shall agree to pay interest at not less than four per centum per annum, compounded quarterly, for the average time, not less than sixty days, during which the funds remain in the bank. The funds shall be held subject to the warrants of the Cherokee County Highway Commission. Said warrants shall be signed by the Chairman and countersigned by the Secretary of the Board of Highway Commissioners, and shall be drawn payable to the person or

persons to whom funds may, from time to time be due, for salaries, incidental expenses, or for the permanent work of building and improving the public roads as the work progresses; and such accounts prior to being paid, shall be approved by the Chairman of the Cherokee County Highway Commission, the Secretary of the Cherokee County Highway Commission and the Engineer.

1917, XXX, 266; 1918, XXX, 1086.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1343) § 34. Tax to Be Levied to Pay Interest and Provide Sinking Fund and Maintenance Fund—Deposit and Management—Report of Treasurer—Payment of Interest and Principal—Provisos.—There is hereby directed to be levied and collected, in the same manner and at the same time as other taxes are levied and collected, an annual tax on all the taxable property of the said county sufficient to pay the interest on said bonds as the interest shall become due and payable; and to provide, also, a sinking fund sufficient to retire the said bonds as they shall mature. And such an amount for the maintenance of the roads constructed under this Article as shall be deemed advisable by the Highway Commission. The said sum shall be annually paid over to the Treasurer of Cherokee County, to be by him kept and placed on deposit as a separate fund in such banks of Cherokee County of said State, upon such interest as may be obtained, but at not less than four per cent. per annum, compounded quarterly. The Treasurer shall annually present to the Circuit Court of said County of Cherokee an itemized statement of all such funds received by him, and when and where the same are deposited and at what rate of interest. This report shall be filed with the Clerk of said Court. The County Treasurer shall pay the interest on said bonds as it becomes due and payable, and the principal as the said bonds mature. This levy, as provided for the retirement of the interest and principal of said bonds, is to be levied only in case that such election, as is above provided for, is voted in favor of said bonds; otherwise the said Cherokee County Highway Commission are authorized and directed to provide an annual tax of three mills, same to be levied and collected in the same manner and at the same time as other taxes are now levied and collected, on all taxable property of Cherokee County for the purpose of constructing permanent highways in said Cherokee County; the said work to be done on the system of highways herein set forth, at least one-tenth of same in each township annually, under the terms and provisions of this Article, under supervision of County Highway Commission: *Provided*, That the provisions of this Article shall apply equally to the funds levied under the said three-mill levy in case bond issue fails as same shall apply to the funds derived from sale of bonds if same should carry: *Provided*, That in case the bond issue herein provided for fails, the said Highway Commission shall be authorized to borrow money for permanent road work in anticipation of said levy, and shall be authorized to pledge the said levy as security therefor.

1917, XXX, 266.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1344) § 35. Personnel of Commission—Compensation of Commissioners.—That the Commissioners herein provided for shall consist of the following: W. C. Hamrick, J. B. Hambright and J. D. Jeffries. The compensation of the members of the Commission is to be as follows: The Chairman to receive one hundred and fifty (\$150) dollars per annum, and the other two members of the Commission to receive one hundred dollars per annum, payable in monthly installments, and shall not be entitled to any other compensation whatsoever, except actual expenses of necessary travel in the performance of duties required.

1917, XXX, 266; 1918, XXX, 1086.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1345) § 36. To Have Jurisdiction Over Chaingang and Road Working Equipment—Provisos.—The said Cherokee County Highway Commission, through its Engineers or other officers employed by it, shall have jurisdiction of the chaingang and the road working equipment of the county, the said chaingang and road working equipment to be used by the said Highway Commission in permanent road work, as set forth herein, as deemed advisable by them; all expenses of the same to be paid out of the funds provided for in this Article; they shall have authority to divide the same in any manner desired, and employ labor under contract system or in any other manner that may seem expedient, and further, to contract any portion of the permanent work referred to in this Article as may be regarded for the best interest of the county: *Provided*, That the said Highway Commission may allow any part of the said equipment, including the chaingang to be used under the direction of the Supervisor and the Township Commissioner located in the township where said work is to be done, for road maintenance, whenever the same may be practicable, and when such is done to collect from the funds provided for road maintenance the *pro rata* share of the expenses of the said road equipment for the time the said equipment is used in the various townships for said road maintenance: *Provided*, That the said chaingang and road working equipment shall continue to be under the supervision and jurisdiction of the County Board of Commissioners until the permanent road work provided for herein is begun by the Cherokee County Highway Commission.

1917, XXX, 266.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1346) § 37. Application of Interest on Proceeds Deposited.—The interest accruing on the funds arising from the sale of said bonds, while deposited in the banks of Cherokee County, as hereinbefore provided, shall be, by the Treasurer of said county, applied to the payment of the first year's interest payments of said bonds, as far as it may go, and any balance which may accumulate thereafter on such account shall be added to the principal of the sinking fund, to be expended as above provided for in said sinking fund.

1917, XXX, 266.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1347) § 38. Reports.—The Commission shall, at end of each quarter of each year, make a full report of its transactions during that year, includ-

ing an itemized statement of all moneys received and disbursed for whatever purpose, said report to be filed with the Clerk of Court for said county and to be submitted by the Clerk to the Circuit Judge presiding at the next succeeding term of Court of General Sessions for said county and submitted by him to the Grand Jury for investigation. The Grand Jury shall make an examination of the books, papers, and accounts and the work of the said Commission, as now required by law to be made of the county officers.

1917, XXX, 266; 1918, XXX, 1086.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1348) § 39. Purchases.—That all supplies, equipment and purchases of all kinds made by the said Commission, and all contracts for road work or road material, shall be on a competitive basis, so that same may be secured at the least price consistent with efficiency.

1917, XXX, 266; 1918, XXX, 1086.

Jeffries et al v. Hambright et al, 116 S. C. 203; 107 S. E. 514.

(1349) § 40. Expenditures Limited.—That the said Commission in the expenditure of the funds under their control now or hereafter, for permanent road work, shall be limited in the expenditure of same to an average of twenty-two hundred and fifty (\$2,250.00) dollars per mile, exclusive of culverts, bridges and road on which Federal funds are used, and further, that one-tenth of the total expenditure for permanent road work shall be made in each township.

1918, XXX, 1086.

(1350) § 41. How Road Funds in Cherokee County to Be Expended—Proviso.—That the road funds provided for Cherokee County shall not be expended per mile, or as raised in the various townships, but shall be appropriated by the County Commissioners of said county where same shall be necessary: *Provided*, That at least 15 per cent. of the funds provided for road maintenance in said county shall be expended in each township.

1917, XXX, 272.

(1351) § 42. Maintenance—Roads to Be Dragged Monthly.—That the said County Commissioners shall arrange for the proper maintenance of the roads of the county, employing competent persons to have in charge the said work, as the said Commissioners may deem best: *Provided*, That said roads shall be dragged by a split drag monthly, or oftener, as may be necessary, using any machinery now owned by various townships and providing such other as may be necessary, and make such other arrangements as in their judgment are necessary in order to have the roads of the county properly maintained.

1917, XXX, 272.

(1352) § 43. Expenditure of Bridge Fund—Proviso.—That the general bridge fund provided for the county shall be expended in maintenance of necessary bridges and culverts in the various townships: *Provided*, That at least 10 per cent. of said funds shall be used in each township.

1917, XXX, 272.

(1353) § 44. Townships to Bear Pro Rata of Expenses of Road Building Therein.—That whenever the county chaingang or county road organization and equipment, or any portion thereof, shall be engaged in road maintenance, such as is provided in this Article, and in the building of bridges or approaches as set forth herein, then the *pro rata* expenses of same shall be charged to the township in which the said work is done and be a part of the expense of that township under the division of the funds as herein set forth.

1917, XXX, 272.

(1354) § 45. To What Funds Does Not Apply.—That the provisions of the four preceding Sections shall not apply to funds arising from bond issue for bridges, or any special levy for permanent road work.

1917, XXX, 272.

(1355) § 46. Road Maintenance Tax in Cherokee County.—That an annual tax of two (2) mills on all the property in Cherokee County is hereby levied, to be collected as other taxes are collected, for the purpose of maintaining the roads constructed, or those to be constructed or improved, by the Highway Commission in said county.

1919, XXXI, 33.

(1356) § 47. Highway Commission May Borrow.—That the said Commission is authorized to borrow from time to time, in anticipation of the collection of said taxes, and by pledging same, whatever funds may be necessary to purchase necessary machinery to maintain the said road until the said taxes are collected.

1919, XXXI, 33.

(1357) § 48. County Treasurer to Turn Over Funds.—That the said County Treasurer of Cherokee County is hereby authorized and required to turn over to the Chairman of the Cherokee County Highway Commission on March 1 of each year, or as soon thereafter as collected, of all funds in his hands arising from levies made under the provisions of Section 46 above for maintenance purposes, and also any balance in his hands at that time arising from levies.

1919, XXXI, 33.

(1358) § 49. Disbursement.—That the funds referred to in the preceding Section for maintenance purposes be paid out by the said Highway Commission in the same manner and under the same terms and provisions as vouchers in reference to other funds in their hands for road improvement.

1919, XXXI, 33.

(1359) § 50. Reports.—That the said Commission shall make itemized and verified reports of the funds expended for road maintenance as is now required to be done in reference to other funds in their hands for road improvement.

1919, XXXI, 33

(1360) § 51. **Right of Condemnation.**—That the said Highway Commission shall have the same right to condemn land for top soil and drainage for maintenance purposes and for road improvement that the ordinary county authorities now have and shall proceed in the same manner; the power being hereby vested in the said Commission to condemn land for top soil and drainage, or prevent shedding, for road improvement and road maintenance as in their discretion may be necessary, proceeding under the terms of the general law now regulating same in reference to the ordinary county authorities.

1919, XXXI, 33.

(1361) § 52. **Permanent Road Funds to Be Reimbursed.**—The said Commission is authorized to reimburse the permanent roads funds for any funds used by the said Commission heretofore in road maintenance, or that may hereafter be used of same to carry on the said maintenance work, until the funds provided under the terms of the foregoing Sections become available, or until the Commission has borrowed funds under the powers set forth herein.

1919, XXXI, 33.

(1362) § 53. **Sinking Fund Commission Additional Duties.**—That in addition to the duties now imposed by law upon the Sinking Fund Commission of Cherokee County, it shall be the duty of the said Commission to ascertain what sums of money are now held in the hands of the Sinking Fund Commission of the town of Gaffney, S. C., and to take over and hold all such sums that may have been raised to pay the interest and principal of the several issues of bonds by the town of Gaffney, S. C., for the purpose of building, erecting, establishing and installing the electric light, water-works and sewerage plants in said town; and it shall be the duty of the Sinking Fund Commission of the town of Gaffney, S. C., within thirty days from the approval of this Act to turn over and deliver to the Sinking Fund Commission of Cherokee County all sums of money now in their hands, together with all evidences of indebtedness to said Sinking Fund Commission of Gaffney, including all notes and all securities held by them arising out of funds that may have been loaned to the town of Gaffney, or to any other person, firm or corporation, and shall deliver to the Sinking Fund Commission of Cherokee County a complete statement of all levies that may have been made by said town for the purpose of paying interest on and retiring the bonded indebtedness of the town, together with the amounts received from such sources from the time such levies were made; and the Sinking Fund Commission of the town of Gaffney shall render a full and complete accounting of all its actings and doings with respect to said funds.

1912, XXVII, 76.

(1363) § 54. **Commission to Keep Account of Funds Received.**—

That the Sinking Fund Commission of Cherokee County shall keep a true and correct account of all funds so received, and shall pay the interest and principal of all bonds issued by the town of Gaffney, S. C., as the same may mature; and during each year after the first of March,

and as soon as the taxes for each fiscal year shall have been collected by the Treasurer of the town of Gaffney, ascertain the amount due to the sinking fund, and draw their warrant on the Town Treasurer for the same; and said funds shall be kept accounted for, and reported as other funds in their hands.

1912, XXVII, 76.

(1364) § 55. Gaffney Sinking Fund Commission to Make Final Settlement.—That after the Sinking Fund Commission of the town of Gaffney, S. C., shall have made a full, complete and final settlement with the Sinking Fund Commission of Cherokee County, then the said Sinking Fund Commission of Gaffney, S. C., shall be abolished, and all the duties hereto imposed on the same shall be discharged by the Sinking Fund Commission of Cherokee County.

1912, XXVII, 76.

CHESTER COUNTY.

(1365) § 1. Offices of County Supervisor, County Commissioners and Township Road Supervisors Abolished in Chester County.—That the offices of County Supervisor, of County Commissioners and of Township Road Supervisors in and for Chester County be, and are hereby, abolished.

Civ. '12, § 1996; 1910, XXVI, 648; 1916, XXIX, 851; 1920, XXXI, 816.

(1366) § 2. Board of County Directors Created—Appointment—Term. That a Board of County Directors of Chester County, to consist of three (3) members, is hereby created. The members of said Board shall be appointed in the same manner as County Commissioners are now appointed by the Governor, upon the recommendation of the Legislative Delegation, for a term of two years from the date of expiration of the term of the present County Supervisor and until their successors are appointed and qualified.

1916, XXIX, 851; 1920, XXXI, 816.

(1367) § 3. Organization—Compensation—Bonds.—That said Board of County Directors shall elect from their number a Chairman, upon whom may be devolved by the Board, in its discretion, such executive and official duties as it may deem advisable. That the Chairman of said Board shall receive as compensation for his services the sum of five hundred (\$500.00) dollars per annum, and that each of the other members of said Board shall receive the sum of four hundred (\$400.00) dollars per annum. That each member of said Board, before entering upon the discharge of the duties of his office, shall enter into a bond secured by a duly licensed surety company to be approved by the Clerk of Court, payable to the county, in the sum of five thousand (\$5,000.00) dollars, conditioned for the faithful performance of his duties. The premiums on said bonds shall be paid out of the ordinary fund of the county.

1916, XXIX, 851; 1920, XXXI, 816.

(1368) § 4. Duties.—That all the duties, obligations and functions heretofore imposed by law upon the Township Road Supervisors, the County Commissioners and County Supervisor of Chester County, which may be consistent with the provisions of this Article, together with all the powers and authority now vested by law in the said offices and officers, are hereby devolved upon and vested in said Board of County Directors.

1916, XXIX, 851; 1920, XXXI, 816.

(1369) § 5. Office—Disbursements—County Property—Roads.—That it shall be the general duty of said Board of County Directors, for the discharge of which duty full power and authority are hereby conferred, to organize and conduct the administration of the county's business, financial and fiscal affairs, upon a systematic, economical and efficient basis. To that end the said Board (1) shall provide and maintain at the county seat an office for the transaction of business, which shall be open as nearly as practicable upon every business day of the year, wherein shall be kept all books of account, contracts, correspondence and other records of official business; (2) shall inaugurate and maintain, under such expert supervision and direction as may be necessary, a system of receiving and disbursing funds and keeping accurate check of same, and of accounting and bookkeeping that will properly safeguard the public interests and accurately determine and show the cost of maintaining all public institutions and public property and of performing all public work of every character; (3) shall maintain and keep in repair and in efficient operative condition all county property and county institutions; and (4) shall be chargeable with and responsible for the construction and proper maintenance and upkeep of the county's roads, highways and bridges.

1916, XXIX, 851; 1920, XXXI, 816.

(1370) § 6. Clerk—Supervisor of Roads—Employees.—That the said Board of County Directors is hereby authorized and required: (1) To employ a competent office assistant, to be known as Clerk of the Board of County Directors, who shall be required to be in the office of the Board daily within reasonable office hours, to keep the books, accounts and records and to perform the clerical work of said office, and to perform such other duties as may be imposed by the said Board; (2) to employ a competent and skilled person to have in charge and to organize and manage the construction, maintenance and repair of the roads, highways and bridges of the county who shall be known as the Supervisor of Roads, and to whom shall be committed adequate authority and full responsibility for the construction and maintenance of roads, highways and bridges, under the general direction of said Board; (3) to employ such other assistants, agents and servants and to retain the services of such professional and technical experts as may be necessary properly to carry on the business of the county.

1916, XXIX, 851; 1920, XXXI, 816.

(1371) § 7. Compensation of Employees—Bonds—Removal.—That the compensation and salaries of said Clerk of the Board, Supervisor of Roads, and of all other employees, agents and servants of the county shall be determined and fixed by the said Board of County Directors and shall be

as low as may be consistent with securing competent employees and efficient service. An adequate bond, with good and sufficient surety, payable to said Board of County Directors, and conditioned for the faithful performance of their duties, shall be required of the Clerk of the County Board of Directors, of the Supervisor of Roads, and of such other employees and contracting parties as the Board may deem proper. The said Clerk of the Board of County Directors, the Supervisor of Roads and all other employees shall be subject to removal or discharge at the discretion of the Board.

1916, XXIX, 851; 1920, XXXI, 816.

(1372) § 8. Highway Districts—Deputy Supervisors.—That said Board of County Directors is hereby authorized and empowered to subdivide the county with respect to roads, highways and bridges into such districts or sections as it may deem best for the public interests and to authorize or require the Supervisor of Roads to appoint and employ Deputy Supervisors of Roads in and for such districts or sections. Said Deputy Supervisors shall be employed upon such terms and shall have such authority and shall be charged with the performance of such duties as may be conferred and imposed by the Supervisor of Roads under the direction of the Board of County Directors.

1916, XXIX, 851; 1920, XXXI, 816.

(1373) § 9. Chaingang—Laborers.—That said Board of County Directors is hereby authorized and empowered to use the chaingang of the county for the construction and maintenance of the roads, highways and bridges of the county in such manner and at such places as it may deem best for the public interests, to hire laborers to work in connection with said chaingang and to use said chaingang in connection with any work being done for the county by contract or otherwise.

Civ. '12, § 2001; 1910, XXXI, 650; 1916, XXIX, 851; 1920, XXXI, 816.

(1374) § 10. Commutation Road Tax—Evasion a Misdemeanor—Penalty.—That from and after January 1, 1921, all able-bodied male persons between the ages of 21 and 50, both inclusive, residing in Chester County, not exempt under the general law, except those who are required to perform road duty or pay a commutation tax in incorporated cities and towns shall be subject to road duty and shall be required to perform or cause to be performed annually six days' labor upon the roads of the county in the subdivision of the county with respect to roads and highways in which he shall reside: *Provided*, All persons subject to road duty may in lieu of performing such labor pay to the County Treasurer on or before the first day of April of each year such sum by way of commutation tax, to be not less than four (\$4.00) dollars and not more than ten (\$10.00) dollars per annum, as may be fixed and published by the County Board of Directors not later than January 20 of each year. All persons subject to road duty who shall fail to pay the commutation tax herein provided shall be called out and caused to labor or to furnish an acceptable substitute for the required number of days each year at the discretion of the Supervisor of Roads or his duly authorized deputy or agent and under such rules and regulations as the Board of County Directors may prescribe. Any person liable to road

duty who shall fail or refuse without lawful excuse to appear and render the service required of him in person or by substitute after receiving twenty-four hours' notice or warning in writing of the time and place he is to report for duty shall be guilty of a misdemeanor and punishable by a fine of not exceeding twenty-five (\$25.00) dollars or imprisonment at hard labor not exceeding thirty (30) days.

1913, XXVIII, 173; 1916, XXIX, 851; 1920, XXXI, 816.

(1375) § 11. Care of Indigent—Sale of Poor House Farm.—That said Board of County Directors is hereby authorized and empowered to provide adequate means and facilities for properly supporting and caring for all persons who by reason of age, poverty or infirmity are or may become public charges and entitled to maintenance and care at the expense of the county. In this connection, said Board of County Directors is hereby expressly authorized and empowered in its discretion to sell at public auction, after due advertisement, and convey, and to execute and deliver good and sufficient title deeds therefor, all or any part of the present County Poor House Farm, or to make such other disposition of said real estate as it may deem best for the public interests: *Provided*, The proceeds of any sale of said property shall be set apart and so much thereof as may be necessary reinvested as speedily as practicable in real estate or in buildings, plant and equipment which shall be devoted to and used for the care and support of persons who are and may become public charges upon the county.

1916, XXIX, 851; 1920, XXXI, 816.

(1376) § 12. General Laws Applicable Unless Inconsistent.—That said Board of County Directors of Chester County shall be governed by and subject to all such provisions of the general law with respect to the exercise of their powers and the administration of the county's affairs as are not inconsistent with the provisions of this Article.

1916, XXIX, 851; 1920, XXXI, 816.

(1377) § 13. Special Tax in Chester County.—In Chester County, for the purpose of maintaining and improving the public highways, there shall be levied each year an annual tax of two mills on all the real and personal property in the said county, which shall be levied and collected in the same way and at the same time as all other taxes. And said highway tax, when collected, shall be set apart and appropriated to each of the eight townships in the county equitably and *pro rata* according to the public road mileage of each township, by the Board of County Directors, on the first day of January of each year, or as soon thereafter as practicable. And said Board of Directors shall file their apportionment of said taxes with the County Treasurer, who shall thereupon credit each township with its apportionment, and keep an account with each of said townships.

Civ. '12, § 1995; 1910, XXVI, 647; 1920, XXXI, 815.

(1378) § 14. County Treasurer to Keep Ledger of Road Taxes.—The County Treasurer in said county, in a ledger kept for that purpose, shall keep a separate account with each township road fund, in which he shall credit each township with the said property tax as apportioned to it by the

County Directors, and with any road commutation tax paid by any citizen residing in such township, and with any other funds that may belong to the roads of such township from any source; and pay out from said township's funds the warrants and claims drawn by the Board of County Directors thereon as hereinbefore provided. And the said County Treasurer shall make monthly settlements with and monthly reports to the Board of County Directors, of the separate and respective township road funds.

Civ. '12, § 2000; 1910, XXVI, 650; 1920, XXXI, 815.

(1379) § 15. Funds—How Spent.—The County Directors shall expend and use the township road fund arising from the said property tax, the commutation tax, or other source, for the maintenance and improvement of the public roads in the township to which the same belongs and is credited.

Civ. '12, § 1997; 1910, XXVI, 649; 1920, XXXI, 815.

CHESTERFIELD COUNTY.

(1380) § 1. Laws as to Chesterfield County of Force, Except as Modified by This Article.—That the law shall remain the same as now provided in reference to the county of Chesterfield, except as the same is changed and modified by the provisions of this Article.

1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034.

(1381) § 2. Office of County Supervisor Abolished for Chesterfield County—Term of Incumbent Reserved.—That the office of the County Supervisor for Chesterfield County be, and the same is hereby, abolished, to be effective at the end of the term of the incumbent in office in 1920.

1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034.

(1382) § 3. Board of County Commissioners—Appointment—Terms.—That the Board of County Commissioners, consisting of five members, is hereby created, to be appointed by the Governor upon the joint recommendation of the whole Legislative Delegation for said county. Such Commissioners shall be appointed for the terms of five, four, three, two and one year, respectively, so that not more than one new Commissioner may be appointed in any one year.

1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034.

(1383) § 4. Vacancies.—Any vacancy on said Board of Commissioners, caused by death, resignation or otherwise, shall be filled by appointment, as herein provided, and said Commissioners shall be chosen as nearly as practicable from different parts of the said county.

1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034.

(1384) § 5. Powers of Board—Proviso.—That the said Board of County Commissioners shall have all the powers now vested in the County Commissioners under the law, and shall be subject to the general law except as herein provided, and shall have authority to pass upon, approve, or disapprove all claims against the said county, and no claim of past or existing

indebtedness against the county shall be paid except on approval of said Commissioners: *Provided*, That all claims against the county for road and bridge construction and maintenance shall be approved by the County Highway Engineer hereinafter provided for.

Civ. '12, § 2005, 2009; 1910, XXVI, 652; 1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXI, 1034.

(1385) § 6. Chairman—Clerk and Bookkeeper—Acconuts.—That the said Board of County Commissioners shall elect a Chairman from their number and shall elect a Clerk and Bookkeeper, which Clerk and Bookkeeper shall be one and the same person, and may be elected from their number, and which Chairman and Clerk and Bookkeeper shall sign and countersign all vouchers issued out of their office; and the Chairman so elected shall assume all the clerical and official duties heretofore exercised by the County Supervisor. The said Board may employ, outside of their number, a Bookkeeper at a salary not exceeding \$600.00 per annum; and shall see to it that said Bookkeeper shall keep correct accounts not only of the County of Chesterfield, but of each township in said county, of all moneys spent through the office of said Board of Commissioners. In the event said Board of County Commissioners elect such Clerk and Bookkeeper from their number, he shall receive a salary of \$700.00 per annum in lieu of his salary provided for in Section 7 of this Article.

1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034.

(1386) § 7. Compensation of Board.—Each member of the said Board of Commissioners shall receive an annual salary of three hundred (\$300.00) dollars per annum.

1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034.

(1387) § 8. County Highway Engineer—Powers and Duties—Contracts—Claims—Road Work—Bonds of Commissioners and Engineer.—The said Board of Commissioners is authorized and empowered and shall employ a County Highway Engineer, whose term of office shall be one year, unless sooner discharged by the said Board, at a salary not exceeding twenty-two hundred (\$2,200.00) dollars per annum. Said Highway Engineer shall be a person skilled in road engineering, and in the event that said Board is unable to procure the services of such person they may employ any other competent person, to be known as said County Highway Engineer. The said County Highway Engineer shall take charge of and superintend the working, construction, and maintenance of the public roads and bridges and highways of the county, and shall have power, with the consent of the said County Board of Commissioners, to make all contracts necessary for the working, construction, and maintenance of the said roads, bridges and highways in said county, and is empowered, with the consent of said County Board of Commissioners, to contract with an individual or individuals of each township of said county for such work, and all funds, whether derived from the county ordinary road fund or from the township road funds, respectively, shall be spent under the control of the said Highway Engineer with the consent of the said County Board of Commissioners. And said Highway Engineer shall see to it that all claims against the said county

for road working or construction or maintenance are duly itemized before his approval for payment. The said County Board of Commissioners, in conjunction with the said Highway Engineer, are hereby empowered to lay out public roads in said county for construction and to work and maintain public roads already laid out and constructed or partly constructed. The said Commissioners shall be commissioned by the Secretary of State as now provided by law, and shall each give bond in the sum of five hundred (\$500.00) dollars for the faithful performance of their duties, respectively. The said County Highway Engineer shall give bond in the sum of five thousand (\$5,000.00) dollars, conditioned for the faithful performance of his duties; the premium on said bond to be paid for out of the ordinary fund of the county.

1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034.

(1388) § 9. Commutation Road Tax—Non-payment a Misdemeanor—Penalty—Disposition of Fines.—It shall be the duty of the said County Commissioners and of the County Highway Engineer to see to it that all persons liable to pay commutation tax shall pay the same. And any and all persons in said county liable to road duty shall pay the road tax of three (\$3.00) dollars, except ministers of the gospel; said tax shall be charged by the Auditor of Chesterfield County against every able-bodied male person between the ages of twenty-one and fifty-five years, inclusive, upon the tax books of said county, and shall be collected by the County Treasurer of said county as other taxes are collected, and to be expended on the roads in the township of the person paying same. Any person liable to road duty and failing to pay said road tax shall be guilty of a misdemeanor, and, upon conviction, shall pay a fine of not less than ten (\$10.00) dollars, nor more than fifty (\$50.00) dollars, or be imprisoned for not less than ten days nor more than thirty days, in the discretion of the Court, and all fines collected for the nonpayment of said road tax shall be credited to the road fund of the township where such party failing to pay same resides.

1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034; 1921, XXXII, 232.

(1389) § 10. Property Tax for Roads—Use of Proceeds.—There shall be annually levied on all the real and personal property of Chesterfield County a tax of four mills for road and bridge purposes, to be collected as other taxes are collected, one-half of which shall go into the ordinary funds of the county and the other half of which shall be expended on the roads and bridges of the townships from which it is collected.

Civ. '12, § 2003; 1910, XXVI, 652; 1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034.

(1390) § 11. Road Forces.—The said County Highway Engineer, with the consent of the said County Board of Commissioners, is hereby authorized and empowered to organize road working forces for the construction and maintenance of the public roads of said county, all of which roads shall be under the supervision and control of the said County Board of Commissioners.

1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034.

(1391) § 12. Annual Borrowings—Pledge of Taxes—Approval of Contracts—Publication of Statements.—That the said County Board of Commissioners are hereby authorized and empowered to borrow money from year to year to pay current expenses, including ordinary expenses, and expenses for road and bridge building, and to pledge the taxes of the county to secure the same, with the consent of the Delegation in the General Assembly. All contracts for road and bridge work must be approved in writing by a majority of the said Board. That the said Board of Commissioners shall publish semiannually an itemized statement of all expenditures made by the county.

1916, XXIX, 853; 1918, XXX, 864; 1919, XXXI, 192; 1920, XXXI, 1034.

(1392) § 13. Special Tax.—A tax of two mills on all property in Cheraw Township shall be levied to supplement the commutation tax for road work in said township; same to be paid into the county treasury as other taxes are paid, to be expended in said township.

Civ. '12, § 2008; 1910, XXVI, 653.

COLLETON COUNTY.

(1393) § 1. Highway Commissioner.—There shall be for and in the County of Colleton a Highway Commissioner who shall be elected by the qualified electors of said county for a term of four years, and until his successor is elected and qualified to be elected at the same time as other county officers of said county, and shall receive, as compensation for his services an annual salary of one thousand dollars, and is hereby authorized to employ a Clerk, whose salary shall be four hundred and eighty dollars per annum.

Civ. '12, § 2014; 1911, XXVII, 165; 1912, XXVII, 861; 1914, XXVIII, 607; 1915, XXIX, 406; 1916, XXIX, 857.

(1394) § 2. Duties of Highway Commissioner.—The Highway Commissioner shall have all the powers and perform all the duties heretofore devolved upon and vested in the County Supervisor and County Board of Commissioners of Colleton County, and shall give bond in the sum of five thousand dollars conditioned upon the faithful performance of his duties as Commissioner.

Civ. '12, § 2017; 1911, XXVII, 165; 1912, XXVII, 861; 1914, XXVIII, 607; 1915, XXIX, 406; 1916, XXIX, 857.

(1395) § 3. Form of Accounts.—That no account shall be audited and paid by the Highway Commissioner unless the same shall be itemized and verified.

1912, XXVII, 861; 1914, XXVIII, 607; 1915, XXIX, 406; 1916, XXIX, 857.

(1396) § 4. Traveling Expenses of Commissioner.—That the sum of two hundred and fifty dollars shall be allowed the Highway Commissioner for the purpose of defraying his traveling expenses over the county, provided he uses an automobile for such purpose.

1912, XXVII, 861; 1914, XXVIII, 607; 1915, XXIX, 406; 1916, XXIX, 857.

(1397) § 5. Commissioners to Account and Purchase Certain Supplies.—

The said Highway Commissioner shall at each term of the Circuit Court for Colleton County present on the second day of the said term of Court, to the presiding Judge, an itemized, verified statement of all disbursements made during the year, with the amount of cash on hand, and the amount of outstanding indebtedness, if any, by whom held, and by what authority said indebtedness was contracted, which statement, after inspection by the presiding Judge, shall be transmitted to the Grand Jury of the said county. That the Highway Commissioner shall buy supplies and furnishing for the county chaingang at wholesale prices and pay cash for the same in such manner and way as will best serve the interest of the county, and he shall keep an accurate record of all such expenditures for said chaingang, duly itemized and certified with vouchers and original invoices, and file the same with the statements as required in Section 5 hereof. Said statement to include and show the average cost of maintenance and support of each inmate of the chaingang, and also the average cost for the keep of each mule or other animal used by said Highway Commissioner for the repairs and construction of roads in said county.

Civ. '12, § 2020; 1911, XXVII, 165; 1912, XXVII, 861; 1914, XXVIII, 607; 1915, XXIX, 406; 1916, XXIX, 857.

(1398) § 6. How Proceeds Used and Apportioned.—

All moneys received from taxation for roads and bridges, which is fixed at two mills, and the commutation tax, shall be apportioned to the several townships, and used only for the repair and construction of roads and bridges, in the respective townships from which collected, and separate vouchers shall be kept for each of the townships showing amounts paid out in the several townships.

Civ. '12, § 2018; 1911, XXVII, 165; 1912, XXVII, 861; 1914, XXVIII, 607; 1915, XXIX, 406; 1916, XXIX, 857.

(1399) § 7. How Road Tax Disbursed.—

That all money derived from the two-mill road tax, paid in by municipal corporations in said county, shall be kept separate by the County Treasurer and turned over to the town Treasurer of the town from which collected, and the same shall be used by the municipal authorities for the repair and construction of roads and bridges within the corporate limits of said town.

Civ. '12, § 2019; 1911, XXVII, 165; 1912, XXVII, 861; 1914, XXVIII, 607; 1915, XXIX, 406; 1916, XXIX, 857.

(1400) § 8. Distribution of Railroad Taxes—Use of Chaingang.—

That the taxes paid by railroads within said county, for roads and bridges, shall not be restricted and limited to the township from which it may have been collected, but shall be distributed over the entire county, in the discretion of the Highway Commissioner, and expenses incurred for the maintenance and support of the chaingang shall be paid out of the ordinary tax fund of the county, and the chaingang shall be used in any portion of the county, in the discretion of the Highway Commissioner.

1912, XXVII, 861; 1914, XXVIII, 607; 1915, XXIX, 406; 1916, XXIX, 857.

(1401) § 9. Physician and Attorney.—That said Highway Commissioner shall have the authority, and hereby is empowered, to employ a physician for the poor and chaingang, and an attorney to represent the county, upon such reasonable terms as he may deem to be for the best interest of the county.

1912, XXVII, 861; 1914, XXVIII, 607; 1915, XXIX, 406; 1916, XXIX, 857.

(1402) § 10. Officers Paid Monthly.—That the Highway Commissioner shall pay all salaried officers of the county monthly.

1912, XXVII, 861; 1914, XXVIII, 607; 1915, XXIX, 406; 1916, XXIX, 857.

(1403) § 11. Supervisory Board for Colleton County—Highway Commissioners—Terms—Bonds.—A Supervisory Board for Colleton County is hereby created. Said Board shall be composed of four members, one of which shall be the Highway Commissioner of Colleton County, and the other three members shall be appointed by the Governor, upon recommendation of the County Delegation in the General Assembly, that is to say, one by the Senator and two by the members of the House of Representatives. The term of office of the Highway Commissioner shall remain as it is, and the term of the other three members shall be for two years and until their successors have qualified, unless sooner removed by the Governor, upon the recommendation of a majority of the members of the General Assembly of Colleton County. The Highway Commissioner shall be Chairman of the Board. Each member of the Board, except the Highway Commissioner, shall give bond in the sum of one thousand dollars, to be approved by the Clerk of Court for Colleton County.

1920, XXXI, 896.

(1404) § 12. Expenditure of Road Funds—Letting of Contracts—Disbursements.—The authority of the Highway Commissioner to expend funds or contract for the expenditure of funds for road work and bridge building shall be exercised under and subject to the Supervisory Board. The Supervisory Board shall pass upon and determine all contracts for purchase of supplies after due advertisement and upon competitive bids to cover purchases for a month or not more than three months, said purchase to be by wholesale and at wholesale prices; and shall make contracts for building bridges and road work upon competitive bids duly called for by advertisement, and shall pass upon all claims for payment by the county, except salaried claims, and the certificate of the said Supervisory Board, or a majority thereof, shall be attached by the Highway Commissioner for the drawing or paying of money or the binding of the county by any contract whatsoever, in regard to purchasing supplies and road working: *Provided, further*, That these provisions shall not apply to purchase in emergency to amounts not exceeding twenty-five (\$25.00) dollars during any one month and contracts for road work not exceeding fifty (\$50.00) dollars.

1920, XXXI, 896.

(1405) § 13. Meetings—Compensation.—The members of the said Board shall meet on the first Monday of each month and at such other time as the

Board shall think it necessary to meet. The members of the Board, except the Highway Commissioner, shall receive the annual salary of one hundred dollars.

1920, XXXI, 896.

(1406) § 14. Accurate Account of Taxes in Each Township.—The Treasurer of Colleton County shall keep an accurate account of the taxes for road purposes in each of the townships of the county, and said taxes shall go to pay for work done on the roads and bridges in the respective townships, subject to the order of the Supervisory Board hereinbefore provided.

Civ. '12, § 2021; 1911, XXVII, 167.

(1407) § 15. Supervisory Board May Borrow Money.—In no case shall the overseer collect money for his hands. The Supervisory Board at all times shall have the right, when necessary, to borrow money to work on the roads to cover amounts herein stipulated, and pledge the tax for the same, and the money so collected from each township shall be expended therein: *Provided*, That in Adams Run and Collins Township parties subject to road duty shall pay the commutation tax herein on or before May 1, or perform eight days' labor on the public highways.

Civ. '12, § 2026; 1909, XXVI, 149.

(1408) § 16. Road Engineer to Be Employed.—The Supervisory Board of Colleton County shall employ a competent Road Engineer, at a salary not to exceed one hundred dollars per month, to have charge of the road working forces of the county, and to lay off, grade and superintend the construction of permanent improvement, giving special attention to the construction of sand-clay roads in the county.

Civ. '12, § 2027; 1910, XXVI, 944.

(1409) § 17. Duty of the Road Engineer.—The County chaingang and all other road working forces of the county be directed by the said Road Engineer, under the supervision of the Supervisory Board, and that no claim for road work be paid, if for more than five (\$5) dollars, until the work be personally inspected and approved by said Road Engineer or Supervisory Board.

Civ. '12, § 2028; 1910, XXVI, 944.

(1410) § 18. How Roads to Be Made.—The public roads of the county be made as straight and direct as possible, and the work done be of a permanent and scientific nature, and that the first roads worked shall be from the county seat to the boundary line of the county, and shall intersect as nearly as possible at right angles, the roads to be first worked being selected by the Supervisory Board.

Civ. '12, § 2030; 1910, XXVI, 944.

(1411) § 19. License Tax on Automobile Repair Shops in Colleton County.—That all automobile repair shops shall pay into the county treasury of Colleton County the sum of fifteen dollars a year as a license for each and every year which they are engaged in the business of repairing automobiles; that said license shall be procured from the Clerk of Court for

said county on or before January 1 of each and every year during the continuance of said business; and each and every shop that shall be opened up after the first of January shall, before commencing business, procure a license from said Clerk of Court of said county, paying therefor the sum of fifteen dollars.

1916, XXIX, 904; 1918, XXX, 834.

(1412) § 20. License Tax on Certain Timber Carts in Colleton County.—

That an annual license fee of ten dollars is hereby imposed upon all timber carts in use upon the public highways of Colleton County, where said carts are used by manufacturers of timber into lumber, which is to be sold on the market to the public: *Provided, however,* That no license fee is collectible hereunder for any timber cart used by any person for the purpose of hauling timber or lumber for the benefit of his own plantation, whether the timber shall be manufactured into lumber or not; nor shall any license be imposed upon any farmer who wishes to use his timber cart on any of the public roads of Colleton County, so long as it is to haul his own timber and lumber, which is to be used on his plantation.

1916, XXIX, 904; 1918, XXX, 834.

(1413) § 21. License Tax on Certain Tramways in Colleton County.—

That all owners and builders of tramways and locomotive roads and tramways over and across the public highways of Colleton County, or those operating the same now in existence, shall pay a license fee of five dollars into the county treasury of Colleton County for each and every public road that they now cross or shall hereafter cross, and for each time said public roads are crossed by said locomotive roads or tramways. This Section shall not apply to common carriers of passengers or freight who operate railroads within said county.

1916, XXIX, 904; 1918, XXX, 834.

(1414) § 22. Lien and Collection of License Fees—Failure to Pay, a Misdemeanor.—

That the license fees hereinabove imposed shall be a first lien upon any and all property upon which it is imposed, or against any other property whatever now owned or hereafter owned by the parties entitled to pay said license; and in the event they fail or refuse to pay the license hereby imposed in this Article, it shall be made the duty of the Clerk of Court, to whom the said license fees are hereby made payable, to report within ten days after the same become due, to wit, June 10, the names of such parties liable to pay said license fees to the County Treasurer, who shall thereupon issue his execution directed to the Sheriff of Colleton County, to seize the property upon which the license fee is chargeable, and sell the same to satisfy such license fee; and failing to collect said fee from such property, then the said Sheriff shall be required to seize any other property which is unencumbered and which belongs to the parties hereby liable to such license, and sell the same to satisfy the license fees imposed under the provisions of this Article. And in addition hereto, if any of the parties liable to a license as hereinbefore described, and who shall fail or refuse to pay the said license as the same shall become due under the provisions of this Article, said parties shall be liable to prosecution in the Magistrate's Court

and subject to a fine, in case of conviction, in a sum not less than five dollars nor more than twenty-five dollars, or of imprisonment of not less than five days nor more than ten days, in the discretion of the Magistrate.

1918, XXX, 834.

(1415) § 23. Licenses to Be Expended on Public Highways.—That the licenses so charged shall be expended on the public highways of the county.

1916, XXIX, 904.

(1416) § 24. Commutation Road Tax in Colleton County—Exemptions.

—That all able-bodied male persons over the age of twenty-one to fifty years, inclusive, in the County of Colleton, shall be required annually to pay three (\$3.00) dollars commutation or road tax, except ministers of the gospel actually in charge of a congregation, teachers employed in the public schools, and school trustees, and persons permanently disabled in the military service of this State, and persons who served in the late War Between the States, and all persons actually employed in the quarantine service of this State, and all students who may be attending any school or college at the time when the commutation tax hereinbefore provided for shall become due: *Provided*, That any person claiming exemption from the provisions of this Section on the grounds of physical disability, where such disability is not apparent, shall be required to procure a certificate of disability from two regular physicians, dated within three months: *Provided*, That school trustees shall have credit for actual time served in school work as trustees when certified to before overseer: *Provided, further*, That all persons who are liable for road duty in said county as is provided for by law, in lieu of paying said commutation or road tax, may perform three days' labor of ten hours each on the highways.

Civ. '12, § 2025; 1909, XXVI, 149; 1920, XXXI, 957.

(1417) § 25. Collection.—That the said commutation tax as provided for in the preceding Section shall be due and payable on or before December 31 of each year, and shall be collected by the County Treasurer at the same time other taxes are collected.

1920, XXXI, 957.

(1418) § 26. Elections on Issue of Highway Bonds in Townships of Colleton County—Petition.—That whenever one-third of the qualified freeholders residing in any township in Colleton County shall present a petition to the Highway Commissioner of Colleton County praying for an election upon the question of issuing serial or other coupon bonds for the construction of public highways in such township, it shall be the duty of the Highway Commissioner of Colleton County to order an election upon the question of issuing of serial or other coupon bonds of such township, to an amount not exceeding eight per cent. of the assessed taxable property of such township, said bonds to mature and be payable either twenty years after their date, or in annual series or installments not to exceed twenty years from the date of the bonds, without option of prior redemption, and to bear interest at a rate not ex-

ceeding six per cent. per annum, payable semi-annually, both principal and interest to be payable at some bank or trust company in the city of New York.

1920, XXXI, 1440; 1921, XXXII, 194.

(1419) § 27. **Conduct of Elections—Issue and Sale of Bonds.**—Said election shall be held under the laws governing the holding of general elections in this State. The ballot shall be provided according to law, and on one ballot shall be printed "For permanent roads—Yes," on the other "For permanent road bonds—No." That said election shall be held at the same polling places as were used in such township in the last general election, and all qualified electors residing in such township shall be qualified to vote therein. If a majority of the ballots cast in said election shall be for the issuing of said bonds, the Highway Commissioners of the township in which said election is held (which Highway Commissioners are hereinafter provided for and shall be known as Township Highway Commissioners) shall dispose of said bonds at public or private sale for such price as they may deem to be best obtainable. The expense of said election shall be paid out of the township road funds.

1920, XXXI, 1440; 1921, XXXII, 194.

(1420) § 28. **Terms of Bonds—Execution.**—The said bonds shall be issued in such form and the principal and interest thereof shall be payable at such time or times within the limitations prescribed by Section 26 of this Article as the Township Highway Commissioners of the township issuing such bonds shall, by resolution, determine. The said bonds shall be signed by the said Township Highway Commissioners and countersigned by the Clerk of said Board, and the signatures may be lithographed on the coupons. The bonds to be issued by any of said townships shall show upon their face for what townships said bonds are issued, and liability incurred thereby shall extend only to the township named therein.

1920, XXXI, 1440; 1921, XXXII, 194.

(1421) § 29. **Annual Tax.**—Until the principal and interest of all bonds issued under this Article shall be fully paid, it shall be the duty of the County Auditor of Colleton County to assess and levy, annually, upon all taxable property of the township by or for which said bonds were issued a tax sufficient to pay the principal and interest of the bonds as such principal and interest become due, which tax shall be annually collected by the County Treasurer and applied by him, or under his direction, to the payment of said principal and interest as they respectively become due. In the event that any issue of bonds under this Article shall not be payable in annual series or installments, a sinking fund shall be established for the payment of such bonds at maturity, and there shall be raised annually by taxes aforesaid and paid into the said sinking fund an amount not less than one-twentieth of the principal amount of such bonds. The said sinking fund shall be deposited with the County Treasurer.

1920, XXXI, 1440; 1921, XXXII, 194.

(1422) § 30. Custody of Proceeds.—As soon as the funds arising from the sale of said bonds shall be received by said Township Highway Commissioners they shall be turned into the county treasury until they shall be withdrawn from time to time by the warrant of said Township Commissioners as needed by them in the performance of their duties under this Article.

1920, XXXI, 1440.

(1423) § 31. Township Highway Commissioners — Election — Organization—Compensation—Bond.—The Township Commissioners provided for in this Article shall consist of five members of which the Highway Commissioner of Colleton County shall be a member *ex officio*, and the other four shall be voted for and elected at the same time the election is held for bonds. The said Commission shall elect its Chairman and Secretary, and any vacancy in the Commission shall be filled by the Governor, upon majority recommendation of the Legislative Delegation from Colleton County.

The Commissioners each shall receive as compensation for their services the sum of two hundred dollars per annum, payable quarterly, out of the proceeds of the sale of said bonds. The life of said Commission shall be for a period of three years, or until their successors shall be appointed and qualified. Each of the Commissioners, except the County Highway Commissioner, shall give bond in some approved company doing business in this State under the laws thereof, in the sum of five thousand dollars, from the time the bonds are issued to the time the proceeds thereof are expended and accounted for, premiums on said bond to be paid from the funds derived from said bond issue; but they shall construct said roads as soon as may be advantageously done in their judgment.

1920, XXXI, 1440.

(1424) § 32. Improvement of Roads—Contracts—Condemnation.—The said Township Highway Commission shall elect the roads which shall be permanently improved, in whole or in part, to decide the width of same, and the material to be employed, regard being had to the present condition of said roads and amount of traffic over same. They shall divide the roads to be constructed or improved into sections of not less than one mile, or more than five miles, for the purpose of letting the same out for construction or improvement by contract to the lowest responsible bidder according to plans and specifications to be furnished by the said Township Highway Commission, of the letting of which contract ten days' notice shall be given in at least four public places in the township in which the section or sections of the road are to be let, of the time and place of the letting of said contract, reserving in said notice the right to reject any and all bids; in case any sections are not let on bids the Township Highway Commission shall have such section constructed or improved by hired labor. The successful bidder shall enter into bond for the faithful performance of his duties in double the amount of his bids. They shall have a right to condemn land, soil, trees or other material adjoining or near to the

road for the purpose of relocating, widening, improving or constructing public highways herein provided for, in case the right of way surface, soil, trees or other material cannot be secured by donation or agreement. The same may be taken for the use herein mentioned and the land owner may be afterwards compensated as in condemnation of rights of ways as now provided for by law: *Provided*, That when any road is built under this Article that is the dividing line between two townships, the cost of said road shall be divided equally between said townships.

1920, XXXI, 1440.

(1425) § 33. **Road Maintenance.**—It shall be the duty of the said Township Highway Commissioners to keep the roads constructed or improved by them in proper repair during the life of said Commission, and for this purpose so much of the tax levy now provided by law as may be necessary shall be used.

1920, XXXI, 1440.

(1426) § 34. **Engineer.**—The said Township Highway Commissioners may employ a competent engineer; his duty shall be to locate roads to be constructed by the Commission, to furnish to said Commission estimates of cost of said construction; to see that the work is perfectly performed, furnish plans and specifications and such other duties as said Commission may desire, and in the event more than one township shall vote bonds, then in such case the townships shall jointly employ the same engineer and he shall have charge of the building of the roads in the different townships.

1920, XXXI, 1440.

(1427) § 35. **Records and Reports.**—The said Township Highway Commission shall keep a book open for public inspection at all reasonable times setting forth all contracts made by it for the construction and maintenance of said roads. They shall also present annually to the Circuit Court of Colleton County an itemized statement of all funds received and disbursed by them, and this shall be a part of records of said Court. At the expiration of the life of said Commission all its contracts, papers and books of accounts shall be turned over to the Clerk of Court and filed in his office.

1920, XXXI, 1440.

(1428) § 36. **Previous Elections Validated.**—All elections heretofore held in any township in Colleton county under the provisions of the Article hereby amended are hereby legalized and validated, and the Township Highway Commissioners of such township are hereby authorized to issue bonds pursuant to said election in accordance with the provisions of said Article, as amended by this Article. The said bonds shall mature and be payable, as provided in said Article, as amended by this Article, notwithstanding anything to the contrary, in the proceedings taken relating to said election.

1921, XXXII, 194.

(1429) § 37. Warrants.—All moneys shall be paid out on warrants of the Chairman of said Township Commission, countersigned by the Secretary thereof.

1920, XXXI, 1440.

DARLINGTON COUNTY.

(1430) § 1. Offices of County Supervisor and County Commissioner Abolished in Darlington County at End of Term of Incumbents.—The offices of County Supervisor and of County Commissioners, in and for Darlington County, be, and are hereby, abolished from and after the end of the terms of the incumbents.

Civ. '12, § 938; 1920, XXXI, 834.

(1431) § 2. Board of County Directors.—That a Board of County Directors of Darlington County, to consist of five (5) members, is hereby created. The members of said Board shall be appointed in the same manner County Commissioners are now appointed, by the Governor, upon recommendation of the Legislative Delegation, for a term of two years from the date of expiration of the term of the present County Supervisor, and until their successors are appointed and qualified.

1920, XXXI, 834.

(1432) § 3. Organization—Compensation—Bonds.—That said Board of County Directors shall elect from their number a Chairman, upon whom may be devolved by the Board, in its discretion, such executive and official duties as it may deem advisable. That the Chairman of said Board shall receive as compensation for his services the sum of five hundred (\$500.00) dollars per annum, and that each of the other members of said Board shall receive the sum of three hundred (\$300.00) dollars per annum. That each member of said Board, before entering upon the discharge of the duties of his office, shall enter into a bond secured by a duly licensed surety company to be approved by the Clerk of Court, payable to the county, in the sum of five thousand (\$5,000.00) dollars, conditioned for the faithful performance of his duties. The premiums on said bonds shall be paid out of the ordinary fund of the county.

1920, XXXI, 834.

(1433) § 4. Duties and Powers.—That all the duties, obligations and functions heretofore imposed by law upon the County Commissioners and County Supervisor of Darlington County, which may be consistent with the provisions of this Article, together with all the powers and authority now vested by law in the said offices and officers, are hereby devolved upon and vested in said Board of County Directors.

1920, XXXI, 834.

(1434) § 5. Office—Records—Public Property—Highways.—That it shall be the general duty of said Board of County Directors, for the discharge of which duty full power and authority are hereby conferred, to

organize and conduct the administration of the county's business, financial and fiscal affairs upon a systematic, economical and efficient basis. To that end the said Board, first, shall provide and maintain at the county seat an office for the transaction of business, which shall be open as nearly as practicable upon every business day of the year, wherein shall be kept all books of account, contracts, correspondence, and other records of official business; second, shall inaugurate and maintain, under such expert supervision and direction as may be necessary, a system of receiving and disbursing funds and keeping accurate check of same, and of accounting and bookkeeping that will properly safeguard the public interests and accurately determine and show the cost of maintaining all public institutions and public property and of performing all public work of every character; third, shall maintain and keep in repair and in efficient operative condition all county property and county institutions; and, fourth, shall be chargeable with and responsible for the construction and proper maintenance and upkeep of the county's roads, highways and bridges.

Civ. '12, § 2032; 1908, XXV, 1197; 1920, XXXI, 834.

(1435) § 6. Certain Reports in Darlington County to Be Published.—

The Chairman of said Board of Darlington County shall publish monthly, in some newspaper published in the County of Darlington during the first week of each month, a full statement of the claims audited by the Board of Directors during the month next preceding said publication. The said statement shall show, as published, the file number of the claim, the amount claimed, the amount allowed, the nature of claim or services rendered and the name of the claimant.

1913, XXVIII, 116.

(1436) § 7. Other Reports to Be Published.—The Chairman shall also publish monthly in some newspaper published in Darlington County a verified statement showing the balance for or against the county brought from the month before, the amount paid out during the month and shall also show what balance is to be carried to the next month.

Civ. '12, § 2035; 1908, XXV, 1197; 1913, XXVIII, 116.

(1437) § 8. Price of Publications.—That the contract price for such publications shall not exceed the sum of seven dollars per month. In the event the Chairman is not able to contract for the publication of said reports in a newspaper published in Darlington County, for said sum, he is authorized and directed to post in five public and conspicuous places in Darlington County said reports.

1913, XXVIII, 116.

(1438) § 9. When Salaries to Be Paid.—That it shall be unlawful for the County Treasurer of Darlington County to pay the salary warrants for the pay of the Chairman or Clerk of said Board until he satisfies himself that the reports herein required have been made and published.

1914, XXVIII, 743.

(1439) § 10. Clerk—Supervisor of Roads.—That the said Board of County Directors is hereby authorized and required: (1) To employ a competent office assistant, to be known as Clerk of the Board of County Directors, who shall be required to be in the office of the Board daily, within reasonable office hours, to keep the books, accounts and records, and to perform the clerical work of said office, and to perform such other duties as may be imposed by the said Board; (2) to employ a competent and skilled person to have charge and to organize and manage the construction, maintenance and repair of the roads, highways and bridges of the county, who shall be known as the Supervisor of Roads, and to whom shall be committed adequate authority and full responsibility for the construction and maintenance of roads, highways and bridges, under the general direction of said Board; (3) to employ such other assistants, agents and servants, and to retain the services of such professional and technical experts as may be necessary properly to carry on the business of the county.

1920, XXXI, 834.

(1440) § 11. Compensation of Employees—Bonds—Removal.—That the compensation and salaries of said Clerk of the Boards, Supervisor of Roads, and of all other employees, agents and servants of the county, shall be determined and fixed by the said Board of County Directors, and shall be as low as may be consistent with securing competent employees and efficient service. And adequate bond, with good and sufficient surety, payable to said Board of County Directors, and conditioned for the faithful performance of their duties, shall be required of the Clerk of the County Board of Directors, of the Supervisor of Roads, and of such other employees and contracting parties as the Board may deem proper. The said Clerk of the Board of County Directors, the Supervisor of Roads and all other employees shall be subject to removal or discharge at the discretion of the Board.

1920, XXXI, 834.

(1441) § 12. Road Districts—Deputy Supervisors.—That said Board of County Directors is hereby authorized and empowered to subdivide the county with respect to roads, highways and bridges into such districts or sections as it may deem best for the public interests, and to authorize or require the Supervisor of Roads to appoint and employ Deputy Supervisors of Roads in and for such districts or sections. Said Deputy Supervisors shall be employed upon such terms, and shall have such authority, and shall be charged with the performance of such duties as may be conferred and imposed by the Supervisor of Roads, under the direction of the Board of County Directors.

1920, XXXI, 834.

(1442) § 13. Chaingang.—That said Board of County Directors is hereby authorized and empowered to use the chaingang of the county for the construction and maintenance of the roads, highways, and bridges of the county in such manner and at such places as it may deem best for the public interests, to hire laborers to work in connection with said chaingang, and to use said chaingang in connection with any work being done for the county by contract or otherwise.

1920, XXXI, 834.

(1443) § 14. Commutation Road Tax—Evasion a Misdemeanor—Penalty.—That all able-bodied male persons between the ages of 21 and 60, both inclusive, residing in Darlington County, not exempt under the general law, except those who are required to perform road duty or pay a commutation tax in incorporated cities and towns, shall be subject to road duty, and shall be required to perform or cause to be performed annually six days' labor upon the roads of the county in the subdivision of the county with respect to roads and highways in which he shall reside: *Provided*, All persons subject to road duty may in lieu of performing such labor pay to the County Treasurer on or before the first day of April of each year, by way of commutation tax, the sum of three dollars. All persons subject to road duty who shall fail to pay the commutation tax herein provided shall be called out and caused to labor or to furnish an acceptable substitute, for the required number of days each year at the direction of the Supervisor of Roads, or his duly authorized deputy or agent, and under such rules and regulations as the Board of County Directors may prescribe. Any persons liable to road duty who shall fail or refuse, without lawful excuse, to appear and render the service required of him in person or by substitute after receiving twenty-four hours' notice or warning in writing of the time and place he is to report for duty, shall be guilty of a misdemeanor, and punishable by a fine of not exceeding twenty-five (\$25.00) dollars, or imprisonment at hard labor not exceeding thirty days.

Civ. '12, §§ 2033, 2034; 1908, XXV, 1197; 1914, XXVIII, 757; 1920, XXXI, 834; 1921, XXXII, 80.

(1444) § 15. Care of Indigent.—That said Board of County Directors is hereby authorized and empowered to provide adequate means and facilities for properly supporting and caring for all persons, who by reason of age, poverty or infirmity, are or may become public charges, and entitled to maintenance and care at the expense of the county.

1920, XXXI, 834.

(1445) § 16. License Tax on Certain Vehicles in Darlington County.—That any corporation, firm, person or persons of Darlington County who own or operate or cause to be operated upon any of the streets or public highways of Darlington County any vehicle other than automobiles or motorcycles, shall pay an annual tax for the operation of such vehicle as follows: Twenty dollars for each log cart or log wagon used regularly for commercial purposes: *Provided*, That this shall not apply to log carts used mainly for farm purposes; fifteen dollars for each lumber wagon regularly engaged in hauling lumber for commercial purposes; one dollar for each two-horse wagon; fifty cents for each one-horse wagon, buggy and all other vehicles not otherwise provided for in this Section.

1918, XXX, 850.

(1446) § 17. Owners to Report.—Each corporation, firm, person or persons owning any vehicle subject to the provisions of this Article, shall, when making the usual tax return, report to the County Auditor the nature, kind

and horsepower of such vehicle, who shall note the same on said tax return and assess the taxes provided by this Article, to be collected as other taxes are collected.

1918, XXX, 850.

(1447) § 18. Disposition of Funds.—The funds derived from this tax shall be placed to the credit of the general road fund of Darlington County, and shall be expended only for the maintenance of the public highways of Darlington County.

1918, XXX, 850.

(1448) § 19. Violation a Misdemeanor—Penalty.—Any corporation firm, person or persons violating any provisions of this Article shall be deemed guilty of a misdemeanor, and, upon conviction thereof by any Court of competent jurisdiction, shall be liable to a fine of not less than ten dollars nor more than one hundred dollars, or imprisonment upon the public works for not less than ten days nor more than thirty days.

1918, XXX, 850.

(1449) § 20. Not to Apply to Vehicles Licensed Under General Law.—The provisions of this Article shall not be construed as imposing a license upon such vehicles as are required to be licensed by the general laws in regard to same.

1918, XXX, 850.

DILLON COUNTY.

(1450) § 1. Board of County Commissioners of Dillon County—Appointment—Term.—There shall be in and for the said county of Dillon a County Board of Commissioners composed of six (6) members, who shall be appointed by the Governor, upon the recommendation of the majority of the Legislative Delegation of said county. Said Commissioners shall be appointed, one from each township of said county, and the term of office shall be for the Commissioners appointed from Bethea and Carmichael townships a term of two years, and until their successors are appointed and qualified. The Commissioners of Harleesville and Hillsboro townships a term of four years, and until their successors are appointed and qualified, and the Commissioners from Kirby and Manning townships for a term of six years, and until their successors are appointed and qualified.

Civ. '12, § 1021; 1911, XXVII, 59; 1914, XXVIII, 603; 1920, XXXI, 889; 1921, XXXII, 132.

(1451) § 2. Chairman—Compensation—Bond.—The said Board of County Commissioners shall elect, from their number, a Chairman, who shall hold office for a term of two years, and upon whom may be devolved by the Board in its discretion, such executive and official duties as it may deem advisable. That the Chairman of said Board of Commissioners shall receive, as compensation for his services, the sum of

five hundred (\$500.00) dollars per annum, and that each of the other members of said Board shall receive the sum of one hundred (\$100.00) dollars per annum. That each member of said Board before entering upon the discharge of the duties of their respective offices, shall enter into a bond secured by a duly licensed surety company, to be approved by the Clerk of Court of the said county, payable to the county, in the sum of twenty-five hundred (\$2,500.00) dollars, conditioned for the faithful performance of his duty, the premium on said bonds shall be paid out of the ordinary funds of the county.

Civ. '12, § 1026; 1911, XXVII, 59; 1914, XXVIII, 603; 1920, XXXI, 889; 1921, XXXII, 132.

(1452) § 3. Duties and Powers — Office — Records and Accounts — Care of Highways—Meetings—Purchases.—That it shall be the general duty of the said Board of County Commissioners, for the discharge of which duties full power and authority are hereby conferred, to organize and conduct the administration of the county's business, upon a systematic, economic and efficient basis. To that end the said Board shall provide and maintain, at the Courthouse, an office for the transaction of business, which shall be open as nearly as practicable upon every business day of the year, wherein shall be kept all books of accounts, contracts, correspondence and other records of official business. They shall inaugurate and maintain, under such expert supervision and direction as may be necessary, a system of disbursing funds and keeping accurate checks of same, and of accounts and bookkeeping that will properly safeguard the public interest, and determine and show accurately the cost of maintaining all public institutions and public property, and performing all public work of any character, and they shall be chargeable with the responsibility for the construction and proper maintenance and upkeep of the county's highways and bridges, and it shall be the duty of the Chairman of the Board of Commissioners to visit the chaingang and other working crews at least once a week and advise with the Road Supervisor as well as visit the office of the County Commissioners at least once a week and advise with and direct the Clerk of said Board, and the other Commissioners shall visit the chaingang and other working crew at least once a week when the chaingang or working crew is in their respective township. The said Board of County Commissioners shall be required to hold a meeting at their office in the town of Dillon on the first Tuesday in each month, and at such meetings they shall review the weekly reports of the work done on the public highways and amounts paid for same. It shall be the further duty of said Board to purchase all road building and bridge building material, food and supplies for chaingang and other necessary expenses. The same to be purchased after competitive bids have been made on same.

Civ. '12, § 1024; 1911, XXVII, 59; 1914, XXVIII, 603; 1920, XXXI, 889; 1921, XXXII, 132.

(1453) § 4. Clerk of Board—Apportionment of Road Funds—Bridge Fund—Warrants.—Said Board of County Commissioners are hereby authorized and empowered to employ a competent office assistant to

be known as the Clerk of the County Board of Commissioners, who shall receive a salary not in excess of twelve hundred (\$1,200.00) dollars per year, to be fixed by said Board of County Commissioners. Said Clerk shall be required to be in the office of the Board daily within reasonable office hours to keep the books, accounts and records, and to perform the clerical work of said office, and such other duties as the Board may impose. He shall be required to keep a set of books in which shall be entered, in separate accounts, the *pro rata* share of the road fund belonging to each township of said county, and such amounts shall be expended only in said townships: *Provided*, That 20 per cent. of all moneys belonging to the road fund of said county shall be set aside as a bridge fund and so kept and used for bridge building and repairing in any section of said county. Said Clerk shall state clearly on each and every pay warrant the township or other fund that the same is to be charged by the County Treasurer and the County Treasurer is hereby forbidden to pay any warrant that is not so designated, and before any warrant shall be paid it shall be signed by at least three (3) Commissioners, one of whom shall be from the township in which the expenditure was made, and the purchase of supplies and other necessary articles for the county; all pay certificates shall be signed by at least four of the Commissioners. It shall also be the duty of the Clerk of the County Commissioners to assist in the clerical work of the office of the Superintendent of Education of Dillon County when not actually engaged in business for the Board of County Commissioners.

1914, XXVIII, 603; 1920, XXXI, 889; 1921, XXXII, 132.

(1454) § 5. Road Supervisor.—The County Board of Commissioners for said county shall employ a competent and skilled person to have in charge and to organize and manage the construction, maintenance and repair of roads, highways and bridges of the county, who shall be known as the Road Supervisor and who shall receive an annual salary of not exceeding fifteen hundred (\$1,500.00) dollars per annum. It shall be the duty of said Supervisor to keep a record of all expenses, including that of the maintenance of the chaingang and turn in to the Clerk of the Board a weekly statement showing the township or townships in which such work has been done and also showing the school district, as nearly as is practicable, such amounts as should be charged thereto.

1914, XXVIII, 603; 1920, XXXI, 889; 1921, XXXII, 132.

(1455) § 6. Road Districts—Deputy Road Commissioners.—That said Board of County Commissioners and Road Commissioner is hereby authorized and empowered to subdivide the county with respect to roads, highways and bridges into such districts or sections as it may deem best for the public interests, and may contract for section of roads to be built and maintained, and to appoint and employ Deputy Road Commissioners in and for such districts or sections. Said Deputy Road Commissioners shall be employed upon such terms, and shall have such authority and shall be charged with the performance of such duties as may be conferred and imposed by the Board of County Commissioners, and Road Commissioner.

1914, XXVIII, 603; 1920, XXXI, 889.

(1456) § 7. Chaingang—Laborers.—That said Board of County Commissioners and Road Commissioner are hereby authorized and empowered to use the chaingang of the county for the construction and maintenance of the roads, highways and bridges of the county in such manner and at such places as it may deem best for the public interests, to hire laborers to work in connection with said chaingang, and to use said chaingang in connection with any work being done for the county by contract or otherwise.

1914, XXVIII, 603; 1920, XXXI, 889; 1921, XXXII, 182.

(1457) § 8. Attorney.—The said Board shall employ the services of an attorney at law, who shall attend all meetings of the Board and shall advise the said Board at all times when called upon. Such attorney shall receive the sum of one hundred (\$100.00) dollars per annum for his services, payable monthly.

1914, XXVIII, 603.

(1458) § 9. Rural Policemen.—The County Board of Commissioners shall appoint the Rural Policemen for said county, who shall, at all times, be subject to the directions and under the control of said Board, which Board is also empowered to remove any or all of said Policemen for cause.

1914, XXVIII, 603.

(1459) § 10. Township Lines to Be Readjusted.—In addition to the other duties to be performed by them, said County Board of Commissioners may, if they see proper, readjust, reform and fix the lines and boundaries of township lines of the several townships and parts of townships into which said County of Dillon is now divided, so that said townships may be in as compact form as practicable and conform as near as possible in area and territory, and designate the same by name or by number, or by both name and number; and in case of such readjustment and reformation, said Board shall prepare and keep in their office a description showing and indicating, clearly and distinctly, the line and boundaries of each such township, file a copy thereof in the office of the Clerk of the Circuit Court, in and for said county, to be by him entered on the Book of Plats and Locations, and publish the same once in each week, for four successive weeks, in a newspaper published in said county.

Civ. '12, § 1025; 1911, XXVII, 59.

(1460) § 11. General Laws Applicable.—That said Board of County Commissioners of Dillon County shall be governed by and subject to all such provisions of the general law with respect to the exercise of their powers and the administration of the county's affairs as are not inconsistent with the provisions of this Article.

1914, XXVIII, 603; 1920, XXXI, 889.

(1461) § 12. Commutation Road Tax in Dillon County—Provisos.—That all able-bodied male persons over the age of twenty-one to fifty years, inclusive, in the County of Dillon shall be required annually to pay \$3.00 commutation or road tax, except ministers of the gospel actually in charge of a congregation, teachers employed in the public schools, and school trustees, and persons permanently disabled in the military service of this State,

and persons who served in the late War Between the States, and all persons actually employed in the quarantine service of this State, and all students who may be attending any school or college at the time when the commutation tax hereinbefore provided for shall become due: *Provided*, That any persons claiming exemption from the provisions of this Section on the grounds of physical disability, where such disability is not apparent, shall be required to procure a certificate of disability from two regular physicians, dated within three months: *Provided*, That school trustees shall have credit for actual time served in school work as trustees when certified to before overseer: *Provided, further*, That all persons who are liable for road duty in said county as is provided for by law, in lieu of paying said commutation or road tax, may perform three days' labor of ten hours each on the highways.

1912, XXVII, 842; 1918, XXX, 862; 1919, XXXI, 36.

(1462) § 13. Time of Payment.—That the said commutation tax as provided for in Section 12 above shall be due and payable on or before December 31st of each year and shall be collected by the County Treasurer at the same time other taxes are collected.

1912, XXVII, 842; 1918, XXX, 862; 1919, XXXI, 36.

(1463) § 14. Publication of Reports.—The County Board of Commissioners shall publish quarterly in some newspaper published in the county a full report of the financial condition of the county showing the expenditures, from what fund same was expended and for what purposes used.

1921, XXXII, 132.

DORCHESTER COUNTY.

(1464) § 1. County Government for Dorchester County.—In the County of Dorchester there shall be a County Supervisor, whose term of office shall be four years and whose bond and election shall be as now provided by law.

Civ. '12, § 1027; 1914, XXVIII, 598; 1921, XXXII, 9.

(1465) § 2. Duties and Powers of Supervisor.—That the said County Supervisor shall be invested with all the rights, duties, powers and privileges with which County Supervisors are now invested under the general law, except as herein may be limited or emerged.

1921, XXXII, 9.

(1466) § 3. Road Districts.—The County of Dorchester shall be divided into four road districts as follows, to be known as Summerville District, Ridgeville, St. George and Reesville Districts. That portion lying east of Cypress Swamp down to Slan's bridge: follow the Ashley River to Bacon bridge, and from Bacon bridge to Delemars Cross Roads shall be known as Summerville District. That portion lying between the western boundary and embracing Four Hole Swamp, and the extreme eastern boundary of Cypress, and embracing said swamp, down to Slan's bridge follow the Ashley River to Bacon bridge and from Bacon bridge to Delemars Cross Roads, shall be known as the Ridgeville District. That por-

tion between Four Hole Swamp and what is known as the Walterboro and Bunches road, and embracing said road, shall be known as the St. George District. That portion lying west of the Walterboro and Bunches road to the Orangeburg line shall be known as Reesville District.

1921, XXXII, 9.

(1467) § 4. County Commissioners — Term — Compensation — Bond — Duties.—That in the County of Dorchester there shall be four County Commissioners, whose term of office shall be four years, and whose salary shall be four hundred and fifty (\$450.00) dollars. Said Commissioners shall be appointed by the Governor upon the recommendation of the members of the General Assembly of the said county, or a majority thereof. Said Commissioners shall be invested with all the rights, duties, powers and privileges with which such County Boards of Commissioners are invested under the general law, except as the same may be herein limited or enlarged. Said Commissioners shall be appointed, each from one road district, whose bond shall be one thousand dollars, to be approved by the Clerk of Court, whose residence must be in said district. Their duties shall be to advise with the Supervisor in their several road districts, and to have equal power with the Supervisor in directing the work of the chaingang in their several districts, but not to interfere with the Supervisor in discharge of his duties as to the absolute control over the guards and overseers.

1914, XXVIII, 598; 1919, XXXI, 73; 1921, XXXII, 9.

(1468) § 5. Powers of County Board of Commissioners.—That the County Supervisor and County Commissioners shall constitute the County Board of Commissioners for Dorchester County, and the said County Board of Commissioners shall be invested with all the rights, duties, powers and privileges with which County Boards of Commissioners are invested under the general law.

1921, XXXII, 9.

(1469) § 6. Duties of County Supervisor—Contracts—Vouchers.—That the County Supervisor shall have an office at the Courthouse, and shall give his entire time to the supervision of the roads and bridges of said county, and to the other duties of the office, and the said County Supervisor shall be at his office at the county seat on the first Monday in each month, and at such times as he shall deem advisable and necessary. He shall examine into all claims presented against the county, and shall submit the same to the County Board of Commissioners, with his recommendation thereon. He, with the Commissioners from the districts where work is to be let, shall let all contracts for bridges or other public work, and shall advertise for bids on any contract where the cost is over ten (\$10.00) dollars. He shall personally inspect all work done under their contracts, and vouch for claims therefor. Such claims shall not be valid for payment until approved by a majority of the County Board of Commissioners and when approved by a majority of the said County Board of Commissioners a majority shall sign said vouchers, and no vouchers shall be a valid claim against said county unless so approved. All claims against the

county shall be filed with the Clerk of the Board of County Commissioners and presented by him to the Board of Commissioners at the regular meeting on the first Monday in each month.

Civ. '12, §§ 1028, 1029; 1914, XXVIII, 598; 1921, XXXII, 9.

(1470) § 7. Control and Management of Chaingang—Publication of Reports—Duties and Pay of Supervisor.—The County Supervisor and County Commissioners shall have charge of the county chaingang and shall distribute its benefits among the various road districts; that is to say, that the chaingang proper shall work three months in each district, and they shall elect overseers and guards therefor, whose compensation shall be fixed by the County Board of Commissioners: *Provided, however,* That the Supervisor shall appoint the Captain of the chaingang, but whose salary shall be fixed by the Board of County Commissioners. He shall publish a quarterly report of the operations of the chaingang, showing the expenses of the same, the number of days of work actually done by the convicts, the average daily cost of the same, and the number of miles of roads constructed or repaired in each road district, and the value of the mules, machinery and equipment of the chaingang outfit on the board at the Courthouse, showing the relative cost in each district. He shall inspect the public roads of the county and shall advise and consult with the County Commissioners as to their maintenance and improvement; he shall ascertain, either by measurements or reliable records, the exact number of miles of public roads in each district; he shall have the mileposts erected along the public roads showing the distance from the county Courthouse or some other center of travel on roads not leading to the county seat. He shall receive a salary of fifteen hundred (\$1,500.00) dollars per annum, payable monthly in the same manner as other claims against the county are paid.

1914, XXVIII, 598; 1915, XXIX, 221; 1916, XXIX, 790; 1918, XXX, 836; 1919, XXXI, 73; 192, XXXII, 9.

(1471) § 8. Organization of County Board of Commissioners—Clerk of Board—County Attorney.—Immediately after the appointment and qualification of the County Commissioners, and the election and qualification of the County Supervisor, or as soon thereafter as may be practicable, the said County Supervisor shall call a meeting of the said County Board of Commissioners for the purpose of organization, and the said Board of Commissioners shall meet thereafter on the first Monday in each month for the transaction of business, and the majority of the said Board shall constitute a quorum. The County Supervisor shall be Chairman of the said Board, and preside at its meetings. The said Board shall elect a Clerk, who shall act as Secretary of said Board, who shall receive a salary of six hundred (\$600.00) dollars per annum, payable monthly; also a County Attorney, whose salary shall be four hundred (\$400.00) dollars per annum, payable monthly, and such other business as is necessary to properly organize the Board of County Commissioners and also the chaingang. In the absence of the County Supervisor, some member of the said Board shall act as Chairman, and preside over the meetings.

1914, XXVIII, 598; 1921, XXXII, 9.

(1472) § 9. **Payment of Claims—Powers of County Board.**—The County Commissioners, together with the County Supervisor, shall constitute the County Board of Commissioners, which Board shall pass upon all claims payable by the county, and shall have power to reduce or reject any claim or claims they may deem illegal or unsatisfactory or any part thereof. Said County Board of Commissioners shall be invested with all the rights, duties, powers and privileges with which County Boards of Commissioners are now invested under the general law, except as may be herein specifically enlarged or limited. Said County Board of Commissioners shall have general supervisory control over public highways, bridges, ferries, chaingang, poor fund, county property and the finances of the said county, and over the actions of the County Supervisor and County Commissioners.

Civ. '12, § 1031; 1914, XXVIII, 598; 1921, XXXII, 9.

(1473) § 10. **Borrow Money.**—The said County Board of Commissioners shall have power to borrow money for the use of the county, and the County Supervisor shall execute the loan by virtue of a resolution of the said Board, and no loan shall be made by him except in pursuance of such resolutions: *Provided*, They shall make no obligations except as they be authorized by special Act of the General Assembly.

Civ. '12, § 1033; 1914, XXVIII, 598; 1921, XXXII, 9.

(1474) § 11. **Expenditures.**—The expenditures of any one year shall not exceed the revenues for that year. It shall be unlawful to approve any claim in excess of the revenues or to draw any warrant upon any fund in excess of the amount to the credit of said fund.

Civ. '12, § 1036; 1914, XXVIII, 598; 1921, XXXII, 9.

(1475) § 12. **Floating Chaingang.**—The County Commissioners shall organize and operate what is known as a floating chaingang, in keeping up the roads already built, and said gang is not to operate at any time in any of the several road districts when the chaingang proper is operating, but to be used exclusively for keeping up roads already built in the districts where the gang is in operation, and that the Supervisor and Commissioners are hereby prohibited from building or constructing any new roads for the next two years. Whenever the Highway Board of Commissioners are using the chaingang in constructing the roads already sold out, the number of days used by said Highway Commissioners shall be charged to the said road district. The said Highway Commissioners shall not use in its operations at any time or interfere with the floating chaingang.

1921, XXXII, 9.

(1476) § 13. **Delinquent Road Taxes—Apportionment of Commutation Tax.**—The County Treasurer of said county is authorized, directed and required to turn over to the Sheriff of said county all executions arising from the road defaulters at the same time and in the same manner as all other executions are delivered. And that the said Sheriff be allowed same fees for services as are now allowed by the Magis-

trates. He is also hereby directed and required to keep the fund derived from the commutation tax separate from other funds, and to apportion same as equally as possible among the several road districts.

1914, XXVIII, 598; 1921, XXXII, 9.

(1477) § 14. Statement of Purchases to Be Filed.—In the County of Dorchester the Commissioners on or before the second Monday of each and every month, file with the Clerk of the Court of Common Pleas a full and itemized statement of all purchases, disbursements and expenditures during the preceding month, which statement shall be open to public inspection.

Civ. '12, § 941; 1903, XXIII, 26.

(1478) § 15. Townships May Issue Bonds.—That any township in Dorchester County, of the State of South Carolina, be, and it is hereby authorized and empowered to issue and sell interest bearing coupon bonds of the said township, payable to bearer, in such denominations and amount as may be deemed necessary by the Commission hereinafter provided for, not to exceed eight per cent. of the assessed valuation of the property of said township for taxation, and bearing a rate of interest not exceeding six per cent. per annum, payable annually or semiannually, and at such times as they may deem best; said bonds to be issued as hereinafter provided for the purpose of building and improving the public highways and bridges in the said township: *Provided*, That the question of issue of bonds hereby authorized shall first be submitted to the qualified voters of said township at an election to be held to determine whether said bonds shall be issued or not as hereinafter provided.

1916, XXIX, 906.

(1479) § 16. Township Road Improvement Commission.—That at said election so held as above provided, the qualified electors of said township shall elect, subject to the provisions of this Article, a Commission to be composed of three (3) qualified electors to take charge and control of the said bonds and the proceeds thereof in the event of the issuance of same, and should said bonds be issued, the said Commission so elected shall be, and they are hereby, vested with the same powers and duties with respect to said bonds and the proceeds thereof and the management and disbursement thereof, as are now allowed by law to the County Board of Commissioners in like cases and with respect to the issuance of similar bonds; and said Commission shall be known as the Township Road Improvement Commission of Township.

1916, XXIX, 906.

(1480) § 17. Election on Bond Issue.—That on the presentation of a petition signed by one-third of the qualified electors of any township, the County Supervisor of Dorchester County shall immediately order an election for the purpose of determining the issue of bonds hereby authorized, and for the purpose of electing the Commission herein provided for, to be held at the usual voting precincts of said township, on the question whether such bonds shall be issued or not, and for the election of said Commission herein provided for, in which said election only the qualified voters

of said township shall be allowed to vote; and the said County Supervisor shall give notice of said election for three weeks in at least one paper published in Dorchester County shall designate the time and place and shall appoint three managers at each precinct for said election, and shall receive the returns of said managers and declare the result: *Provided*, That should said election result against the issuance of said bonds, then the said election for the Commission herein provided for shall be a nullity.

1916, XXIX, 906.

(1481) § 18. Ballots—Issue of Bonds.—That the said County Supervisor shall have prepared for the use of said voters in said election two sets of ballots which shall be placed, a sufficient number of each, at each polling place; on one set of which shall be printed the words “For Bonds,” and on the other set of which shall be printed the words “Against Bonds.” If a majority of the votes cast at said election be for the issuance of coupon bonds provided for herein, the said Township Road Improvement Commission may issue and sell said interest bearing coupon bonds of the said township, payable to bearer in such denominations and amount as they may deem necessary, not to exceed eight per cent. of the assessed valuation of the property of said township for taxation, as shown by the books of the County Auditor of Dorchester County last before the aforesaid election, to run for a period of not exceeding thirty years from the date of issue, and bearing interest at a rate not exceeding six per cent. per annum, payable annually or semiannually, and at such times as they may deem best.

1916, XXIX, 906.

(1482) § 19. Requirements of Candidates for Commission—Bond of Commission.—That the candidates for election to a position on said Township Road Improvement Commission, in order to be elected thereto, shall file their pledges and expense accounts as are required by law in cases of elections of other county officers, and if elected, shall, before entering upon the duties of office hereunder, take the oath or oaths now required by law in the same manner as other officers: *Provided*, That such pledges need not be filed longer than ten days next preceding the election, and the Commission so elected shall, before entering upon the duties of office, enter into bond with good and sufficient sureties, to be approved by the Clerk of Court of Dorchester County, payable to the State of South Carolina, and in the usual form, in the sum of five thousand dollars each, conditioned for the faithful performance of his duties under the provisions of this Article.

1916, XXIX, 906.

(1483) § 20. Tax Levy—Application of Proceeds.—That it shall be the duty of the county officers of Dorchester County, charged with the assessment and collection of taxes, to levy such a tax annually upon all of the property, real and personal, within the limits of said township for which bonds are issued and collect the same as taxes for State, county and school purposes are now levied and collected, as will raise a sum sufficient to pay the interest on all bonds under and in pursuance of this Article, the funds so collected to be applied solely to the payment of interest on said bonds and for the purpose of creating a sinking fund to retire said

bonds at maturity said county officers shall assess and collect annually two mills, to be invested or deposited in some safe bank or deposit company, at interest within the townships where the taxes are assessed, if possible, by the Treasurer of Dorchester County.

1916, XXIX, 906.

(1484) § 21. Form of Bonds.—The said bonds and coupons thereto attached shall be signed by the Chairman and countersigned by the other two members of said Township Road Improvement Commission: *Provided*, That the signature of said officers may be lithographed or engraved upon the coupons attached to said bonds, and such lithographed or engraved signatures shall be sufficient signature thereto.

1916, XXIX, 906.

(1485) § 22. Disposition of Revenues.—The Treasurer of Dorchester County is hereby directed to apply all revenues derived from the commutation tax provided by law and levied in any township holding an election and issuing bonds, hereunder, to the improvement of highways and bridges in said township, and to that end the said Treasurer is hereby directed to turn over such revenues annually to the said Township Road Improvement Commission herein provided for, and the said Township Road Improvement Commission is hereby authorized and directed to take charge of said commutation revenues and to apply the same exclusively to the improvement of highways and bridges in said township.

1916, XXIX, 906.

(1486) § 23. Compensation of Commissioners—Term.—That each member of said Commission shall receive as compensation for the performance of his duties hereunder the sum of one hundred dollars annually, payable monthly, out of the proceeds derived from said bonds. The said Commission shall hold office until the second general election for State and county officers succeeding their first election and until their successors are duly elected and qualified. They shall be commissioned by the Governor in the same manner as other county officers holding elective offices. Their successors in office shall be elected at the same time as other county officers and for a period of two years and until their successors are duly elected and qualified, and shall be vested with the same powers and duties as provided for the Commission as first elected under the provisions of this Article.

1916, XXIX, 906.

(1487) § 24. Any Township a Unit.—That any township in the County of Dorchester, in the State of South Carolina, shall be a unit for the purpose of issuing bonds as herein provided, and may issue and sell such bonds upon complying with the terms and provisions of this Article.

1916, XXIX, 906.

(1488) § 25. License for Automobile Repair Shops in Dorchester County.—That all automobile repair shops shall pay to the Treasurer of Dorchester County the sum of fifteen dollars as a license, which they shall

procure from the Clerk of Court of said county before they shall be authorized or permitted to do the business of repairing automobiles in said county, and said sum shall be used on the public highways of the county.

1917, XXX, 282.

(1489) § 26. Disposition of Proceeds Derived from Licenses Thereunder.—That all money derived from the license tax hereby imposed upon automobile repair shops shall be expended by the County Supervisor only for the erection and construction of bridges in the said county or for road purposes.

1917, XXX, 282.

(1490) § 27. License on Timber Carts—Proviso.—That an annual license tax of ten (\$10.00) dollars is hereby imposed on all timber carts in use upon the public highways of Dorchester County: *Provided*, That no license tax be imposed on any timber cart or log wagon when being used by individuals in moving timber upon their own lands for the improvement of same, or removing timber from fields.

1917, XXX, 282.

(1491) § 28. License for Certain Vehicles Used for Hauling.—That it shall be unlawful for any person, firm or corporation to habitually haul timber, lumber or other produce or products whatsoever within the County of Dorchester upon the public highways of said county, any vehicle other than automobile truck, of any description which shall be pulled by four or more mules, horses or oxen, without first having obtained a license therefor from the Clerk of Court of said county, which license shall be the sum of twenty-five (\$25.00) dollars per annum for each wagon or other vehicle as above described and so used in Dorchester County.

1917, XXX, 282.

(1492) § 29. Penalty for Violation Hereof.—That any violation of this Article shall be punishable by a fine of not exceeding one hundred dollars or imprisonment not exceeding thirty days.

1917, XXX, 282.

(1493) § 30. When License to Be Paid—Tag.—Said license shall be collected by the Clerk of the Court of Dorchester County on the 1st day of March, and annually thereafter: *Provided*, That each owner of any of the vehicles hereby subject to this license shall cause to be placed on said vehicles a tag showing said license has been paid.

1917, XXX, 282.

FAIRFIELD COUNTY.

(1494) § 1. County Government for Fairfield County.—That upon the recommendation of the Legislative Delegation of Fairfield County the Governor shall appoint during the year 1913 a County Supervisor and four County Commissioners for Fairfield County, whose terms of office shall be until the 31st of December, 1914, and until their successors shall have been

appointed and qualified. Thereafter in the same manner shall be appointed a Supervisor and four Commissioners for said county, the term of whose office shall be as follows: Of the County Supervisor for four years; two of the said Commissioners shall serve for two years and two of them for four years (to be determined by lot), and until their successors shall have been appointed and qualified. These five shall constitute the County Board of Commissioners for Fairfield County.

Civ. '12, § 1089; 1910, XXVI, 708; 1913, XXVIII, 111.

(1495) § 2. Salaries of Supervisors and Commissioners.—The salary of the Supervisor shall be fifteen hundred (\$1,500.00) dollars per annum, payable in monthly installments, and the Commissioners shall receive as compensation \$2.00 per day for not more than one hundred and twenty-five days' actual service each year, to be paid from funds appropriated for roads and bridges.

1913, XXVIII, 111; 1918, XXX, 836; 1921, XXXII, 70.

(1496) § 3. Powers and Jurisdiction.—The Supervisor and said Board shall exercise the same powers and jurisdiction and perform the same duties as are now conferred upon and required of the like officers by the general law of the State relating to County Government, except as herein and hereby qualified or enlarged.

1913, XXVIII, 111.

(1497) § 4. Appropriations for Roads and Bridges.—At the first session of said Board in every year said Board shall appropriate from the funds of said county for roads and bridges not less than one thousand (\$1,000) dollars to each district in the county as hereinafter designated, the sum of one thousand (\$1,000) dollars to be expended upon roads and bridges in each of said districts in addition to the commutation taxes collected therefor.

1913, XXVIII, 111.

(1498) § 5. Road Districts.—The said county is hereby divided into four road districts, as follows: No. 1—To comprise Townships Nos. 1, 2 and 12; No. 2—To comprise Townships Nos. 9, 10, 11, 13 and 15; No. 3—To comprise Townships Nos. 3, 4, 5 and 14; No. 4—To comprise Townships Nos. 6, 7 and 8.

1913, XXVIII, 111.

(1499) § 6. Commissioners to Be Appointed—How.—The four Commissioners herein provided for shall be appointed, one from each road district.

1913, XXVIII, 111.

(1500) § 7. County Board of Commissioners.—That the District Commissioners with the County Supervisor shall constitute the County Board of Commissioners and shall be invested with all the rights, powers and duties with which the County Boards of Commissioners are now invested under the general law, except as the same may be herein enlarged or

limited, and shall have general supervisory control over the public highways, bridges, ferries, chaingangs, Poor Houses, county property and finance of said county.

Civ. '12, §§ 1041, 1047; 1913, XXVIII, 111.

(1501) § 8. Commissioners to Take Oath and Give Bond.—That the said Commissioners shall, before entering upon the duties of their office, take the constitutional oath required of all officers, and shall enter into bond in some surety company, to be approved by the Clerk of Court of Common Pleas and General Sessions of Fairfield County, in the sum of two thousand (\$2,000) dollars, except the County Supervisor, whose bond shall be three thousand (\$3,000) dollars, for the faithful performance of the duties of their office, which said bond shall be filed with the Clerk of Court of said county. The premium of said bonds to be paid by the county.

Civ. '12, § 1040; 1913, XXVIII, 111.

(1502) § 9. Clerk of Board.—That said Board shall employ a Clerk, who shall be an expert bookkeeper, and who shall keep the books and accounts of said Board by a double entry system; that said clerk shall reside at the county seat; that the salary of said clerk shall be three hundred (\$300) dollars per annum.

Civ. '12, § 1042; 1913, XXVIII, 111.

(1503) § 10. Claims to Be Filed—How.—That all claims against the county shall be filed with said clerk, itemized and sworn to; that said clerk shall, upon presentation of any claim against said county, file the same and enter the same in a book which he shall keep for the purpose, which shall show the number of the claim, the date of filing, description of the claim, the name of the claimant, the amount of the claim, the amount allowed and the date of payment.

Civ. '12, § 1043; 1913, XXVIII, 111.

(1504) § 11. Claims to Be Approved.—All claims against the county must be passed upon by the Board in session, a record in the minutes thereof made; must be approved by the County Supervisor and two other members of the County Board, and unless this is done no claim shall be valid.

1913, XXVIII, 111.

(1505) § 12. Supplies to Be Let to Lowest Bidder.—The County Commissioners shall let to the lowest competent bidder the furnishing of all supplies.

Civ. '12, § 2051; 1909, XXVII, 154.

(1506) § 13. Meetings of Boards.—That the said Board shall meet in their office at the county seat not less than one day in each month, for the transaction of business, and three members thereof shall constitute a quorum; the County Supervisor shall be the chairman of the Board: *Provided*, That in his absence the Board may elect a temporary chairman.

Civ. '12, § 1045; 1913, XXVIII, 111.

(1507) § 14. **Board Not to Be Interested in Contracts.**—The said Board of Commissioners shall not make any purchase of material or make any contract whereby any member of the Board or any member of his immediate family would be profited in any financial way, and any such purchase or contract shall be nonenforceable, null and void.

Civ. '12, § 1046; 1910, XXVI, 710.

(1508) § 15. **Monthly Statement of the County Commissioners of Fairfield County for Grand Jury.**—The Board of County Commissioners of Fairfield County shall have prepared and completed by the second Monday of each and every month, so that the same shall be in complete form on that date, a verified statement showing all moneys received by the County Board of Commissioners, stating how and from what source said moneys came; also showing each and every itemized bill against the county which shall have been approved and paid by the said Board, setting forth in detail full particulars as to each and every item ordered paid, said statement to be totalled and arranged showing what balance, if any, remains to the credit of said office in detail, or what deficit, if any, there is; said statement to be filed with the Grand Jury at each term of the Circuit, who shall investigate the same, and when in their judgment necessary, with the aid of an expert accountant, and report any and all irregularities to the Court.

Civ. '12, § 948; 1909, XXVI, 141.

(1509) § 16. **County Officers of Fairfield County to Report Fees and Salaries.**—All county officers in Fairfield County, who under the provisions of law are authorized to charge and collect fees for any official service or receive salaries, be, and they are hereby, required to make a full and accurate report of all such fees collected and salaries received by them to the County Board of Commissioners semiannually, which report shall be kept by said Board for the Grand Jury and public inspection—that is to say, for the first six months on the 30th of July, or within thirty days thereafter, and for the second six months thereof on the 31st of December, or within thirty days thereafter.

1919, XXXI, 56.

(1510) § 17. **Penalty.**—Any failure or refusal to make such reports by any such officers is hereby declared to be nonfeasance in office; and upon conviction therefor the offender shall be punished by fine or imprisonment in the discretion of the Court.

1919, XXXI, 56.

(1511) § 18. **Commutation Tax—Collection—Evasion a Misdemeanor—Penalty.**—It shall be the duty of the County Supervisor and of the County Commissioners and of such Township Commissioners as may be hereafter appointed to see that all persons liable to pay commutation road tax, shall pay the same, and any and all persons in said county liable to road duty (except ministers of the Gospel) shall pay an annual commutation road tax of four (\$4.00) dollars; said tax shall be charged by the Auditor of Fairfield County against every able-bodied

male person between the ages of eighteen and fifty-five years, inclusive, and shall be collected by the County Treasurer of said county as other taxes are collected, and shall be expended on the roads in the township or school district of the person paying the same. Any persons liable to road duty and failing to pay said road tax shall be guilty of a misdemeanor, and; upon conviction, shall pay a fine of not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars, or be imprisoned for not less than ten days nor more than thirty days, in the discretion of the Court, and all fines collected for the nonpayment of said commutation road tax shall be credited to the road fund of the township where such party failing to pay the same resides.

Civ. '12, § 2047; 1911, XXVII, 168; 1913, XXVIII, 111; 1914, XXVIII, 521; 1914, Sp., XXIX, 27; 1915, XXIX, 595; 1921, XXXII, 70.

(1512) § 19. Auditor to Enter on Books Names of Those Liable to Pay Tax.—It shall be the duty of the County Auditor to see that the names of all persons liable for said road tax of four (\$4.00) dollars are entered upon his tax books, and that the same is placed in the hands of the County Treasurer for collection. It shall also be the duty of each District Commissioner to furnish the County Auditor with the names of all persons in his district who are liable to pay the commutation tax, and further to swear out warrants before a Magistrate against all persons who fail to do so within the time prescribed by law.

Civ. '12, §§ 2048, 2049; 1909, XXVI, 154; 1913, XXVIII, 111; 1914, XXVIII, 521; 1921, XXXII, 70.

(1513) § 20. Civil Engineer.—Whenever in the judgment of County Commissioners it is necessary, they may employ a civil engineer, whose fees and expenses shall not exceed three hundred dollars per annum.

Civ. '12, § 2046; 1911, XXVII, 168.

(1514) § 21. Road Fund.—The fund for roads and bridges shall consist of all moneys raised by the four dollar road tax, above provided for, and all fines and penalties imposed by the Circuit Judges, in the Court of General Sessions, and by the Magistrates in the Magistrates' Courts; said fund shall be kept separate from the ordinary county funds by said County Treasurer.

Civ. '12, § 2050; 1909, XXVII, 154; 1921, XXXII, 70.

(1515) § 22. Apportionment of Road Funds—Enforcement.—All appropriations for and all funds available for the upkeep of the roads of the county shall be equitably apportioned and expended by the County Board among the several road districts, and the provisions of this Act requiring that the commutation road tax be expended on the roads, in the township or school district of the person paying the same is mandatory, and, in case the same is disregarded, then the County Board of Commissioners shall be amenable to a rule to show cause, upon the application of any taxpayer affected thereby.

1921, XXXII, 70.

(1516) § 23. Special Tax for Roads, Etc.—There is hereby levied, and there shall be hereafter annually levied, on all the real and personal property of Fairfield County a tax of two mills for road and bridge pur-

poses, to be collected as other taxes are collected, which shall be expended on the roads and bridges of the townships or school districts from which it is collected.

1921, XXXII, 70.

(1517) § 24. Overseer May Be Employed.—That each District Commissioner in expending the money obtained from the commutation tax on the public road may hire a competent overseer to direct hands employed, and who shall receive for such service the sum of \$1.50 per day for each full day of actual service. No Commissioner shall expend more than the amount apportioned to his district, nor shall he present any bill for approval for any material or any hands or teams furnished by himself.

Civ. '12, § 2045; 1911, XXVII, 168; 1913, XXVIII, 111; 1914, XXVIII, 521.

(1518) § 25. Salaries Paid—How.—That salary of County Supervisor and per diem of County Commissioners be paid out of general fund or out of the appropriation made in county supply bill for repairs on roads and bridges.

1913, XXVIII, 111.

(1519) § 26. Roads of Fairfield County to Be Divided Into Sections.—That the Supervisor and Board of County Commissioners of Fairfield County (hereinafter referred to as the county authorities) be, and they are hereby, empowered, directed and required to divide the public roads under their control into sections, or blocks, of such several lengths as in their judgment they may deem most advantageous for letting out the said roads to contract or contracts, in whole or in part, for the maintenance thereof.

1920, XXXI, 1037.

(1520) § 27. Bids for Maintenance by Contract.—When the said sections shall have been duly defined, described and numbered, so that each may be separately treated as an integral proposition hereafter, and so kept distinct in the office of the County Board, the said county authorities shall forthwith advertise for bids for maintenance thereof, once a week, for four weeks, in such methods of advertisement as will be deemed sufficient, in their judgment, to secure the object desired; setting forth explicitly the conditions, terms and guarantees to be imposed in connection therewith.

1920, XXXI, 1037.

(1521) § 28. Duration of Contracts—Conditions.—The said contracts shall be named to run for a twelve-month period, with privilege, mutually agreed upon, of a renewal, otherwise a full discretionary power is hereby granted the authorities to specify the requirements of maintenance, but it is expressly hereby required that in no case shall any section of any road be placed under contract unless the stipulations therefor call for a system of maintenance that will insure an improvement of the roads of the county superior to the conditions obtained under the system of maintenance by the chaingang system.

1920, XXXI, 1037.

(1522) § 29. **Powers and Duties of County Supervisor.**—All work of maintenance under the contract system shall be under the direct supervision and responsibility of the County Supervisor, and he shall have the authority to appoint, at the expense of the county, such assistance as he may require for the proper discharge of his duties in the premises.

1920, XXXI, 1037.

(1523) § 30. **Duty of County Attorney—Bond in Contracts.**—It is also required that the County Attorney shall, in all cases, act in an advisory capacity in the preparation of the said contracts, and that a sufficient bond for faithful performance be written into the same in an amount to be fixed by the Board.

1920, XXXI, 1037.

(1524) § 31. **Chaingang of Fairfield County Abolished — Disposition of Convicts.**—That the County Chaingang now and heretofore maintained in Fairfield County be, and the same is hereby, abolished and that convicts now imprisoned thereon be conveyed by the County Supervisor to the State Penitentiary to serve the remainder of the sentence which have been imposed on said convicts, as provided by law.

1911, XXVII, 168; 1913, XXVIII, 111; 1914, XXVIII, 521; 1921, XXXII, 70.

(1525) § 32. **Use of Equipment.**—That the equipment of the said chaingang, consisting of tractors, trucks, scrapes, teams, etc., shall be distributed among the four road districts in said county, to be used and employed by the several County Commissioners in said districts, respectively, under the supervision of the Supervisor, in the construction, improvement and maintenance and upkeep of the roads in said districts, respectively, and, if necessary, the County Board of Commissioners shall purchase such further road working equipment as may be needed to supply each road district with such road working outfit as in the judgment of the said Board may be efficiently and economically operated in said district.

1921, XXXII, 70.

(1526) § 33. **Road Work—Hired Labor—Contracts.**—That the road work to be done in the several districts may be done under the general supervision of the County Supervisor, by the Road Commissioners of said districts, respectively, with hired labor, if that method be deemed, by the Supervisor and County Board of Commissioners, the most efficient and economical. But if, upon trial of such method, it shall be found to be, in the judgment of the Supervisor and County Board inefficient or extravagant; or, in case of the failure of the Commissioner of any district to achieve satisfactory results in such work; or in the event of the failure or neglect of the Commissioner of any district to satisfactorily discharge his duties, then, and in either case, the Supervisor and the Board of Commissioners may let out such work, or any part thereof, on contract to the lowest responsible bidders. In case the said work, or any part thereof, is let to contract, then the Supervisor may, in his discretion, allow the contractor who is awarded the con-

tract for said work the use of the road machinery or other equipment placed in the said district for such length of time as may be deemed advisable and expedient, proper compensation to be required therefor under the contract. The contractor shall give bond with sufficient surety, conditioned for the faithful performance of the work under the terms and requirements of the contract, and for the proper care and repair of any road machinery committed to his care, and for the due and proper care and maintenance of any teams hired to him under such contract.

1921, XXXII, 70.

(1527) § 34. **Approval of Contracts.**—All contracts for road and bridge work (not including contract work done under the Township Bond Act for Fairfield County) must be approved, in writing, by a majority of the Board of County Commissioners.

1921, XXXII, 70.

(1528) § 35. **Issue of Highway Bonds by Townships of Fairfield County—Petition—Election—Terms of Bonds.**—That whenever one-third of the qualified freeholders residing in any township in Fairfield County shall present a petition to the County Board of Commissioners of said county praying for an election upon the question of issuing serial or other coupon bonds for the construction of public highways in such township, it shall be the duty of the County Board of Commissioners of Fairfield County to order an election upon the question of issuing serial or other coupon bonds in such township, to an amount not exceeding eight per cent. of the assessed taxable property of such township, said bonds to run for not exceeding twenty years and to bear a rate of interest not to exceed six per cent. per annum, with the right to call in any or all of said bonds after ten years.,

1921, XXXII, 17.

(1529) § 36. **Use of Bond Funds—Inter-Township Highways.**—That where a main public highway of the said county, or a county to county highway passes through or across a part of two or more townships of said county, the Highway Commissions of said townships, hereinafter provided for, may expend the proceeds of bonds so voted in the construction, improvement or maintenance of such highway jointly and by co-operation, and also thereafter expend any residue of said funds in the construction, improvement and maintenance of any of the main tributary roads leading into the said county to county highway. For the purpose of co-operation among the several townships in the construction of such county to county highway, each of said townships are hereby authorized and empowered under the provisions of this Act, to issue bonds in proportion to the taxable value of the property returned in said townships respectively, as shown by the books of the Auditor of Fairfield County, to be expended in the construction of such highway.

1921, XXXII, 17.

(1530) § 37. **Conduct of Elections—Sale of Bonds.**—Said election shall be held under the laws governing the holding of general elections in this State. The ballots shall be provided according to law, and

on one ballot shall be printed "For permanent road Bonds—Yes," on the other "For permanent road bonds—No." That the said election shall be held at the same polling places as were used in such townships in the last general election, and all qualified electors residing in such township shall be qualified to vote therein. If a majority of the ballots cast in said election shall be for the issuing of said bonds, the County Supervisor, and the Commissioners hereinafter provided for, to be known as Township Highway Commissioners, shall dispose of the said bonds to the highest bidder for cash, at not less than par, upon such notice by advertisement and competitive bids as the Supervisor and said Township Highway Commissioners shall deem proper, reserving the right to reject any and all bids. The expenses of the election shall be paid out of the township road funds.

1921, XXXII, 17.

(1531) § 38. Terms of Bonds—Execution.—Upon the acceptance of any bid, the County Board of Commissioners shall have printed serial or other coupon bonds to an amount not exceeding eight per cent. of the assessed valuation of the taxable property of such township, to run not more than twenty years, with the right to the township of redeeming any or all of them after ten years. These bonds shall be signed by the County Supervisor and countersigned by the Clerk of the Board, but the signatures may be lithographed on the coupons. The bonds to be issued by any of said townships shall show upon their face for what township said bonds are issued, and the liability incurred thereby shall extend only to the township named therein.

1921, XXXII, 17.

(1532) § 39. Tax for Interest and Sinking Fund—Reports.—The interest on said bonds shall be paid semi-annually on the first day of January and the first day of July each and every year and the Auditor and Treasurer shall levy and collect on the property in said townships, a tax sufficient to pay the interest on these bonds and to pay one-twentieth (1-20) or more of the principal as it falls due, the one-twentieth or more mentioned above and surplus accruing after the payment of the interest on said bonds shall be turned over to the County Sinking Fund Commission, to be invested by them in such funds as are recognized in law as proper for the investment of trust funds. The Sinking Fund Commission shall annually present to the Circuit Court of Fairfield County an itemized statement of all funds received by it, and how they have been invested, to whom loaned, and what security. This report shall be filed with Clerk of said Court.

1921, XXXII, 17.

(1533) § 40. Custody and Disbursement of Bond Funds.—As soon as the funds arising from the sale of said bonds shall be received by the said Township Highway Commissioners, they shall be turned into the county treasury, until they shall be withdrawn from time to time by the warrant of said Township Highway Commissioners as needed by them in the performance of their duties under this Act.

1921, XXXII, 17.

(1534) § 41. Township Highway Commissioners—Election—Term—Compensation—Bond.—The Township Highway Commissioners provided for in this Act shall consist of three members who shall be freeholders in said township, who shall be voted for and elected at the election which may be ordered for the issue of said bonds. The said Commission shall elect its chairman and secretary, and any vacancy in the Commission shall be filled by the Governor upon the recommendation of the Legislative Delegation from Fairfield County. The Commissioners each shall receive as compensation for their services the sum of one hundred (\$100.00) dollars per annum, payable quarterly out of the proceeds of the sale of said bonds. The life of said Commission to be for a period of three years, or until their successors shall be appointed and qualified. Each shall give bond in some approved company doing business in this State, under the laws thereof, in the sum of five thousand (\$5,000.00) dollars from the time the bonds are issued to the time the proceeds thereof are expended and accounted for; premiums on said bonds to be paid from the funds derived from said bond issue; but they shall construct said roads as soon as may be advantageously done in their judgment.

1921, XXXII, 17.

(1535) § 42. Joint Commissions.—That where two or more townships through which a main public thoroughfare, or county to county highway passes, join in the construction of said highway, the Highway Commission in such case shall consist of the Chairman of the Highway Commission of the several townships, so acting together.

1921, XXXII, 17.

(1536) § 43. Improvement of Roads by Commissions—Contracts—Condemnation.—The said Township Highway Commission shall select the roads which shall be permanently improved, in whole or in part, to decide the width of same, and the material to be employed, regard being had to the present condition of said roads, and the amount of traffic over same. They shall divide the roads to be constructed or improved into sections of not less than one mile nor more than five miles, for the purpose of letting the same out for construction or improvement by contract to the lowest responsible bidder according to plans and specifications to be furnished by the said Township Highway Commissioners, for the letting of which contract ten days' notice shall be given in at least four public places in the township in which the section or sections of road are to be let, of the time and place of the letting of the said contract, reserving in the said notices the right to reject any and all bids. In case any sections are not let on bids, the Township Highway Commission shall have such section constructed or improved by hired labor. The successful bidder shall enter into bonds for the faithful performance of his duties in double the amounts of his bid. They shall have the right to condemn land, surface, soil, trees or other material adjoining or near to the road for the purpose of relocating, widening, improving or constructing public highways herein provided for, and in case the right of way, surface, soil, trees, or other material cannot be secured by donation or agreement, the same may

be taken for the use herein mentioned, and the landowner may afterwards be compensated as in condemnation of rights of way as now provided by law.

1921, XXXII, 17.

(1537) § 44. Maintenance of Roads Improved.—It shall be the duty of the said Township Highway Commissioners to keep the roads constructed or improved by them, in proper repair during the life of said Commission, and for this purpose so much of the two mill tax levy now provided for by the law as may be necessary shall be used, and the County Supervisor as now constituted shall co-operate with the said Commission.

1921, XXXII, 17.

(1538) § 45. Township Engineers.—The said Township Highway Commissioners may employ a competent engineer, whose duty shall be to locate roads to be constructed by the Commission, to furnish to the said Commission estimates of the cost of said construction; to see that the work is properly performed, furnish plans and specifications and to perform such other duties as said Commission may desire.

1921, XXXII, 17.

(1539) § 46. Records—Reports.—That said Township Commission shall keep a book open for the public inspection at all reasonable times setting forth all contracts made by it for the construction and maintenance of said roads. They shall also present annually to the Circuit Court of Fairfield County an itemized statement of all funds received and disbursed by them, and this shall be part of the records of said Court. At the expiration of the life of said Commission all its contracts, papers and books of account shall be turned over to the Clerk of Court and filed in his office.

1921, XXXII, 17.

(1540) § 47. Disbursements.—All moneys shall be paid out on warrants of the Chairman of the said Township Commission, countersigned by the Secretary thereof.

1921, XXXII, 17.

(1541) § 48. County Sinking Fund Commission.—The County Supervisor, the County Treasurer and the Clerk of Court for Fairfield County are hereby constituted the Sinking Fund Commission for the purpose of this Article.

1921, XXXII, 17.

(1542) § 49. Special Road Tax Elections in Townships of Fairfield County—Petition—Notice of Election—Managers—Township Highway Commissioners.—That whenever one-third of the qualified electors, and a like proportion of the resident freeholders of any township in Fairfield County shall file a petition with the County Board of Commissioners for said county praying for an election upon the question of levying a special annual tax to supplement any other tax or appropriation made for road purposes in said township, it shall be the duty of the County Board of

Commissioners to order an election, upon the request of levying such tax in such township, to an amount not exceeding five mills of the assessed taxable property in said township. Such election shall be held at the same polling places as were used in said township in the last general election, after giving two weeks' notice of the time and place thereof, in some newspaper published within the county, and by posting notice thereof in at least three public places in said township. The County Board of Commissioners shall appoint three managers to hold the said election, and all qualified electors residing in said township shall be qualified and entitled to vote therein. That at the same time of voting upon the question of levying the said supplemental road tax, the electors shall vote for three persons who shall be resident freeholders and electors of said township, who shall be known as the Highway Commission for said township. The said election shall be conducted as is provided by law for the conduct of general elections. The ballots shall be provided according to law, and on one ballot shall be printed the words: "For special road tax—Yes;" and on the other: "For special road tax—No."

1921, XXXII, 98.

(1543) § 50. County Auditor to Levy Tax—Repeal of Tax.—Within ten days after such election, if a majority of those voting shall vote for such levy, the managers of the election shall furnish the County Auditor with a statement of the amount so levied, and the Auditor shall enter the same in the tax duplicates, and he shall annually each year thereafter enter the said amount in the tax duplicates until the same is repealed by said tax payers at an election called, as herein provided for that purpose, and he is notified that the same has been repealed, which election shall be called and notice given in the same way and manner as is herein provided for the calling of an election to make the levy of such tax. The County Treasurer shall collect the said tax as other county and State taxes are collected: *Provided*, That any tax which may be levied after the first day of October in any fiscal year, shall not take effect until the next fiscal year. Such levy shall be a lien on the property in said township, which shall be subject thereto in case of default in payment.

1921, XXXII, 98.

(1544) § 51. Disbursement of Tax Funds.—The tax so collected shall be paid out by the County Treasurer, on warrants drawn by the said Township Commission, which shall be used by said Commission on the construction, maintenance and improvement of the public roads in said township.

1921, XXXII, 98.

GEORGETOWN COUNTY.

(1545) § 1. Office of County Supervisor for Georgetown County Abolished.—That the office of County Supervisor for the County of Georgetown be, and the same is hereby, abolished.

1920, XXXI, 1096.

(1546) § 2. Board of County Commissioners—Appointment—Term.—That there shall be in and for said County of Georgetown, a County Board of Commissioners, composed of seven members, who shall be appointed by the Governor, upon the recommendation of the Legislative Delegation of said county, and who shall serve for two years, and until their respective successors are appointed and qualified. One member to be appointed from each township.

1920, XXXI, 1096; 1921, XXXII, 95.

(1547) § 3. Chairman—Clerk—Term and Compensation.—The said County Board of Commissioners shall immediately after qualifying, meet and organize by electing one of their number as chairman, and also elect a clerk, who shall be designated as Clerk of the County Board of Commissioners; he shall hold his office at the will and pleasure of said Board, and receive such annual salary as the Board of County Commissioners may fix, payable monthly upon the warrants of said Board.

1920, XXXI, 1096.

(1548) § 4. Commutation Road Tax—Payment—Proof of Disability.—That all able-bodied male persons, between the ages of twenty-one and fifty-five years, both inclusive, in the county of Georgetown, shall be required annually to pay a capitation road tax of three (\$3.00) dollars on or before the 31st day of December of each year, except ministers of the Gospel actually in charge of a congregation, persons permanently disabled in the military service of this State and of the United States, and persons who served in the late War Between the States, which capitation tax must be paid by the person subject thereto to the County Treasurer, and on payment of the same a receipt shall be issued showing the date, amount and purpose for which paid, and signed by the person collecting the same: *Provided*, That any person claiming exemption from the provisions of this Act on the ground of physical disability, where such disability is not apparent, shall be required to give a certificate of disability from two regular physicians: *Provided*, That all persons who are liable for road duty in said county as is provided for by law, in lieu of paying said commutation or road tax may perform six (6) days' labor of ten (10) hours each on the highways.

Civ. '12, § 2052; 1911, XXVII, 178; 1919, XXXI, 237; 1920, XXXI, 1096; 1921, XXXII, 200.

(1549) § 5. Time of Payment—Assessment and Collection.—That said capitation tax shall be due and payable at the same time that the poll tax of said county is due and payable, and shall be charged against all persons liable therefor by the County Auditor in the same manner as poll taxes are now charged and shall be collected by the County Treasurer at the same time and in the same manner as poll taxes are now collected.

Civ. '12, § 2053; 1911, XXVII, 178; 1912, XXVII, 682; 1920, XXXI, 1096.

(1550) § 6. Nonreturn For, or Nonpayment of, Commutation Road Tax a Misdemeanor—Penalty.—Any person hereunder made liable for the payment of said capitation road tax, who shall fail to make such payment when same is due, or who fails to list said tax at the time provided

for listing the same with the Auditor, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine in a sum not less than five (\$5.00) dollars and not more than ten (\$10.00) dollars, or by imprisonment for not less than ten (10) or more than thirty (30) days.

1912, XXVII, 682; 1920, XXXI, 1096.

(1551) § 7. Returns.—Every person in said county liable for said road tax shall return himself for taxation for such tax to the County Auditor of said county in each and every calendar year, between the first day of January and the twentieth day of February, and the County Auditor is hereby authorized and directed to solicit and take such returns, and he shall make out and deliver to the Township Assessors of the several townships of said county lists of the names of the persons who have returned themselves for taxation for such tax in their townships. The Township Assessors and County Commissioners shall add to said lists the names of all persons in the county liable for said tax, and who have not returned themselves to the County Auditor, and said lists shall be returned as promptly as possible to said County Auditor. Said County Auditor, in each and every year, on or before the fifteenth day of October, shall make out and deliver a list of the names of all persons liable for said road tax in said county, alphabetically arranged by townships, to the County Treasurer of said county.

Civ. '12, § 2054; 1911, XXVII, 178.

(1552) § 8. Road Fund.—The County Treasurer is hereby authorized and directed to collect said tax, and to turn the same into the road fund for said county. The County Treasurer shall keep a book, in which shall be recorded, by townships, the names of those paying said commutation or road tax.

Civ. '12, § 2055; 1911, XXVII, 178.

(1553) § 9. Use of Proceeds of Commutation Tax.—The commutation tax received hereunder shall be used by the Board of County Commissioners upon the public highways of Georgetown County at such places and at such times as they may deem necessary.

1920, XXXI, 1096.

(1554) § 10. Residents of Towns or Cities Not Exempt.—No person subject to pay the capitation tax hereinabove required shall be exempt or excused from such payment by reason of being a resident of any incorporated town or city of the county.

1920, XXXI, 1096.

(1555) § 11. Use of Chaingang.—The County Board of Commissioners shall have charge of the chaingang and all equipment and shall distribute its benefits among the various townships as impartially as possible, and shall appoint an overseer or overseers and guards therefor; but their compensation will be fixed by the County Board of Commissioners.

1920, XXXI, 1096.

(1556) § 12. **Meetings of County Commissioners—Quorum—Majority Rule.**—The County Board of Commissioners shall hold regular meetings on the first Tuesday after the first Monday in each month of the year, at the County Court House, for the transaction of business, and a majority of the said Board shall constitute a quorum: *Provided*, That in all matters regarding the county affairs a majority of said County Commissioners shall rule and be binding.

1920, XXXI, 1096.

(1557) § 13. **Compensation of Commissioners.**—That each of said Commissioners shall receive as compensation for his services the sum of one hundred fifty (\$150.00) dollars per year.

1920, XXXI, 1096.

(1558) § 14. **Terms of Incumbents and Existing Contracts Not Affected.**—Nothing in this Article shall be construed to interfere with the tenure of office of the County Supervisor and Commissioners in office February 1, 1920, or with any contract or engagement heretofore entered into by and with them.

1920, XXXI, 1096.

(1559) § 15. **Road Supervisor—Employment—Compensation—Duties.**—That for the purpose of working and improving the public roads and highways in Georgetown County, the County Board of Commissioners herein provided for shall, as soon as practicable after the organization of said Board, employ a competent man, to be known as Road Supervisor, at a salary of not more than twenty-five hundred (\$2,500.00) dollars per annum, whose duty it shall be to supervise the working and improvements of the public roads, to have control of chaingang and other forces that may be used for this purpose, under the general direction of the County Commissioners, and perform such other duties as said County Commissioners may require; said Road Supervisor shall not be engaged in any other work but that provided for in this Section, and shall be subject to removal at any time in the discretion of said County Commissioners.

Civ. '12, § 1935; 1909, XXVI, 146; 1920, XXXI, 1096.

(1560) § 16. **Contract Plan.**—As a supplement to the chaingang work in said county, the Board of County Commissioners are hereby authorized, whenever practicable, to have roads worked by contract plan.

Civ. '12, § 2056; 1911, XXVII, 178.

(1561) § 17. **When Article Effective.**—This Article shall go into effect at the expiration of the present terms of office of the County Supervisor and County Commissioners. In the event that the present County Commissioners shall resign their offices, the County Board of Commissioners as herein provided shall be forthwith appointed, and in such event the present County Supervisor shall thereupon have no further duties and authority in regard to county or road affairs in the County of Georgetown except as may be conferred upon him by the said County Board of Commissioners appointed hereunder. In the event of the death or resignation of the present County Supervisor, this Article, in its entirety, shall go

into effect. In the event that the present County Commissioners resign, and the present County Supervisor shall die or resign, the funds provided in the Act providing for taxes and appropriation for the County of Georgetown for 1920, for the office of the County Supervisor and the County Commissioners, then unexpended, shall be used as far as possible to pay the salaries of the County Board of Commissioners and County Engineer as herein provided.

1920, XXXI, 1096.

GREENVILLE COUNTY.

(1562) § 1. **Election of Supervisor of Greenville County.**—At the general election for State and county officers in the year 1916 there shall be elected a Supervisor of Greenville County, whose term shall begin on January 1, 1917, and continue for four years; and at each alternate general election thereafter a similar election shall be held.

1915, XXIX, 66.

(1563) § 2. **The Supervisor to Give Bond.**—The Supervisor so appointed or elected shall give the bond required by Section (1024) of this Code.

1915, XXIX, 66.

(1564) § 3. **Authority of Supervisor.**—The said Supervisor is hereby vested with all the authority set forth in Sections (1059), (1065), (1078), (1079), (1086), (1088), (1089), (1099), (1100), (1101), (1104), (1105), (1106), (1108), (1109), (1110), (1112), (1114), (1115), (1116), (1122), (1123), and (1124) of this Code.

1915, XXIX, 66.

(1565) § 4. **Salary of the Supervisor.**—That the salary of said Supervisor shall be sixteen hundred and eighty dollars per annum, payable monthly.

1915, XXIX, 66.

(1566) § 5. **Appointment of Clerk.**—That said Supervisor shall appoint a clerk, who shall be removable at his pleasure, and who shall receive a salary of seven hundred and twenty dollars per annum, payable monthly.

1916, XXIX, 66.

(1567) § 6. **Duties Devolved Upon Supervisor.**—That all duties now imposed by law upon the County Board of Commissioners of Greenville County are hereby devolved upon said Supervisor, and all laws applicable to said Board are hereby made applicable to him, except when they conflict with the foregoing provisions of this Article.

1916, XXIX, 66.

(1568) § 7. **Supervisor to Keep "File Book of Claims."**—The County Supervisor of Greenville County shall keep a book called "File Book of Claims," in which shall be entered all claims as presented. This book shall be printed and ruled with appropriate columns showing: (1) Claim num-

ber. (2) Date of filing. (3) By whom presented. (4) To whom claim belongs. (5) Nature of claim. (6) Date of action. (7) Amount of claim. (8) Amount allowed. (9) Amount disallowed. (10) Item number in Supply Act to which chargeable. (11) Remarks. The number of claim shall not be entered upon the book until the claim shall have been allowed and entered on the "Claims Classification Book" hereinafter provided for, and shall then be made to conform to the number thereon. A separate claim must be filed for each account chargeable to any particular item in the County Supply Act or to any subdivision thereof. The principal of each note for money borrowed in anticipation of the collection of taxes shall be paid directly by the County Treasurer, the said Treasurer holding said note as his voucher for the principal thereof and the lender filing claims with Supervisor in the usual form for the interest, but not for principal; except where a specific appropriation shall have been made, for the payment of a particular note.

Civ. '12, § 1054; 1910, XXVI, 729.

(1569) § 8. Also Book Called "Classification of Claims Allowed."—The County Supervisor shall keep a book called "Classification of Claims Allowed," in which shall be entered all claims allowed in numerical order. This book shall be printed and ruled with appropriate columns showing: (1) Line number. (2) Claim number. (3) Warrant number. (4) Item number in Supply Act to which chargeable. (5) Claimant. (6) Nature of claim. (7) Amount allowed. (8) Amount paid. (9) Date paid. (10) Amount unpaid. (11) Columns headed and numbered, "Item Number 1" and upward, with a tabulated statement at head of each column showing: (a) The amount of the appropriation made for the particular item; (b) the amount of claims allowed to date chargeable to such item; (c) the balance of the appropriation subject to future claims which may be allowed, or the balance of over allowed. (12) Total. With similar tabulation. Within the first ten days of each and every month, the County Supervisor shall publish one time in a newspaper of the county, selected by him as calculated to give full publicity thereto, a statement, under his hand, attested by the Clerk, and approved by the County Auditor, showing the exact financial condition of each item at the end of the preceding month, as the same may appear from this book, Subdivision 11; briefly describing the item by title as in the County Supply Act. The advertising charges therefor shall not exceed \$4 for each insertion.

Civ. '12, § 1055; 1910, XXVI, 729.

(1570) § 9. Also "Bills Payable" Book.—The County Supervisor shall keep a book of "Bills Payable," in which he shall enter, as and when made, all notes for loans in anticipation of collection of taxes. The entries thereon shall show: (1) Note number. (2) Date of note. (3) Date due. (4) Payee. (5) Amount. (6) Rate of interest. (7) Date paid. Said notes shall be numbered in the order in which they may be executed.

Civ. '12, § 1056; 1910, XXVI, 730.

(1571) § 10. Also "Bond Book."—The County Supervisor shall keep a book called "Bond Book," in which shall be entered all bonds outstanding

and hereafter issued. This book shall be printed and ruled with appropriate columns showing: (1) Series number. (2) Title of bonds. (3) Date of issue. (4) Date due. (5) Interest rate. (6) Interest payable. (7) Interest amount due January 1. (8) Interest amount due July 1. (9) Number of bonds. (10) Bond numbers. (11) Denomination. (12) Total value issued. (13) Remarks.

Civ. '12, § 1057; 1910, XXVI, 730.

(1572) § 11. County Treasurer to Keep Daily Cash Receipt Book.—The County Treasurer shall keep a book called "County Treasurer's Daily Cash Receipts," in which shall be entered daily all taxes and other moneys received by the County Treasurer from all sources. This book shall be printed and ruled with appropriate columns showing: (1) Line number. (2) Date received. (3) Name. (4) Amount received. (5) State taxes, with subsidiary columns for taxes and penalty. (6) County taxes, with subsidiary columns for: (a) Taxes for all purposes; (b) penalty; (c) commutation road tax; (d) fines, fees and licenses; (e) R. M. C. fees; (f) miscellaneous income; (g) total receipts for county; (h) loans for county; (i) special local taxes (Dunklin and Oaklawn Townships). (7) School taxes, with subsidiary columns for: (a) Townships; (b) school districts; (c) 3-mill tax; (d) penalty; (e) special school tax; (f) penalty; (g) high school tax; (h) penalty; (i) interest on school bonds; (j) penalty; (k) poll tax; (l) penalty; (m) capitation dog tax; (n) penalty; (o) miscellaneous income; (p) total receipts for schools; (q) loans for school. It is hereby made the duty of the County Auditor of Greenville County to distribute upon said books the items of receipts for taxes to appropriate columns as herein required.

Civ. '12, § 1058; 1910, XXVI, 730.

(1573) § 12. Also "Disbursements for County Expenses."—The County Treasurer shall keep a book called "Disbursements of all Funds for County Expenses," in which shall be recorded all disbursements made by him on account of county expenses for each fiscal year. This book shall be printed and ruled with appropriate columns, showing: (1) Line number. (2) Claim number. (3) Warrant number. (4) Item in Supply Act to which chargeable. (5) Date of payment. (6) Claimant. (7) Nature of Claim. (8) Columns headed and numbered "Item No. 1," and upward, with a tabulated statement intended to apply to such at the head of each column, showing: (a) The amount of the appropriation made for each particular item; (b) the amount of warrants paid to date chargeable to such item; (c) the balance of the appropriation subject to future warrants. (9) loans. (10) Miscellaneous. (11) Total, with tabulation as in (8).

Civ. '12, § 1059; 1910, XXVI, 731.

(1574) § 13. Also "Disbursements of School Funds."—The County Treasurer shall keep a book called "Disbursements of School Funds," in which shall be recorded all disbursements made for school purposes during each fiscal year. This book shall be printed and ruled with appropriate columns, showing: (1) Line number. (2) School district number. (3) Warrant number. (4) Treasurer's number. (5) Date of payment. (6)

Claimant. (7) Nature of claim. (8) General cash book folio. (9) Amount. (10) Common school and special school tax. (11) High school tax. (12) Interest on school bonds. (13) Miscellaneous.

Civ. '12, § 1060; 1910, XXVI, 731.

(1575) § 14. Also "**Monthly Cash Book.**"—The County Treasurer shall keep a book called "County Treasurer's General Monthly Cash Book," in which he shall make up a statement within the first five days of every month, showing the amount of receipts and disbursements during the preceding month on account of State, county and school taxes for each fiscal year not completely closed. This book shall be printed and ruled with appropriate columns, showing: (1) Date received. (2) Daily cash receipt book folio. (3) Department. (4) Ledger folio. (5) Taxes. (6) Penalty. (7) Total receipts. (8) Date of payment. (9) Disbursement book folio. (10) Department. (11) Ledger folio. (12) Total disbursements. Under the head of "Department," on the debit side, shall be entered the amount of State taxes received during the preceding month; the amount of county taxes received for the same period, which shall include taxes for all purposes, commutation road tax, fines, fees and licenses, Register of Mesne Conveyance fees, miscellaneous income, loans for county purposes, Dunklin special local tax, Oaklawn special local tax; the amount of school taxes received for the same period, which shall include the 3-mill tax, special school tax, high school tax, interest on school bonds, poll tax, capitation dog tax, miscellaneous income loans for schools. The debit side of the account shall show, in tabulated form, the balance on hand from last month of State taxes, county taxes and school taxes, separately stated, aggregated and added to the total receipts for the month. Under the head of "Department," on the credit side of the account, shall be shown separately disbursements of State taxes for the preceding month, disbursements of county taxes for the same period and disbursements of school taxes for the same period, separately stated and aggregated; also the balance in hand at the end of the month to be carried forward to next month, separately stated, showing State taxes, county taxes and school taxes, and aggregated. This statement shall also show, separately, cash in the Treasurer's office and cash on deposit in bank aggregated and agreeing with the total balances shown. Within the first 20 days of each of the months of January, April, July and October, the County Treasurer shall publish one time in a newspaper of the county, selected by him as calculated to give full publicity thereto, a condensed statement, approved by the County Auditor, of receipts and disbursements from the beginning of the fiscal year on account of the foregoing taxes, separately stated, and the balances on hand at the end of the preceding quarter to the credit of each. The advertising charges therefor shall not exceed \$2.50 for each insertion.

Civ. '12, § 1061; 1910, XXVI, 732.

(1576) § 15. **Treasurer to Make Monthly Report.**—The County Treasurer shall within the first five days of every month, make a report to the County Supervisor of the collections and disbursements of all funds for county expenses during the preceding month for each fiscal year upon account of which the same shall have been received. Each fiscal year shall

be kept separate and distinct, and the County Treasurer shall make out as many reports as there are fiscal years to which the same are to be charged. He shall keep a book in which these reports shall be made out. The Supervisor shall keep a similar book and shall, on or before the first day of each month, deliver the same to the County Treasurer to be filled out in conformity with the book kept by said Treasurer. This book shall be printed and ruled with appropriate columns and headed "County Treasurer's Monthly Report to the County Supervisor of the Collections and Disbursements of all Funds for County Expenses, from.....19.., to, 19.., for the fiscal year commencing January 1, 19.., and ending December 31, 19.." This report shall contain two subdivisions, one of which shall show receipts for all county purposes, and the other shall show expenditures authorized and total disbursements to date. The first subdivision shall show in tabulated form the balance on hand from last report, and receipts by County Treasurer since last report, aggregated, from which shall be deducted disbursements since last report, showing balance on hand at date of report. The second subdivision shall be printed and ruled with appropriate columns, showing: (1) Classification item number. (2) Purposes. (3) Expenditure authorized by law. (4) Total disbursed to date. (5) Limit of disbursements for future claims. Under the subdivision, "Purposes," shall be entered in numerical order the items of appropriation conformably with the County Supply Act. Under the column, "Expenditure authorized by law," shall be entered separately, the amount of appropriation for the special items as contained in Supply Act for the year. Under the column "Total disbursed to date," shall be entered the total amount of disbursements made by the County Treasurer, chargeable to the several items by classification number. Under the column "Limit of disbursements for future claims," shall be entered the difference between "The expenditure authorized by law" and "Total disbursed to date" on account of the several items in the Supply Act. This report shall be signed and dated by the County Treasurer.

Civ. '12, § 1062; 1910, XXVI, 733.

(1577) § 16. To Keep "Bills Payable" Book.—The County Treasurer shall keep a book of "Bills Payable," in which he shall enter as, and when made, all notes for loans in anticipation of collections of taxes. The entries thereon shall show: (1) Note number. (2) Date of note. (3) Date due. (4) Payee. (5) Amount. (6) Rate of interest. (7) Date paid. Said notes shall be numbered in the order in which they shall have been executed. Such loans shall be negotiated by the County Treasurer with such bank or banks in the city of Greenville, of approved responsibility, as may offer the most favorable terms upon competitive bids, after thirty days' advertisement; the proposals shall be upon such terms and conditions as may be determined by the County Treasurer upon consultation with the County Supervisor. The notes therefor shall contain an option in favor of the county to pay the same at any time before maturity, with interest to date of payment; and it is hereby made the duty of the County Treasurer, as he may be in funds applicable thereto, to pay the same.

Civ. '12, § 1063; 1910, XXVI, 734.

(1578) § 17. **Treasurer's Monthly Report of School Collections and Disbursements—Similar Book by Superintendent of Education.**—The County Treasurer shall, within the first five days of every month, make a report to the County Superintendent of Education of the collection and disbursement of school taxes during the preceding month for each fiscal year upon account of which the same shall have been received. Each fiscal year shall be kept

separate and distinct, and the County Treasurer shall make out as many reports as there are fiscal years to which the same are to be charged. He shall keep a book in which these reports shall be made out. The County Superintendent of Education shall keep a similar book, and shall, on or before the first day of each month, deliver the same to the County Treasurer to be filled out in conformity with the book kept by the said Treasurer. This book shall be printed and ruled with appropriate columns and headed, "County Treasurer's Monthly Report to the County Superintendent of Education of the Collections and Disbursements of all Funds for School Expenses from, 19., to, 19., for the fiscal year commencing July 1, 19., and ending June 30, 19." This report shall contain, in tabulated form, a statement showing balance on hand from last report, amount collected since last report, aggregated, from which shall be deducted disbursements since last report, showing balance on hand at the date of the report, and remarks. This shall be signed by the County Treasurer and dated.

Civ. '12, § 1064; 1910, XXVI, 734.

(1579) § 18. **County Treasurer's Book of Blank Receipts.**—The County Treasurer shall keep a book of blank receipt forms, which he shall use in receipting for all moneys other than taxes. This book shall be printed with a stub and perforated lines separating stub from receipt. Upon the stub shall be printed the following: (1) Number. (2) Date. (3) Received of. (4) Amount. (5) Cash Book folio. (6) On account of. (7) Signature—Payer and Treasurer. The person paying money to the Treasurer shall sign in the blank space entitled "Payer," and the Treasurer shall, in like manner, sign in the blank space entitled "Treasurer." The receipt shall be in the following form:

"No. Office of County Treasurer.
Greenville, S. C., ... 19..
Received of dollars (\$)
on account of
. County Treasurer."

Civ. '12, § 1065; 1910, XXVI, 735.

(1580) § 19. **Entries to Be Made in Ink.**—All entries, footings and amounts carried forward in the book hereinbefore provided for, shall be made in ink. Each page shall show perfect balancing of all columnar additions, and of all footing carried forward.

Civ. '12, § 1066; 1910, XXVI, 735.

(1581) § 20. Supervisor Cannot Spend Funds for Purposes Other Than That for Which Appropriated.—The County Supervisor is hereby prohibited from drawing any warrant upon the County Treasurer to be paid out of any of the several funds specifically appropriated for any purpose other than that for which the same shall have been so appropriated; and it shall be unlawful for the County Treasurer to pay any such inhibited warrant. It shall be unlawful for the County Supervisor to create by contract, express or implied, any obligation against the county which, with the obligation then existing and chargeable to any particular item of appropriation, shall exceed the amount specifically appropriated therefor: *Provided*, That in case of emergency, with the written consent of the County Delegation, this requirement may be dispensed with. Should the County Supervisor violate the provisions of the paragraph next preceding, in this Section, the claim resulting therefrom shall be declared null and void as against the county, and the officer offending shall be held responsible to the claimant therefor upon his official bond. It is hereby made the duty of the County Supervisor to so apportion the appropriation for maintenance of convicts and road working organization and the appropriation for dispensary constables as to cover the total expenses on account of these items for the entire fiscal year for which they may be respectively appropriated.

Civ. '12, § 1067; 1910, XXVI, 736.

(1582) § 21. Warrant of Supervisors to Show Fund on Which Drawn .—The County Supervisor shall state upon each warrant drawn by him upon the County Treasurer the item of the appropriation in the County Supply Act on account of which it shall have been drawn; he shall also, in a tabulated form upon said warrant, state the amount of such appropriation, the amount theretofore drawn against it, the amount of the warrant then drawn and the balance against which future warrants may be drawn. No warrant shall be paid by the County Treasurer or be allowed as a credit to him in his settlement unless it conform with this requirement.

Civ. '12, § 1068; 1910, XXVI, 736.

(1583) § 22. When Funds Are Exhausted Payments to Be Stopped—Annual Settlement.—That whenever the appropriation for any specific item of county expenses, as provided in the County Supply Act of any year, shall have been exhausted by warrants of the County Supervisor upon the County Treasurer, the payment of further claims chargeable to the account of such item shall be immediately suspended. Such claims in excess of the appropriation, after having been audited, allowed and entered upon the book of "Classification of Claims Allowed," for the year to which they belong, shall be transferred in red ink to the same book for the succeeding year; numbered with the claims for that year; the number endorsed upon said claims in red ink; the amounts distributed in the item column for past indebtedness; and in the column headed "Nature of Claim," shall be entered, "Past Indebtedness of 19.., No...." Upon the book from which the claim shall have been transferred, opposite the claim, shall be noted, "Transferred to 19.., No...." In the County Supply Act for the succeeding year these claims shall be provided for by an appropriation in the

item "Past Indebtedness Claims," wherein they shall be classified by numbers, nature and amount. A certified schedule of these claims, itemized and classified, shall be furnished by the County Supervisor of the County Delegation during the first week in January of every year. At the annual settlement with the Comptroller General all cash balances to the credit of the revenue of the county for all county purposes, and all uncollected assets, for the fiscal year to which said past indebtedness claims belong, shall be passed to credit of the revenue of the county for all county purposes for the fiscal year to which said past indebtedness claim shall have been transferred, to the extent of the amount of the same and of any other indebtedness of the preceding year provided for in the budget for the succeeding year; the balance, if any, shall be deposited by the County Treasurer in some reliable savings institution, at interest, for the purpose of accumulating a fund with which to put the county upon a cash basis: *Provided*, That this Section shall not apply to obligations incurred in violation of Section 20 of this Article, but is intended to apply only to such obligations of the county as are not within the control of the County Supervisor.

Civ. '12, § 1069; 1910, XXVI, 736.

(1584) § 23. Disposition of Certain Income.—All income to the County from fines, fees, costs, licenses, commutation road tax, Register of Mesne Conveyances' office, and from all other sources, not otherwise appropriated by law, shall be paid to the County Treasurer and be applicable to all claims for the payment of which the appropriations for the year on account of county expenses shall have been made.

Civ. '12, § 1070; 1910, XXVI, 737.

(1585) § 24. Loans from State Sinking Fund.—The County Treasurer is authorized and specifically directed, on January 1 of every year, to pay upon the warrant of the County Supervisor the item on account of loans from State Sinking Fund Commission out of any cash on hand at December 31, preceding, derived from any and all sources of county income, whether there be sufficient funds on hand at that time applicable to this specific item or not; it being intended that this item be preferred to all other items of county expenses so as to make January 1 the period of annual settlement with the Sinking Fund Commission.

Civ. '12, § 1071; 1910, XXVI, 738.

(1586) § 25. County Auditor to Examine Books.—It shall be the duty of the County Auditor, on or before the 10th day of each and every month, to personally examine the several books herein prescribed for the County Supervisor and County Treasurer, such inspection covering the transactions for the preceding month, and to verify, by actual count of cash and certificates of deposit, the cash reported on hand by the County Treasurer. If upon such inspection he shall find that they are correct, and conform with the requirements of Sections 7 to 27, both inclusive, he shall endorse upon each one so found the word, "Approved," and sign and date the same; and he shall report to the Grand Jury at its next session any delinquencies or failure upon the part of either of said officers to comply with the requirements of Section 7 to Section 27, both inclusive, of this Article.

Civ. '12, § 1072; 1910, XXVI, 738.

(1587) § 26. **Annual Settlement of Auditor.**—In the annual settlement with the County Treasurer, supervised by the Comptroller General, the County Auditor shall make up a full statement of the receipts and disbursements of county taxes and other income for the fiscal year ending December 31 preceeding. Each fiscal year, beginning January 1 and ending December 31, shall be kept separate and distinct at whatever time of the year said settlement may be made.

Civ. '12, § 1073; 1910, XXVI, 738.

(1588) § 27. **Fines and License Book of Auditor.**—The County Auditor shall keep a book called "Fines and Licenses," in which shall be entered all fines, fees, costs, and licenses reported to him as having been collected by the Clerk of the Court and Magistrates of the county. To this end it is hereby made the duty of the Clerk of the Court and of the Magistrates in Greenville County, within the first ten days of each of the months of January, April, July and October, to present to the County Auditor their books showing the collections made by them during the preceding quarter on account of fines, fees, costs and licenses, from which the Auditor shall enter upon his books the several items of collection. He shall thereupon check up the same with the County Treasurer's Daily Cash Receipts Book. The County Auditor, after the expiration of the ten days hereinbefore fixed for such reports, shall mail a notice to the officer failing to comply with this Section, requiring him within three days thereafter to submit his books as herein provided; and upon his failure to do so, the said officer shall be reported by the County Auditor to the Grand Jury at the next session thereafter for such action as the Court may deem proper.

Civ. '12, § 1074; 1910, XXVI, 738.

(1589) § 28. **Supervisor of Greenville County to Appoint Overseers of Highways.**—That the Supervisor of Greenville County be, and he is hereby, authorized and directed to divide the improved highways of said county into sections of from five to ten miles each, as in his judgment the general nature of the same may suggest; that he shall appoint some responsible citizen living upon each section overseer of the same, for the period of one year, the first term beginning with the date of appointment and ending December 31, 1919, and thereafter for a full year.

1919, XXXI, 116.

(1590) § 29. **Duties of Overseers.**—That it shall be the duty of said overseer to carefully note the condition of his section from time to time and make report thereof to the Supervisor, whereupon the Supervisor, in his discretion, shall authorize the said overseer to make such repairs as may be deemed necessary, billing the actual cost thereof to the county, which bills shall be paid by the Supervisor out of the appropriation for repairs and maintenance of highways. No indebtedness on this account shall be incurred by said overseer without the authority of the Supervisor and all bills shall be subject to his approval.

1919, XXXI, 116.

(1591) § 30. **Overseers to Serve Without Compensation—May Engage in Work.**—That said overseer shall serve without compensation, but may

personally engage in said repair and maintenance work after contract for same, covering each particular job, shall have been authorized by the Supervisor.

1919, XXXI, 116.

(1592) § 31. **Highways Affected.**—That the improved highways referred to are those improved by the Highway Commission.

1919, XXXI, 116.

(1593) § 32. **Commutation Tax for Greenville County—Procedure for Exemption—When Tax Due.**—That all able-bodied male persons from the age of twenty-one to fifty, both inclusive, in the County of Greenville, shall be required annually to pay a commutation or road tax of one dollar, except ministers of the gospel actually in charge of congregations, teachers employed in the public schools, school trustees and all students who are attending any school or college: *Provided*, That any person claiming exemption hereunder on the ground of physical disability, where such disability is not apparent, shall be required to produce a certificate of two regular physicians, dated within twelve months of the time when such tax is had and payable. That the said commutation tax to be paid by the person so liable on or before December 31 of each year.

1917, XXX, 283.

(1594) § 33. **Failure to Pay Tax a Misdemeanor—Penalty—Proviso.**—All persons who are liable to the payment of commutation or road tax in Greenville County who shall fail to pay such commutation or road tax when the same becomes due, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than five dollars and not more than twenty-five dollars, or imprisonment of not less than ten days nor more than thirty days: *Provided*, That any person liable to penalty for nonpayment of road tax may pay the amount of said penalty to the Sheriff or County Treasurer, and said officers are authorized to accept \$5.00 in full payment of said penalty when voluntarily paid by the person so liable.

1917, XXX, 283.

(1595) § 34. **Quarterly Statements to Be Filed With the Supervisor.**—In the County of Greenville, the County Treasurer shall file with the Supervisor, at the end of each quarter herein referred to, a statement showing the amount of moneys on hand to the credit of the county, and said statement shall further show to what department or branch of the county funds said moneys properly belong.

1915, XXIX, 449; 1920, XXXI, 1001.

(1596) § 35. **The Office of Supervising Auditor of Greenville County Created.**—That the office of Supervising Auditor of Greenville County be, and the same is hereby, established.

1915, XXIX, 477.

(1597) § 36. **Appointment and Removal of Supervising Auditor.**—That said Supervising Auditor shall be appointed by and shall be removable by the Governor upon the recommendation of a majority of the Greenville Delegation in the General Assembly.

1915, XXIX, 477.

(1598) § 37. **Term of Office.**—That his term of office shall be for four years, and until his successor shall have been appointed and qualified.
1915, XXIX, 477.

(1599) § 38. **Compensation of Supervising Auditor.** That the salary shall be at the rate of sixteen hundred and eighty dollars per annum, payable monthly.
1915, XXIX, 477.

(1600) § 39. **Bond.**—That he shall give bond in the sum of one thousand dollars in the manner and form prescribed in Section (1024) of this Code.
1915, XXIX, 477.

(1601) § 40. **Duties of Supervising Auditor.**—That his duties shall be as follows: (a) He shall supervise the various county offices and institutions and see that the provisions of the law applicable to them respectively are faithfully and properly observed. (b) He shall countersign all warrants drawn by the Supervisor, County Superintendent of Education, or other officer, upon the County Treasurer, and only upon the full compliance of the same with the provisions of law: *Provided*, This requirement shall not apply to teachers' pay certificates. (c) He shall carefully audit the books of the several county officers with the end in view that they fully comply with all the provisions of law applicable to them respectively and account for all funds received by them. (d) He is specially charged with the duty of supervising the conduct and accounts of the Sheriff in the matter of tax executions, to the end that prompt and correct returns, according to law, be made by said officer in connection therewith; the said Sheriff being charged with the full amount of said tax executions and discharging himself only by satisfactory evidence that the same cannot be enforced. (e) He shall make a full list of every piece of real estate in the county according to the directions and with the same power and authority as is contained in Section (439) of this Code, and shall report to the Auditor such pieces of real estate as are not on the tax books, whose duty it shall be to place the same upon his books with a charge of such taxes for the preceding years, not exceeding ten, as shall not have been paid. (f) He shall act as expert to the Grand Jury, rendering them such assistance as may be needed in their investigations and presentments; upon the first day of each term of the Court of General Sessions he shall submit to the Grand Jury a full report of the financial condition of the county and of the results of his supervision and audit of the books of the several county officers. (g) He shall check up the books of the Clerk of the Court with the sessions docket and see that all fines imposed have been promptly paid to him and by him turned over to the County Treasurer. (h) He shall audit the books of the Magistrates at least one week before each term of the Court of General Sessions.

1915, XXIX, 477.

(1602) § 41. **Supervisor to Furnish Office, Books, Etc.**—The Supervisor is directed to furnish said Supervising Auditor with office room and such furniture and stationery as he may need, out of the fund provided for books, stationery and printing.

1915, XXIX, 477.

GREENWOOD COUNTY.

(1603) § 1. **Office of Road Supervisor and Office Supervisor in Greenwood County Abolished—Duties Devolved on County Supervisor.**—The offices of County Road Supervisor and County Office Supervisor for Greenwood County be, and the same are hereby, abolished, and the duties heretofore prescribed for said offices shall devolve upon the office of County Supervisor for Greenwood County.

1916, XXIX, 742; 1920, XXXI, 786.

State v. Fidelity & Deposit Co., 114 S. C. 511; 104 S. E. 182.

(1604) § 2. **County Supervisor, Election—Term of Office.**—That the office of County Supervisor for Greenwood County is hereby created and the duties of said office shall be the same as now prescribed by law for County Supervisors. The County Supervisor shall be elected at the next general election in Greenwood County and his term of office shall begin at the expiration of the terms of office for the present County Road Supervisor and County Office Supervisor and shall continue until July 1, 1925.

1920, XXXI, 786.

(1605) § 3. **Compensation.**—The County Supervisor for Greenwood County shall receive a salary of two thousand dollars per annum, payable monthly.

1913, XXVIII, 100; 1920, XXXI, 786.

(1606) § 4. **County Commissioners—Compensation—Appointment—Road Overseer.**—That the office of County Commissioners is hereby created, which shall consist of two members, who are citizens of and electors in Greenwood County and who together with the County Supervisor shall constitute a Board of County Commissioners for Greenwood County. That the salary of the said County Commissioners shall be three hundred dollars each per annum, payable monthly, and the said County Commissioners shall be appointed and commissioned by the Governor upon the recommendation of a majority of the Greenwood County Delegation in the General Assembly, and their term of office shall begin at the expiration of the terms of office of the County Road Supervisor and County Office Supervisor. That the term of office of the County Supervisor and County Board of Commissioners, except the first term hereinabove provided for, shall be four years, and until their successors are appointed and qualified. That in addition to the powers and duties as now prescribed by law upon the Board of County Commissioners, they are hereby authorized and required to employ a competent man as Road Overseer for Greenwood County at a salary of not less than one hundred and twenty-five dollars nor more than two hundred dollars per month, payable out of the funds appropriated for roads and bridges, and it shall be the duty of the said Board of Commissioners to have a general oversight and supervision of the building and maintaining of roads and bridges in Greenwood County: *Provided, however,* This Section shall not be construed so as to limit or abridge the power heretofore conferred upon the County Highway Commission over roads and bridges already constructed or to be hereafter constructed and maintained

by or through the said Highway Commission and shall have supervision of the chaingangs of the said county. The Road Overseer so employed shall be subject to removal at the pleasure of the County Board of Commissioners, with or without cause.

1920, XXXI, 786.

(1607) § 5. Engineer.—The County Board of Commissioners may also employ a competent civil engineer whenever in their judgment the services of an engineer are deemed necessary.

1920, XXXI, 786.

(1608) § 6. Highway Commission for Greenwood County Made Permanent—Powers of Commission—Highways Through Towns.—That there is hereby created a Commission for Greenwood County to be known as “The Greenwood Highway Commission.”

1919, XXXI, 550; 1920, XXXI, 1126.

(1609) § 7. Of Whom Composed.—The said Greenwood Highway Commission shall be composed of seven citizens, who are qualified electors of Greenwood County, to be appointed and commissioned by the Governor upon the recommendation of the majority of the Delegation from Greenwood County in the General Assembly. The said Commissioners shall hold their office for four years and until their successors are appointed and qualified, and shall be subject to removal by the Governor upon the recommendation of a majority of the Delegation from Greenwood County, and a majority of the Delegation shall nominate the Chairman of said Commission. All vacancies on said Commission shall be filled by the Governor upon the recommendation of a majority of the Greenwood Delegation. The said Highway Commission so appointed shall be, and is hereby, declared to be a permanent Commission, with all the powers conferred upon it under the terms and provisions of this Article, and amendments thereto.

1919, XXXI, 550; 1920, XXXI, 1126.

(1610) § 8. Duties.—The duties of said Commissioners shall be to make contracts and expend all funds for the building and permanent improvement of the roads and bridges of the said county appropriated or raised therefor. They shall have full power and authority to make such contracts as in their discretion may be necessary to carry out the purpose of this Article; to employ a competent Engineer or Engineers and such other help as they may deem advisable, and fix their compensation; to draw warrants upon the County Treasurer against the funds appropriated in such amounts and in such installments as they may deem necessary, such warrants to bear the signatures of at least four members of the said Commission, and they shall be paid by the County Treasurer, who shall prescribe the form thereof. The said Commission shall have full authority and power to postpone all road work when, in their judgment, such postponement will be to the best interest of the taxpayers in Greenwood County. It shall be the duty of said Commission to maintain, repair and make such changes and alterations in the said highway so constructed, from time to time, as in their judgment may be for the best interest of the county, and the tax levied for the

maintenance of the said highways shall be expended solely under the direction of the said Highway Commission, and shall be kept and held separate from other county funds.

1919, XXXI, 550; 1920, XXXI, 1126.

(1611) § 9. To Locate Highways.—The Commission shall locate or relocate any of the highways of the said county in accordance with the scheme herein set forth, so far as the same is to be reconstructed or surfaced, so as to make a permanent roadway, as far as possible and practicable, with due regard to distance and grade, and shall have full power to condemn land and acquire rights of way, either for construction or for road materials for surfacing, in the same manner as is now authorized by law to condemn lands and acquire rights of way, and in such condemnation proceedings the Commission may assess benefits to the land so condemned, as well as damages, which damages shall be paid out of the funds in the hands of the said Commission.

1919, XXXI, 550; 1920, XXXI, 1126.

(1612) § 10. Purpose—Compensation.—It is the purpose of this Article to enable said Highway Commission to permanently improve, as far as the funds will permit, first, all the main thoroughfares of the county of Greenwood throughout the entire county, or from county line to county line, and after this is done, so far as the funds will permit, the other public roads of the said county, and also, when and where necessary, to build permanent bridges throughout said county. And to this end, and that the work may progress with as much uniformity as possible, the said Commission shall, immediately upon their organization, select the roads to be improved, which roads shall be, first, the main thoroughfares and arteries of trade and traffic in the said county, and shall divide them into sections, and begin work upon all the sections of said highway or highways as near the same time as practicable, the purpose being that work upon all the roads to be improved shall begin and be prosecuted throughout the entire county as near simultaneously as possible, so that every section of the said county may get the benefits of this Article. After completing the main thoroughfares they shall improve the other public roads of the county, so far as the funds will permit, in accordance with the scheme set forth in this Article. The Commissioners so appointed shall be paid as compensation for their services the sum of three (\$3.00) dollars each per day for each day actually engaged, and in no case shall the total amount paid a Commissioner exceed the sum of three hundred (\$300.00) dollars per annum, said money to be paid out of the bond issue. The said Highway Commission is hereby authorized to build, construct and maintain any of the said highways which pass through the corporate limits of towns of less than two thousand (2,000) population, and is authorized to make such expenditures with reference to and upon such highways within the corporate limits of such towns as in the judgment of said Commission is for the best interest of the county.

1919, XXXI, 550; 1920, XXXI, 1126.

(1613) § 11. Powers and Authority—Meetings—Reports.—Said Commission shall have full power and authority to make such rules and regulations as they may deem necessary with the proper performance of their duties. They shall meet, confer with, and report to the Delegation from Greenwood County every two months, and from time to time, as may be necessary, with reference to the prosecution of said work and the discharge of their duties, as herein provided, and the said Commission shall annually, at the close of each year, make a full report to the Grand Jury of Greenwood County of its transactions during the year then closed, including an itemized statement of the money received and disbursed, and for what purpose, which said report shall be transmitted by said Grand Jury to the Circuit Judge presiding at the next succeeding term of Court for said county after said report has been made to said Grand Jury. It shall be the duty of the Grand Jury of said county to make an annual examination of the books, papers, accounts and work of said Commission as they are now required by law to make of the county officers of said county. That it shall be the duty of the County Supervisor of said county to assist and co-operate with said Commission in carrying on the work herein provided for, and at his discretion to furnish for the use of said Commission the chaingang and road machinery of said county whenever requested to do so by said Commission.

1919, XXXI, 550; 1920, XXXI, 1126; 1921, XXXII, 106.

(1614) § 12. Commutation Road Tax for Greenwood County.—That all able-bodied male persons between the ages of twenty-one and fifty-five, both years inclusive, in the County of Greenwood, shall be required annually to pay a commutation or road tax of three dollars or work six days on the public roads of Greenwood County, except ministers of the gospel actually in charge of congregations and teachers employed in the public schools: *Provided*, That any persons claiming exemption from the provisions of this Section on the grounds of physical disability, where such disability is not apparent, shall be required to produce a certificate from two regular physicians dated within three months from which said tax is payable. The said tax must be paid by the person subject thereto to the County Treasurer and on payment of which he shall receive a receipt showing the date, amounts and purposes for which paid and signed by the person collecting same.

1920, XXXI, 942.

(1615) § 13. Collection.—The said commutation tax shall be due and payable when poll tax is due and payable and shall be charged against all persons liable therefor by the County Auditor, the same as poll taxes are now charged, and shall be collected by the County Treasurer at the same time as the said poll tax is now collected.

1920, XXXI, 942.

(1616) § 14. Evasion a Misdemeanor—Penalty.—Any person herein made liable to the payment of said road tax who shall fail to make such payment shall be guilty of a misdemeanor, and, upon conviction thereof,

shall be punished by fine of not less than five (\$5.00) dollars and not more than ten (\$10.00) dollars, or by imprisonment of not less than ten or more than thirty days.

1920, XXXI, 942.

(1617) § 15. Residents of Towns Exempt.—Any person who is a *bona fide* resident of any incorporated city or town in said county, paying the regular assessed street tax of such city or towns, is exempt from the provisions of the three preceding Sections.

1920, XXXI, 942.

(1618) § 16. Rural Mail Routes in Greenwood County Public Highways.—That all rural mail routes or parts thereof in the County of Greenwood are hereby declared to be public highways and the proper authorities of the said county are hereby required to maintain and keep such highways in a proper state of repair: *Provided*, The owners of land along said rural mail routes or parts thereof will give the necessary land and suitable location for the said public highways.

1913, XXVIII, 180.

HAMPTON COUNTY.

(1619) § 1. Powers and Duties of Supervisor and County Commissioners of Hampton County.—The said Supervisor and County Commissioners shall have general supervision over all roads, Poor House farms and the financial affairs of said county, and shall perform all duties now required of Supervisors and County Commissioners by the general laws of the State.

Civ. '12, § 1075; 1908, XXV, 1177; 1909, XXVI, 190.

(1620) § 2. County Commissioners in Hampton County May Appoint Clerk and Legal Advisor.—The said Board of County Commissioners, thus constituted, shall have power to appoint a clerk, at a salary not to exceed three hundred dollars, and a legal advisor for the Board, at a salary not to exceed one hundred dollars.

Civ. '12, § 1076; 1909, XXVI, 191.

(1621) § 3. Per Diem of Commissioners and Supervisor.—Commissioners, who may be appointed under the provisions of this Article, shall be paid three hundred dollars per annum without mileage. The Supervisor's salary shall be nine hundred dollars.

Civ. '12, § 1077; 1909, XXVI, 191

(1622) § 4. Employment of County Physicians.—The County Commissioners shall have the power to employ such physicians, as they may deem proper, to do the medical practice for the inmates of the Poor House, the jail and the convicts on the chaingang of said county, and shall use their discretion in paying for the same: *Provided*, That the amount paid for such purpose shall not exceed the sum of two hundred and fifty dollars for all medical services and medicine.

Civ. '12, § 1078; 1908, XXV, 1206.

(1623) § 5. **Work on Bridges Not to Be Let Out by Contract.**—The County Commissioners shall not have power to let out by contract the repairing or building of any bridge which can be repaired or built by a chaingang force, and all material used in small bridges shall be of the best lightwood or cypress, hewn by the convicts on the chaingang, when the same may be practicable.

Civ. '12, § 1079; 1908, XXV, 1206.

(1624) § 6. **Monthly Estimates to Be Made.**—The County Commissioners shall make an estimate at the beginning of each month of the amount needed for feeding and clothing the convicts in their custody, together with all necessities for chaingang and for the Poor House and the poor, for the ensuing month, and shall give the same out by contract to the lowest bidder, as near as may be possible.

Civ. '12, § 1080; 1908, XXV, 1206.

(1625) § 7. **Sworn Statements of Expenditures to Be Filed.**—The County Commissioners shall at the end of each month file with the Clerk of the Court of said county an itemized sworn statement in writing of all expenditures for the chaingang and for the Poor House farm and the poor, showing every item and its cost, and from whom purchased, which statement shall at all times be open for the inspection of the public.

Civ. '12, § 1081; 1908, XXV, 1207.

(1626) § 8. **Commissioners Responsible for Waste.**—The County Commissioners shall be held responsible for any extravagance or waste, and for the prices paid for any article in excess of the lowest price.

Civ. '12, § 1082; 1908, XXV, 1207.

(1627) § 9. **Throwing Sand in Road Prohibited.**—The throwing up of sand in high sandy roads without mixing clay with the sand is hereby prohibited.

Civ. '12, § 1083; 1908, XXV, 1207.

(1628) § 10. **County Supervisor of Hampton County to Publish Monthly Statements—Quarterly Statements.**—It shall be the duty of the Supervisor of Hampton County to publish by the 15th of each month in a newspaper published in said county, a statement setting forth all claims paid or approved for payment by him for the preceding month; and once every three months the Supervisor shall append to the regular monthly statement for publication a detailed statement setting forth the total indebtedness of the county.

1920, XXXI, 866.

(1629) § 11. **Expense.**—The cost of the publication of the monthly reports of the Supervisor shall not exceed the sum of one hundred (\$100.00) dollars per annum.

1920, XXXI, 866.

(1630) § 12. **Monthly Statement of County Commissioners of County of Hampton for Grand Jury.**—The Board of County Commissioners of Hampton County shall have prepared and completed by the second Mon-

day of each and every month, so that the same shall be in completed form on that date, a verified itemized statement showing all moneys received by the County Board of Commissioners, stating how and from what source said moneys came; also showing each and every itemized bill against the county which shall have been approved and paid by the said Board; setting forth in detail full particulars as to each and every item ordered paid; said statement to be totaled and arranged, showing what balance, if any, remains to the credit of said office in detail, or what deficit, if any, there is; said statements to be filed with the Grand Jury at each term of the Circuit, who shall investigate the same, and when in their judgment necessary, with the aid of an expert accountant, and report any and all irregularities to the Court.

Civ. '12, § 948; 1909, XXVI, 141, § 1.

(1631) § 13. Monthly Statement of Other County Officers for Grand Jury.—In the same manner and at the same time the Treasurer, Clerk of Court, Superintendent of Education, Sheriff and Probate Judge of said County of Hampton shall likewise prepare verified itemized statements, showing the receipts and expenditures of funds of the county in their respective offices (fees of said officers coming to them individually not to be included in said statement) and file the same with the Board of County Commissioners, taking a receipt therefor, to be filed with the Grand Jury at each term of the Circuit Court, who shall examine the same as provided in the preceding Section.

Civ. '12, § 949; 1909, XXVI, 141, § 2.

(1632) § 14. Statements to Be Turned Over to Grand Jury.—All the said statements provided to be made in Sections 12 and 13 shall be turned over to the Board of County Commissioners, which said Board shall immediately thereafter file the said statement with the Grand Jury of said county for their information and investigation, the same to be returned by them to the Clerk of the Court immediately after their investigation, and to be by him filed in his office.

Civ. '12, § 950; 1909, XXVI, 141, § 3.

Punishment for violating last three Sections, see Criminal Code.

(1633) § 15. Legislative Delegation of Hampton County May Require Annual Audit of County Officers.—That hereafter the Legislative Delegation for Hampton County shall have the power and authority to require the auditing of the books of the various county officers for Hampton County once each year, if it is desired by such Legislative Delegation that the same be done, and such Delegation is further vested with the power and authority to employ such expert accountants as such Delegation may desire for such purposes, and publish said report in a newspaper published in said county, and that the expenses incurred by such audit and the employment of such Auditor or expert accountant and publication of such report shall be paid by the County Treasurer on a warrant signed by the members of the General Assembly from Hampton County.

1920, XXXI, 778.

(1634) § 16. **Special Tax in Hampton County.**—For the purpose of building, working, keeping and maintaining the public highways and bridges of Hampton County, the County Commissioners are directed to levy a tax of four mills on all taxable property of said county, and the Treasurer of said county is hereby directed to collect said tax.

Civ. '12, § 2057; 1911, XXVII, 191.

(1635) § 17. **Application of Taxes.**—All taxes collected under this Section shall be applied to the township from which it was collected, and the Supervisor is hereby authorized to have the roads worked by contract or by the overseer plan, or by employing superintendents of work, and all road hands shall be required to work under any person directed by the Supervisor when they shall have failed to pay the commutation tax, and it shall be the duty of the Supervisor and he is hereby required to keep a separate road account with each township.

Civ. '12, § 2058; 1910, XXVI, 674.

(1636) § 18. **Work Under Contract.**—Where the roads are worked under the contract system, the Supervisor shall require a suitable bond for the faithful and satisfactory fulfillment of said contract, and where said roads are worked under the overseer plan, the said overseer shall make to the Supervisor a sworn itemized statement, showing to whom the money is paid, and the kind and extent of work done; said statement to be filed with the said Supervisor within thirty days from the time it is placed in his hands, and it shall be especially the duty of the Supervisor, and he is hereby required to see that the funds herein provided for are promptly and economically expended on the roads which are entitled to receive them. The Supervisor is hereby required to keep a separate road fund account with each township in said county, and said accounts shall be submitted to the Grand Jury for their inspection at each session of the Court of General Sessions.

Civ. '12, § 2059; 1910, XXVI, 674.

(1637) § 19. **Commutation Tax in Hampton County.**—All able-bodied persons between the ages of twenty-one and fifty years in the County of Hampton shall be liable for road duty.

Civ. '12, § 1980; 1911, XXVII, 192; 1920, XXXI, 951.

(1638) § 20. **Persons Liable—Failure to Pay a Misdemeanor.**—All persons who are liable to road duty as provided in the preceding Section, in lieu of performing, or causing to be performed, labor upon the highways of said county, shall be required to pay to the County Treasurer of said county an annual commutation road tax of two dollars per head, which shall be expended upon the public roads of the county, and, as nearly as possible, within the township from which it was collected; and any failure to pay said road tax shall be a misdemeanor, and the offender, upon conviction, shall be punished by a fine of not less than five dollars nor more than fifty dollars, or imprisoned for not more than thirty days.

Civ. '12, § 1981; 1911, XXVII, 192; 1915, XXIX, 194.

(1639) § 21. **Returns.**—Every person in said county liable for said tax shall return himself for taxation to the County Auditor between the 1st day of January and the 20th day of February, and the Auditor is required to take such returns and enter the same upon the tax duplicates, and such tax shall be collected by the County Treasurer in the same manner and at the same times as other taxes: *Provided*, That when said tax is collected by the Treasurer from citizens of incorporated towns within said county it shall be turned over to the Town Treasurers of the respective towns to be used for street purposes.

Civ. '12, § 1982; 1911, XXVII, 192; 1912, XXVII, 632.

(1640) § 22. **How Trust Funds to Be Handled.**—That the County Treasurer, Sheriff, Clerk of Court and any officer who may collect or hold trust funds of Hampton County, be, and he is hereby, directed, authorized and required to deposit all funds collected by him as County Treasurer, Sheriff and Clerk of Court with such bank, banks or banking institutions as will be more advantageous to the county for the procurement of the greatest rate of interest from said banks on the average daily balance carried by such County Treasurer with such depository and for the smallest rate of interest that may be charged by such bank, or banks, to the county on any loan procured, or may be procured by such county from such bank or banks, such bank or banks to be selected by the County Treasurer from competitive bids made by banks of the county to the County Treasurer after ten days' notice by the County Treasurer to all such banks in the county: *Provided*, That nothing herein shall be construed as preventing Hampton County from borrowing money outside of the county and State when same can be done to an advantage: *Provided, further*, That if among the competitive banks bidding for loans and deposits the same rate is proposed that Hampton County shall prorate its loans and deposits equally among said banks: *Provided, further*, That in the event of said Hampton County procuring a loan from any bank or banks that renewals thereof shall not be a greater rate of interest than expressed in the original loan agreement: *Provided, further*, That the notice herein required shall be mailed out on or before the 15th of March of each year until this Section is repealed.

1920, XXXI, 924; 1921, XXXII, 261.

HORRY COUNTY

(1641) § 1. **Three Commissioners for Horry County—Terms—Appointment—Bond.**—That there shall be in and for the County of Horry a County Board of Commissioners composed of three (3) members, who shall be appointed by the Governor, upon the recommendation of the Legislative Delegation of said county, and who shall serve for two years, and until their respective successors are appointed and qualified. The Commissioners so appointed shall each give bond in the sum of one thousand (\$1,000.00) dollars, to be approved by the Clerk of the Court of said county, and each of said Commissioners shall receive, as compensation for their services, such salary as shall be fixed by law.

1916, XXIX, 748; 1921, XXXII, 131.

(1642) § 2. Powers and Duties—Chairman—System to Be Installed.—

They shall compose the County Board of Commissioners of Horry County, and as such shall have all the powers and duties heretofore vested in and devolved upon the Supervisor and County Board of Commissioners for Horry County. Each Commissioner shall have power and authority to administer oaths in probating claims against the county, and shall have such special powers and duties relating to the corporate concerns of the county as may be given such Commissioner by the Board. The Board shall elect one of its members Chairman, whose duties shall be to preside at meetings of the Board, call meetings on his own motion or at the request of any other member of the Board, and authenticate when necessary any action of the Board, sign warrants on the County Treasurer, and perform such other duties as is devolved by law on the Chairman of the County Board of Commissioners. The Board of Commissioners may, at its discretion, select an expert road builder to supervise the work upon roads and bridges in the county. The Board of Commissioners shall adopt a system of keeping accounts, reporting purchases and auditing county collections and disbursements, if such system does not conflict with the Comptroller General's office, and with the consent of the said Comptroller's office may enforce such system by any use of the corporate powers of the county that will not injure the right of the public to official service: *Provided*, That wherever the word "Board" appears in this Article it shall mean County Board of Commissioners.

1916, XXIX, 748.

(1643) § 3. To Purchase Supplies.—All supplies of every description whatever to be used by the county or any officer or any department thereof, and paid for out of the public funds, shall be purchased by the Board. Any officer needing supplies shall first file a written requisition with the Board, giving in detail a full description of the article or articles wanted, together with such other information as the Board may require. Whenever possible and practicable, all supplies shall be bought on competitive bids. An account shall be opened with every officer, or department, and an itemized account kept of the purchases therefor, and at the close of each year a statement published.

1916, XXIX, 748.

(1644) § 4. Inconsistent Acts Repealed.—That all Acts and parts of Acts relating to county government in Horry County be repealed if contravening, or modified to conform to this Article; and that the general statutes provided for the organization of County Supervisor and Board of County Commissioners, of Drainage Proceedings and Commission, of Sanitary Drainage Commission, as they relate to County Government in Horry County, be amended so as to conform in their operation to the provisions of this Article.

1916, XXIX, 748.

(1645) § 5. Transfer of Supervisor's Authority.—And all authority heretofore vested in the County Supervisor of Horry County, either by

general law or any special Act, shall be vested in the County Board of Commissioners.

1916, XXIX, 748.

(1646) § 6. Clerk of Board.—The Board shall employ a clerk at a salary not to exceed sixty (\$60.00) dollars per month. He may be removed any time by the Board. It shall be the duty of the clerk to devote his entire time to the work of the county. And in addition to those duties prescribed by law he shall keep such books, records, reports and perform such other duties as the Board may require from time to time. The Board shall require the clerk to immediately take an inventory of all property owned by the county, such as teams and road working equipment, tools and supplies for chaingang. The office record shall show, at all times, in whose possession said equipment may be, and the party having same shall be supplied with a list of the property in his hands and shall be required to furnish to the clerk every thirty days an inventory thereof.

1912, XXVII, 616; 1916, XXIX, 748.

(1647) § 7. Township Supervisor—Term—Vacancy — Removal.—That at the regular monthly meeting of the Board in November, and on each alternate year thereafter, there shall be appointed, by the said Board, one Township Supervisor for each township of Horry County, who shall be a resident of his township. His term of office shall be for two years from January 1, after such appointment, and until his successor shall have been appointed and qualified. All vacancies shall be filed as provided in this Section for appointment. Any Township Supervisor may be removed by the Board for cause, but he shall have the right to be represented, either in person or by counsel, in any and all proceedings relating thereto. All proceedings to be of record.

1914, XXVIII, 633; 1915, XXIX, 588; 1916, XXIX, 748.

(1648) § 8. Duty of Township Supervisors.—It shall be the duty of the Township Supervisor annually, by the fifteenth day of October, to ascertain the names of all persons living in the township liable for road duty, and file with the County Board of Commissioners an alphabetical list of same, who shall in turn forthwith file said list with the County Auditor, who shall file same, after making any corrections or additions from information in his office, with the County Treasurer. They shall have jurisdiction over the roads and bridges in their respective townships, except as hereinafter provided. The Township Supervisor may let contracts for the working of all sections of roads, and for the construction and repair of all bridges in his township, except that where any bridges exceed fifteen feet in length, and contracts for working sections of roads costing over fifty (\$50.00) dollars, he shall cooperate with the County Board of Commissioners in letting such contracts. The contract work let out by the Supervisor shall be let to the lowest bidder, after giving such notice as he may deem sufficient.

1914, XXVIII, 633.

(1649) § 9. **Road Overseers.**—Each Township Supervisor shall recommend to the County Board what, in his judgment, would be a proper district division of his township, and shall appoint suitable road overseers, whether liable for road duty or not, to superintend road working in each of such district divisions. He may assign any person liable to road duty, who has not paid his commutation tax in lieu thereof, to the control of any of said overseers to work upon any sections of roads in the township which he may direct: *Provided*, That no one shall be forced to work a road further than ten miles from his home. He may also hire hands to work on said sections of roads, either under his direction or under the direction of his overseers.

1914, XXVIII, 633.

(1650) § 10. **Road Fund.**—Each Township Supervisor shall have the control and expenditure of the township road funds belonging to his township hereinafter provided for, for the improvement and maintenance of the roads in his township, and for the construction of bridges in his township, subject, however, to the exceptions hereinbefore made. He shall personally inspect all work done on the public roads of his township, by contract or otherwise, and shall approve every claim against his township road fund, which said claims shall be presented to said Board of County Commissioners, and be paid by a warrant issued from said Board as warrants now issue, drawn upon the respective township road fund. No Township Supervisor, with or without the approval of the County Board of Commissioners, shall expend annually more than the amount of funds belonging to his township road fund, and no Township Supervisor shall present any claim directly or indirectly for any materials, hands or teams furnished by himself, nor shall the overseer render bills for teams furnished by himself.

1914, XXVIII, 633.

(1651) § 11. **Township Road Fund.**—The township road fund for each year shall be the township tax levy fixed by the General Assembly for roads and bridges; the commutation road tax for said township, and any funds arising from a local special tax, bond issue or otherwise for roads and bridges.

1914, XXVIII, 633.

(1652) § 12. **Per Diem.**—Each Township Supervisor shall receive for his services the sum of \$2.00 per day, not exceeding fifty days, for each day's services actually rendered in each year: *Provided*, That the Supervisor of Conway Township shall receive an annual salary of three hundred (\$300.00) dollars.

1914, XXVIII, 633; 1916, XXIX, 748.

(1653) § 13. **Duty of Treasurer.**—The County Treasurer shall, from time to time as collected, place to the separate credit of each township, in a ledger kept for that purpose, any and all funds raised in such township by the levy for roads and bridges; all sums received from the commutation tax, special tax for road purposes and all other sources for road and bridge purposes. The Treasurer shall, at each monthly meeting of the

County Board of Commissioners, render to said Board an itemized statement showing the amount of disbursements and receipts for each township for the preceding months and the balance on hand to the credit of such township.

1914, XXVIII, 633.

(1654) § 14. **Salaries.**—The salary of each Township Supervisor, and all labor hired by him, all moneys due on contract for the purchase of materials and teams for contract work for the maintenance and improvement of roads and building and repair of bridges as hereinbefore provided, shall be paid by the County Treasurer from said township's road and bridge fund after the sworn itemized bills for the same have been approved by the Township Supervisor and audited and approved by the County Board of Commissioners, and upon their warrant drawn for same upon the township's road and bridge fund: *Provided*, That no claim for work done under contract on any section of road or bridge shall be approved unless accompanied by a certificate from the Township Supervisor that the work has been done according to plans and specifications under which the contract for said work was awarded: *Provided, further*, That the County Board of Commissioners shall keep a separate warrant book for each township road fund and shall issue all warrants for the payment of claims on said township road fund out of said township's warrant book; and as soon as practicable after each monthly meeting of the County Board of Commissioners an itemized statement showing all claims paid for each township, and showing the balance to the credit of each township road fund, shall be mailed to each Township Supervisor.

1914, XXVIII, 633.

(1655) § 15. **Clerk.**—The Clerk of the County Board of Commissioners shall keep in a file, specially provided for that purpose, all approved bills or vouchers which have been paid by warrants upon any of said township road and bridge funds, each township's vouchers being kept in a separate file and numbered so as to conform with the number of the warrant by which it is paid.

1914, XXVIII, 633.

(1656) § 16. **Chaingang.**—The Board shall require its clerk to secure for the files of its office a record of the following: (1) Number and names of convicts. (2) Date of commitment. (3) By whom committed. (4) Term of service. (5) Date to be discharged. (6) An inventory of all machinery, tools, teams, supplies and any other article of property now in possession of the chaingang guards. (7) The clerk shall be required to personally visit each of the chaingangs for the purpose of securing this inventory of property. (8) He shall make duplicate lists of the convicts and property in possession of each guard, one for file in the office, which shall be signed by the guard as a receipt; the other to be furnished the guard for his own protection. (9) He shall not discharge any convict only upon the written instruction of the Board. (10) The Board shall immediately take steps necessary to ascertain the daily cost of dieting convicts and feeding teams, and shall then by advertisement ask for sealed bids

for sufficient supplies to care for the chaingang for a period of not less than ninety days, nor more than six months, in the discretion of the Board.

(11) When required, a sample shall be submitted of the different articles bid on, which sample shall be deposited in the office of the County Commissioners. (12) The contract for furnishing said supplies shall be awarded to the lowest bidder, and an agreement entered into with such bidder to deliver such supplies weekly, during the period for which contract was made, in such quantities as the Board may upon written order require.

1916, XXIX, 748.

(1657) § 17. Commissioners to Control Chaingang.—The chaingang of Horry County, South Carolina, shall become and be under the direct, exclusive and full control of the County Board of Commissioners of said county; that all authority and power heretofore given to the County Supervisor, either by the general laws of the State or any special Acts of the Legislature relating to or governing the chaingang of the said county, be, and by this Article hereby is, conferred upon the County Board of Commissioners of Horry County. Whenever the word "Board" appears in this Article it shall be taken to mean County Board of Commissioners.

1916, XXIX, 910.

(1658) § 18. Schedule for Road Work.—That the County Board of Commissioners shall assume control of the said chaingang, and, in order to carry out the purpose of this Article, shall require the following public highways to be worked by the chaingang as nearly as practicable according to the following schedule, to wit: 1. Finklea to Loris—45 days, May 1 to June 15, 1916. 2. Loris-Buck Creek—45 days, June 15 to July 30, 1916. 3. Conway-Pireway—60 days, August 1 to September 30, 1916. 4. Placard from Conway—90 days, October 1 to December 31, 1916. Placard to Strickland's Ford—30 days, January 1 to January 31, 1917. 6. Cool Spring to Gallivant's Ferry—60 days, February 1 to March 31, 1917. 7. Conway-Potato Bed Ferry to Pee Dee Road—60 days, if so much be necessary, April 1 to May 31, 1917. 8. Dog Bluff—60 days, June 1 to July 31, 1917. 9. Jordanville Road—30 days, August 1 to August 31, 1917. 10. White Oak from Brown Swamp—60 days, September 1 to October 31, 1917. 11. Pauley Swamp—60 days, November 1 to December 31, 1917. 12. Reeves' Ferry—45 days, January 1 to February 15, 1918. 13. Reeves' Ferry-Wampee and Little River—75 days, February 15 to June 31, 1918. 14. Conway, Bucksville and Port Harrelson—60 days, July 1 to August 31, 1918. 15. Socastee-Marlows—60 days, September 1 to October 31, 1918. 16. Socastee-Myrtle Beach—60 days, November 1 to December 31, 1918. 17. Kates Bay—30 days, January 1 to February 28, 1919.

1916, XXIX, 910.

(1659) § 19. Duties and Powers of Commissioners.—The County Board of Commissioners shall furnish the chaingang and all teams and road equipment now owned by the county, employ and pay proper and suitable guards and all road working tools and equipment necessary; and shall provide for the general maintenance of the chaingang, except as hereinafter provided for. And the Board of Commissioners shall have the power to

require bond from any overseer or guard placed in control of the said chaingang for the faithful and efficient performances of the duties required of him or them by the said County Board, and to require such forfeit of compensation or money to the county as the said Board may fix, to be paid by the said overseer or guards for the escape of any convict. All work done under the provisions of this Article shall be under the direct supervision of the Township Supervisor in whose township the same be prosecuted; work on the roads leading out of Conway shall begin either at Conway, or such other points as may be agreed upon by the said Township Supervisor and County Board of Commissioners and be as nearly as practicable continuous work leading out each of the said roads. If, however, in the opinion of the County Board of Commissioners and Township Supervisor, any part of said work could be more economically performed other than by the chaingang, then such work may be omitted and the chaingang passed on to that class of work as will be most economically done by them for the best interests of the public welfare.

1916, XXIX, 910.

(1660) § 20. Gang Expenses to Be Approved for Payment by Township Supervisor.—That the said chaingang, while performing its work under the direction of the several Township Supervisors, shall have its expenses for food, both for the chaingang and for the work animals, and the expenses for all materials used in the building and repair of roads and bridges, approved for payment by Township Supervisors, out of his township road fund. That all other expenses for machinery, maintenance and equipment shall be paid for by the County Board of Commissioners out of the county road fund: *Provided*, That the expenses for food for the chaingang shall not exceed 35 cents per day for each convict in the gang.

1916, XXIX, 910.

(1661) § 21. Schedule May Be Changed.—In case of an emergency, the Board shall have the right to change his schedule and use the gang for other county work. On the approval of the Board, any Township Supervisor may have the right to supply feed for teams while operating in his township.

1916, XXIX, 910.

(1662) § 22. Work May Be Changed in Case Extra Labor or Funds Given.—When any Township Supervisor, either in his official capacity, or as the representative of any citizen or number of citizens of his township, offers to provide extra funds or extra labor for assisting in the road work, the Board shall accept same, and change or direct the work of the gang, as will best promote the purpose of this Article.

1916, XXIX, 910.

(1663) § 23. Persons Liable to Road Duty — Exceptions — Duties of Township Supervisor.—That all able-bodied male persons between the ages of twenty-one and fifty, both inclusive, in the County of Horry, except ministers of the gospel actually in charge of a congregation, and persons permanently disabled in the military service of this State, and persons who

served in the late War Between the States, and all persons actually employed in the quarantine service of this State, shall annually perform or cause to be performed upon the highways of the township in which he resides six days' labor of ten hours each; five of which days shall be performed prior to November 1 of each year. Said labor to be done under the direction and supervision of the Township Supervisor or of such road overseers as the latter may select. It shall be the duty of each Township Supervisor to divide the roads of his township into sections, and immediately appoint for each section thereof a competent and suitable road overseer, who shall be under the direct supervision and control of said Supervisor executing the road work as he may direct. Each Township Supervisor shall immediately appoint said overseers and instruct them to prepare an alphabetical list of those subject to road duty on his section and warn them out for such service as such Supervisor may direct. Each Township Supervisor shall be required to keep a book to be designated "Road Book for — Township, No. —, from 19— to 19—." This book shall be so divided as to give each road section space for the following information, to wit: Number and name of section, its approximate distance, designating its beginning and its ending; name of overseer and his address, date of his appointment or reappointment, after which there shall follow an alphabetical list of those subject to road duty in said section, so arranged that upon a report of the overseer there shall be entered opposite each name the number of days worked and the date thereof, or the tax paid and the date thereof. Said book shall at all times be opened to the inspection of any citizen or taxpayer of said township. The said Supervisors shall from time to time make such reports to the County Board of Commissioners as the latter may require: *Provided*, That any person claiming exemption from the provisions of this Section on the ground of physical disability is not apparent, shall be required to produce a certificate of disability from two regular licensed physicians dated within three months.

1912, XXVII, 582; 1915, XXIX, 465.

(1664) § 24. Commutation Tax.—In lieu of performing said labor any citizen liable thereto may pay a commutation road tax of nine (\$9.00) dollars to the County Treasurer on or before the 15th day of March of each year. That the said Treasurer is hereby authorized and directed to collect said tax, keep a book in which shall be recorded by townships the names of those paying said commutation tax. The amount collected of each township shall, upon a warrant drawn by the County Board of Commissioners, be paid over to the Township Supervisor to be expended for the roads of said township.

1912, XXVII, 582; 1915, XXIX, 465; 1920, XXXI, 941; 1921, XXXII, 166.

(1665) § 25. Misdemeanor.—That any person liable to said road duty and not having paid his commutation road tax in lieu thereof by the aforesaid date or dates, and who shall fail to work the full six days when required to do so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than twenty (\$20.00) dollars, or by imprisonment of not more than thirty days at hard labor.

1912, XXVII, 582; 1915, XXIX, 465.

KERSHAW COUNTY.

(1666) § 1. Office of County Supervisor Abolished in Kershaw County—Term of Incumbent Excepted.—That the office of County Supervisor for the County of Kershaw be, and the same is hereby, abolished: *Provided*, That the present County Supervisor shall remain in office until his present term expires.

1920, XXXI, 928.

(1667) § 2. Board of County Commissioners—Term—Proviso.—There shall be in and for the said County of Kershaw a Board of County Commissioners, composed of seven members, who shall be appointed by the Governor, upon the recommendation of the Legislative Delegation of said county, or a majority thereof, and who shall serve one for two years, two for four years, and two for six years: *Provided*, That until the term of the present Board of County Commissioners expires they shall serve jointly with the five members to be appointed under this Section: *Provided*, That the five heretofore appointed shall serve until the expiration of their term and that two additional members herein provided for shall serve for one year from the date of their appointment.

Civ. '12, § 939; 1893, XXI, 483; 1912, XXVII, 679; 1914, XXVIII, 622, 628; 1918; XXX, 817; 1920, XXXI, 928; 1921, XXXII, 13.

Carolina Grocery Co. v. Burnet, 61 S. C. 205, 39 S. E. 381.

(1668) § 3. Chairman—Clerk—Compensation.—The said County Board of Commissioners shall, immediately after qualifying, meet and organize by electing one of their number as Chairman, and also elect a Clerk, who shall be designated as Clerk of the County Board of Commissioners; he shall hold his office at the will and pleasure of said Board and receive such annual salary as the Board of County Commissioners may fix, payable monthly upon the warrants of said Board.

1920, XXXI, 928.

(1669) § 4. Duties and Powers of County Commissioners.—The said County Board of Commissioners shall perform all the duties, and have and exercise all the power, authority and jurisdiction now devolved upon the Supervisor of said county, under and by the laws of this State. They shall have the power and authority to audit and approve and pay, by warrant drawn on the Treasurer, any claims or accounts against said county for ordinary expenses and salary of county offices.

1920, XXXI, 928.

(1670) § 5. Board of County Commissioners of Kershaw County to Meet Monthly—Powers.—Be it enacted by the General Assembly of the State of South Carolina: The County Board of Commissioners shall hold meetings as they may deem best in each month of each year, at the County Courthouse, for the transaction of business, and a majority of the said Board shall constitute a quorum: *Provided*, That in all matters regarding the county affairs a majority of said County Commissioners shall rule and be binding.

1920, XXXI, 928; 1921, XXXII, 173.

(1671) § 6. Compensation.—That each of the said Commission shall receive as compensation for his services the sum of two hundred (\$200.00)

dollars per year, except the Chairman, who shall receive the sum of four hundred (\$400.00) dollars.

1912, XXVII, 679; 1913, XXVIII, 78; 1920, XXXI, 928; 1921, XXXII, 173.

(1672) § 7. **County Engineer.**—That for the purpose of working and improving the public roads and highways of Kershaw County, the County Board of Commissioners herein provided for shall employ a competent man skilled and versed in civil engineering, if in their judgment the services of an engineer are needed, who shall perform such services and duties from time to time as the said Commissioners may require, and that they shall pay for said services whatever compensation that may be agreed upon by the parties in each individual instance.

1920, XXXI, 928; 1921, XXXII, 173.

(1673) § 8. **Loans—Use of Funds.**—That the said County Board of Commissioners are hereby authorized and empowered to borrow money from year to year to pay the current expenses, including ordinary expenses and expenses of road and bridge building, and to pledge the taxes of the county to secure same, and the said County Board of Commissioners is hereby authorized to borrow money from the State and County Sinking Fund Commissions, and said Sinking Fund Commissions are hereby authorized to make such loans. And the County Board of Commissioners are hereby authorized to use any county funds, appropriated for other purposes and unexpended, in the improvements of the roads of the county.

1920, XXXI, 928.

(1674) § 9. **Contracts.**—That all contracts made and entered into by and between the Board of County Commissioners, and any person, persons, firm or corporation for the construction, building or grading of any roads or highways or doing and performing any other work of or for the county wherein time is of the essence of the contract, it shall definitely and explicitly state the time when said work is to be commenced and finished, the price to be paid and any and all conditions therein included.

1921, XXXII, 173.

(1675) § 10. **Bond of Commissioners and Bridge Keepers.**—That each member of the County Board of Commissioners and the Bridge Keepers who collect fares at the county bridge over the Wateree River, near Camden, now appointed and in office, or to be hereafter appointed, be required to enter into a surety bond with a reliable Surety Company in the sum of one thousand (\$1,000.00) dollars conditioned upon the faithful performance of their duties, to be approved by the Clerk of Court of Kershaw County, the premium on said bond to be paid for out of the ordinary fund of the county.

1921, XXXII, 173.

(1676) § 11. **Vouchers—All Funds and Securities to Be Deposited With County Treasurer.**—The Clerk of the Board of Commissioners shall, in addition to his other duties, sign all checks and vouchers which are issued by said Board of Commissioners for the disbursements of the county funds for any purpose, which shall also be countersigned by the Chairman of the Board in all instances, and in the event of the absence of either of them the Acting Clerk and Acting Chairman shall be authorized and

required to sign them, and that no claim or voucher be authorized to be paid unless approved by the majority of the Commissioners, and that all mortgages, securities and moneys of whatsoever kind and nature had and received by any one authorized to receive the same be forthwith deposited with the Treasurer of the county, except the money received from the collection of fares at the county bridge known as the River Bridge over the Wateree River, near Camden, which shall be paid to the said County Treasurer at such time or times during each month as the County Commissioners shall require, who shall issue his receipt therefor in duplicate, one to be filed with the Board of County Commissioners, the person or persons depositing same to retain the other.

1921, XXXII, 173.

(1677) § 12. Record of Disbursements.—The County Commissioners shall have the Clerk of the Board to keep a clear and concise record of all payments made through their office, keeping a separate account for the chaingang; another for each of the forces employed by the county, another for all work done by contract, another for bridge work, another showing equipment purchased and a general account, and such account shall be kept in such a manner as to show clearly the transactions covered thereby, showing as far as possible, what roads such sums were spent on, class of work done, and in what township located and such accounts shall be kept open to public inspection.

1921, XXXII, 173.

(1678) § 13. Reports on Road Work.—The Superintendent of the chaingang and the foreman of all other forces employed by the county shall file in the office of the County Commissioners for public inspection, on the first day of every month, a statement showing the number of hands, number of mules, and the equipment worked under him during the preceding month, the mileage of road worked, what kind of work done, what roads worked, what equipment purchased for his force, what supplies consumed, what repairs and by whom made; and shall give the Commissioners an estimate of the supplies and new equipment needed for his force for the ensuing month; and for his failure to file said statement and estimate shall be liable to forfeit his pay.

1921, XXXII, 173.

(1679) § 14. Purchase of Supplies.—The County Board, upon receiving such estimate, shall carefully examine the same and shall prepare a list of all supplies and equipment needed, and purchase said supplies monthly, except such supplies as may advantageously be purchased for a greater length of time, first receiving in writing bids from any one filing the same before the fourth of the month, and such supplies shall be purchased from the lowest responsible bidder: *Provided*, That wholesale purchases may be made whenever necessary: *Provided, further*, That the necessary purchase of articles arising during the month may be made.

1921, XXXII, 173.

(1680) § 15. Chaingang—Road Improvement.—The chaingang shall be used for permanent road work on the main public roads of the county under the direction of such person or persons as the County Board of

Commissioners may direct, care being taken by the Commissioners to distribute such permanent road work as equally as possible on said main public roads. No permanent road shall be less than in width and as much wider and with such grades as the said Commissioners may determine. Permanent roads shall be straightened wherever and whenever, in the opinion of the County Board, is to the best interest of the county to do so.

1921, XXXII, 173.

(1681) § 16. Contracts for Road Work.—All public roads of the county that have not been worked and are not in good condition shall, as speedily as possible, be surveyed and laid off and the County Commissioners shall forthwith let the same to contract in sections upon such terms and conditions as the County Board of Commissioners may deem best.

1921, XXXII, 173.

(1682) § 17. Board May Contract.—Whenever the repair or maintenance of the roads or the construction of permanent roads, may be more advantageously done by contract than by the county forces, the said Commissioners may let the same to contract under the terms herein mentioned.

1921, XXXII, 173.

(1683) § 18. Commutation Road Tax for Kershaw County.—That all able-bodied male persons between the ages of twenty-one and fifty, both inclusive, in the County of Kershaw, shall be required annually to pay a commutation or road tax of four dollars or work six days on the public roads of Kershaw County, except ministers of the gospel actually in charge of congregations and teachers employed in the public schools: *Provided*, That any persons claiming exemption from the provisions of this Section on the grounds of physical disability where such disability is not apparent, shall be required to produce a certificate from two regular physicians dated within three months from which said tax is payable. The said tax must be paid by the person subject thereto to the County Treasurer, and on payment of which he shall receive a receipt showing the date, amounts and purposes for which paid and signed by the person collecting same.

1912, XXVII, 846; 1920, XXXI, 951; 1921, XXXII, 36.

(1684) § 19. Collection.—The said commutation tax shall be due and payable when poll tax is due and payable and shall be charged against all persons liable therefor by the County Auditor, the same as poll taxes are now charged, and shall be collected by the County Treasurer at the same time as the said poll tax is now collected.

1912, XXVII, 846; 1920, XXXI, 951.

(1685) § 20. Evasion a Misdemeanor—Penalty.—Any person herein made liable to the payment of said road tax who shall fail to make such payment shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not less than five (\$5.00) dollars and not more than ten (\$10.00) dollars, or by imprisonment of not less than ten or more than thirty days.

1912, XXVII, 846; 1920, XXXI, 951.

(1686) § 21. **Residents of Towns Exempt.**—Any person who is a *bona fide* resident of any incorporated city or town in said county, paying the regular assessed street tax of such city or towns, is exempt from the provisions of this Act.

1920, XXXI, 951.

(1687) § 22. **Townships of Kershaw County Empowered to Levy Special Road Tax.**—That the several townships of Kershaw County are authorized and empowered to levy annually a special tax for the purpose of building and improving their public roads, as hereinafter provided.

1914, XXVIII, 720.

(1688) § 23. **Election.**—Upon the filing of petition of at least twenty-five (25) freeholders, resident within the township of said county, praying for an election to determine the question of a special annual levy for building and improving public roads within any township in said county, specifying the amount of such tax to be levied, the County Board of Commissioners shall order an election for said purpose after giving at least three (3) weeks' notice of the time and place of said election, to be published in some newspaper of said county.

1914, XXVIII, 720.

(1689) § 24. **Ballots.**—That the said Board of Commissioners shall furnish for the purpose of said election a sufficient number of ballots, and upon one-half of each shall be printed the words, "For the road levy," and on the other half, "Against the road levy." At said election all qualified electors within said townships are entitled to vote.

1914, XXVIII, 720.

(1690) § 25. **Collection of Tax.**—Three managers shall be appointed by the said Board of Commissioners for each election precinct to conduct said election. If the majority at such election shall be in favor of such road levy, this fact shall be reported to the County Auditor and entered upon his abstract, and such tax shall be levied and collected, and continue from year to year to be so levied and collected until by an election ordered for that purpose shall result against said levy.

1914, XXVIII, 720.

LANCASTER COUNTY.

(1691) § 1. **Office of County Supervisor Abolished.**—That the office of County Supervisor for Lancaster County be, and the same hereby is, abolished, to be effective at the end of the term of the present incumbent.

1915, XXIX, 425; 1916, XXIX, 757.

(1692) § 2. **Board of County Commissioners Created—Appointment.**—That a Board of County Commissioners, consisting of five members, is hereby created, to be appointed by the Governor, two of such members upon the recommendation of the State Senator for said county; two upon the recom-

mentation of the members of the House of Representatives for said county, and one upon the joint recommendation of the whole Legislative Delegation for said county, or a majority thereof.

1915, XXIX, 425; 1916, XXIX, 757.

(1693) § 3. Terms.—That said Commissioners shall be appointed for terms of six, five, four, three and two years, respectively, so that not more than one new Commissioner may be appointed in any one year.

1915, XXIX, 425; 1916, XXIX, 757.

(1694) § 4. Vacancies.—Any vacancy on said Board of Commissioners caused by death, resignation or otherwise, shall be filled by appointment, as herein provided, except that any appointment to supply such vacancy shall be made upon the recommendation of the whole Legislative Delegation or a majority thereof.

1915, XXIX, 425; 1916, XXIX, 757.

(1695) § 5. Powers—Claims.—That said Board of County Commissioners shall have all the powers now invested in County Commissioners under the law, and shall be subject to the general law, except as herein provided, and shall have special authority to pass upon, approve or disapprove, all claims against the said county, and no claim or past or existing indebtedness against the county shall be paid except on the approval of said Commissioners.

1915, XXIX, 425; 1916, XXIX, 757.

(1696) § 6. Clerk—Chairman—Duties.—That said Board of County Commissioners shall elect from among their number a Clerk and a Chairman, who shall sign and countersign all vouchers issued out of their office; and the Chairman so elected shall assume all clerical and official duties heretofore exercised by the County Supervisor.

1915, XXIX, 425; 1916, XXIX, 757.

(1697) § 7. Compensation.—The Chairman and the Clerk of said Board of County Commissioners shall receive as compensation for their services, each, the sum of one hundred and twenty-five (\$125.00) dollars per annum; and the other members of said Board shall receive as compensation for their services, each, the sum of seventy-five (\$75.00) dollars per annum.

1915, XXIX, 425; 1916, XXIX, 757.

(1698) § 8. May Employ Assistants—Engineer—Bond—Physician.—That said Board of Commissioners is authorized and empowered to employ a Stenographer and Bookkeeper at a salary not exceeding six hundred (\$600.00) dollars per annum; and is further authorized and empowered to employ, as they deem it necessary, a skilled Engineer to take charge of and superintend the working of the public roads and highways of the county, at such salary as said Board may determine; and is further authorized and empowered to employ a County Physician and to define his duties and determine his salary: *Provided*, Said Engineer shall enter into a surety bond, to be approved by the County Commissioners, in the sum of two thou-

sand (\$2,000.00) dollars, conditioned for the faithful performance of his duties, the premium on said bond to be paid for out of the ordinary fund of the county.

1915, XXIX, 425; 1916, XXIX, 757.

(1699) § 9. To Be Commissioned.—That said Commissioners shall be commissioned by the Secretary of State, as now provided by law.

1915, XXIX, 425; 1916, XXIX, 757.

(1700) § 10. May Borrow Money—Contracts—Statement.—That the said County Board of Commissioners are hereby authorized and empowered to borrow money from year to year to pay current expenses, including ordinary expenses and expenses for road and bridge building, and to pledge the taxes of the county to secure the same, and all contracts made by the them must be approved in writing by a majority of said Board. The said County Board of Commissioners is hereby authorized to borrow money from the State Sinking Fund Commission, and the said Sinking Fund Commission is hereby authorized to make such loans. That the said Board of Commissioners shall publish not less often than quarterly an itemized statement of all expenditures made for the county.

1915, XXIX, 425; 1916, XXIX, 757.

(1701) § 11. Tax to Be Levied in Lancaster County for Roads—Fines—Proviso.—For the purpose of working and maintaining the public roads and repairing and building the bridges of Lancaster County, there shall be levied an annual tax of 5 mills on all property in said county, which shall be collected as are all other taxes; and at the same time there shall be levied on all male citizens in said county between the ages of 21 and 55 years an annual road tax of \$5.00, which shall be collected as all other taxes are. In addition to the above taxes for roads and bridges, all fines and forfeitures collected in the Magistrate Courts and the Court of General Sessions for said county shall be credited by the County Treasurer to the road fund of the county, so that said fund shall consist of the funds derived from the 5 mill levy, on property, the \$5.00 head tax, and fines and forfeitures of said Courts, and the hire of the convicts of the county when they are not at work upon the public highways thereof: *Provided*, That the taxes herein levied shall be in lieu of all road taxes, either county or municipal, heretofore levied in said county and all work required to be done on the public roads thereof.

Civ. '12, § 2060; 1911, XXVII, 171; 1920, XXXI, 933; 1921, XXXI, 88.

(1702) § 12. Failure to Pay Tax a Misdemeanor.—Any party failing to pay said road tax by March first following the year for which it was levied, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than \$20 nor exceeding \$100.00, or by imprisonment for not more than 30 days.

Civ. '12, § 2061; 1911, XXVII, 171; 1920, XXXI, 933.

(1703) § 13. County Auditor to Enforce Law.—The County Auditor shall list and enter the names of all persons in the county liable for road tax, and shall levy and collect said tax as all other taxes are now levied and collected.

Civ. '12, § 2062; 1911, XXVII, 171.

(1704) § 14. **County Treasurer to Issue Warrants — Proviso.**— The County Treasurer shall keep the road fund separate from all other funds, and shall pay the same out only upon the warrant of the Chairman of the County Board of Commissioners and Clerk of the Board, and every such warrant shall show for what purpose it is drawn, whether for permanent repair, or maintenance of roads, and what road repair or building of bridges, purchase of supplies, material, road machinery, pay of salaries, or any other purpose, so that said warrant shall be a record and check of such payment: *Provided*, That when work is being done under the supervision of a Road Engineer, except where such work is done by the chain-gang or a regular road force of the county, that said warrant shall not be issued until such work is approved by the Road Engineer: *Provided, further*, That warrants for the purchase of material used in such work shall not be issued without the approval of said Engineer when such material is purchased under the direction of such Engineer.

Civ. '12, § 2063; 1911, XXVII, 171; 1916, XXIX, 757.

(1705) § 15. **Fund to Construct Bridges.**—One mill of the 5 mills levy on property, if so much be necessary, shall be deemed a fund for the construction of permanent bridges in said county. Such fund to be used only when necessary to construct new bridges; permanent bridges shall be constructed of reinforced concrete or steel, care being taken by the County Commissioners to use such form of structure as will most economically serve the interest of the county: *Provided*, That if the sum raised by said one mill be insufficient for the construction of bridges in any year, the said County Board may supplement the same by drawing on the general road and bridge fund.

Civ. '12, § 2064; 1911, XXVII, 172.

(1706) § 16. **Records.**—The County Commissioners shall have the Clerk of the Board to keep a clear and concise record of all payments made through their office, keeping a separate account for the chaingang; another for each of the forces employed by the county, another for all work done by contract, another for bridge work, another showing equipment purchased and a general account, and such account shall be kept in such a manner as to show clearly the transactions covered thereby, showing as far as possible, what road such sums were spent on, class of work done, and in what township located, and such accounts shall be open to public inspection.

Civ. '12, § 2065; 1911, XXVII, 172; 1916, XXIX, 757.

(1707) § 17. **Statements to Be Filed in Commissioners' Office.**—The Superintendent of the chaingang and the foreman of all other forces employed by the county, shall file in the office of the County Commissioners for public inspection, on the first day of every month, a statement showing the number of hands, number of mules, and the equipment worked under him during the preceding months, the mileage of road worked, what kind of work done, what roads worked, what equipment purchased for his force, what supplies consumed, what repairs and by whom made; and shall give the Commissioners an estimate of the supplies and new equipment needed

for his force for the ensuing month; and for his failure to file said statement and estimate shall be liable to forfeit his pay.

Civ. '12, § 2066; 1911, XXVII, 172; 1916, XXIX, 757.

(1708) § 18. How Supplies to Be Purchased.—The County Board, upon receiving such estimate, shall carefully examine the same and shall prepare a list of all supplies and equipment needed; and shall purchase said supplies monthly, except such supplies as may advantageously be purchased for a greater length of time, first receiving in writing bids from any one filing the same before the 5th of the month, and such supplies shall be purchased from the lowest responsible bidder: *Provided*, That wholesale purchases may be made whenever necessary: *Provided, further*, That the necessary purchase of articles arising during the month may be made.

Civ. '12, § 2067; 1911, XXVII, 173; 1916, XXIX, 757.

(1709) § 19. Road Engineer to Be Employed.—The Board of Commissioners shall employ a competent Road Engineer to lay out, map and draw plans and specifications for all permanent road and bridge work, and for completing the estimates and specifications of the roads of the county that have not already been mapped and laid off, and all road work shall be done under the supervision of such Road Engineer. And if said work be done by contract, no warrant in payment thereof shall be issued until the same has been approved by the Road Engineer: *Provided*, Payments may be made by the direction of said Engineer as such work progresses.

Civ. '12, § 2068; 1911, XXVII, 173.

(1710) § 20. Chaingang—Construction of Roads.—The chaingang shall be used for permanent road work on the public roads leading into the county seat, under the directions of the Road Engineer, care being taken by the Commissioners to distribute such permanent road work as equally as possible on all main public roads. No permanent road shall be less than twenty feet in width and as much wider as said Commissioners and Engineers may determine, and have such grades as the Engineer may prescribe. Permanent roads shall be straightened wherever to the material interest of the county. The Commissioners shall provide for permanent road work, so far as the same may be possible, in and around the towns of Heath Springs and Kershaw, using the other county forces for such work or letting the same to contract as in their judgment is to the best interest of the county: *Provided*, Said Commissioners may work all roads or any single road leading into said towns as in his judgment will serve the greatest number of people.

Civ. '12, § 2069; 1911, XXVII, 173; 1916, XXIX, 757.

(1711) § 21. Roads to Be Let to Contract.—All public roads of the county that have not already been worked, shall as speedily as possible be laid off by a Road Engineer for such work, and the County Commissioners shall as speedily as possible let the same to contract in sections not exceeding the estimate for said work made by the Road Engineer in charge, and if such roads cannot be let to contract within a reasonable time, the same shall be worked under the supervision of the Road Engineer by any county force available, and it is hereby made the duty of the Commissioners to facilitate the working of such roads as much as possible.

Civ. '12, § 2070; 1911, XXVII, 174; 1916, XXIX, 757.

(1712) § 22. Engineer to Make Estimate of Annual Cost—Provisos.—

The said Commissioners shall have the Road Engineer to estimate the annual cost of maintaining the roads of the county that have been worked, and as other roads are worked the annual cost of maintenance shall be made by said Engineer, and where the maintenance of said road can be let to contract at the estimates made by said Engineer he shall lay off the same in sections, and the said Commissioners shall let said sections to contract—not exceeding the estimate made by said Engineer—for a period of one year, paying for such work as the same progresses under the direction and approval of the Road Engineer in charge: *Provided*, That if said roads cannot be let to contract for such maintenance, that the said Commissioners, by and with the advice of the Road Engineer, shall organize such repair road forces as may be necessary to keep the roads of the county in repair: *Provided*, That when roads are so let to contracts any one contractor may contract for as many miles of road as he desires.

Civ. '12, § 2071; 1911, XXVII, 174; 1916, XXIX, 757.

(1713) § 23. When Commissioners May Let Road to Contract.—

Whenever the repair or maintenance of the roads, or the construction of permanent roads, may be more advantageously done by contract than by the county forces, the said Commissioners may let the same to contract under the terms herein mentioned.

Civ. '12, § 2072; 1911, XXVII, 174.

(1714) § 24. Road Engineer.—

The Commissioners of said County of Lancaster shall employ a Road Engineer only when necessary to carry out the provisions of this Article, and shall see that the Road Engineer employed shall, as expeditiously and with as little expense as possible make such plans, specifications, drawings and estimates as are necessary to be made for all road work within the county.

Civ. '12, § 2073; 1911, XXVII, 174.

(1715) § 25. Rights of Way for Public Roads in Lancaster County.—

That whenever, in the opinion of the County Board of Commissioners of Lancaster County, it shall be advisable to change the route of any public road, or to open any new road in said county, the Road Engineer shall proceed to mark out the route of the proposed change or new road and for this purpose he is hereby vested with authority to go upon any land in said county with his assistants, and when any such proposed change or new road is located, the Board of Commissioners shall appoint one qualified elector of said county and the person over whose land the proposed route is to run, one qualified elector, and the two thus appointed, one other qualified elector, which said three thus appointed shall constitute a Board of Arbitration, and they shall have full authority to go upon the land of any person over which said proposed route may go and examine the same, and shall report in writing, to the Commissioners forthwith, the damages which, in their opinion, such person would suffer by reason of such proposed change or new road: *Provided*, That the county, by its Board of Commissioners, or any person over whose land such proposed change or route is to go, may appeal, within ten (10) days from the filing in the Chairman's office thereof from

the report of such Board of Arbitration to the Court of Common Pleas for said county at the next regular term where an issue shall be made and submitted to a jury under the instructions of the presiding Judge: *Provided, further*, That the amount of damages awarded by any such jury shall, upon an order signed by the presiding Judge, be a judgment against the county upon which execution may issue, unless reversed on appeal to the Supreme Court as hereinafter provided: *Provided, further*, That the county, by its Commissioners, or any person over whose land any such proposed change or new road may go, may appeal from the verdict of such jury and the rulings, charge and conduct of the trial by such presiding Judge to the Supreme Court of the State upon notice in writing within ten (10) days after the rising of the Court to the adverse party: *Provided, further*, That no appeal from the report of the Board of Arbitration or the verdict of the Court of Common Pleas shall prevent the county authorities from proceeding with the work on any such proposed change or new road: *Provided, further*, That when any proposed change of the bed of an old road or the bed of a new road in said county is thus acquired that the title thereto to such width not less than 20 feet, as the Board of Commissioners may deem necessary, shall vest in the County of Lancaster for road purposes only as long as the same shall be used therefor.

1912, XXVII, 859; 1920, XXXI, 757.

LEXINGTON COUNTY

(1716) § 1. **County Board of Commissioners of Lexington County—How Appointed.**—There shall be appointed a Board of County Commissioners, consisting of four members, who shall be citizens and electors in Lexington County, and who, together with the County Supervisor, shall constitute the Board of County Commissioners for Lexington County; one Commissioner to be appointed from each district as hereinafter designated, to wit: District No. 1, consisting of the territory of Chinquapin, Gilbert, Hollow and Hollow Creek townships; District No. 2, consisting of Lexington, Boiling Springs, Platt Springs and Black Creek townships; District No. 3, consisting of Congaree, Sandy Run and Bull Swamp townships; District No. 4, consisting of all other territory in the County of Lexington not included in Districts Nos. 1, 2 and 3. Said Commissioners to be appointed by the Governor upon the recommendation of the Senator and the majority of the members of the House of Representatives, the County Supervisor to be Chairman of the said Board of County Commissioners.

1918, XXX, 695; 1920, XXXI, 845; 1921, XXXII, 144.

(1717) § 2. **Term of Office—Compensation and Bonds of County Commissioners in Lexington County.**—That the salary of the Supervisor shall be as now provided by law, and the compensation of the four members of the said Board shall be one hundred and fifty (\$150.00) dollars each per year, and the further sum of fifty dollars for traveling expenses. Said Commissioners, when so appointed, shall each be commissioned by the Secretary of State as other county officers, and shall each give bond in

the penal sum of one thousand (\$1,000.00) dollars conditioned for the faithful performance of their duties. The term of office of the Board of County Commissioners shall be for two years and until their successors are appointed and qualified.

1913, XXVIII, 103; 1918, XXX, 695; 1919, XXXI, 62; 1921, XXXII, 144.

(1718) § 3. Powers of Board — Contracts — Disbursements — Clerk — Records.—That the said County Commissioners shall have equal power and voice with the Supervisor in making all contracts and paying out all county funds, and no contracts shall be entered into or funds expended unless a majority of the Board of County Commissioners shall authorize same, except that in emergency cases the County Supervisor is authorized to enter into contracts for work not in excess of fifty (\$50.00) dollars: *Provided*, That no funds shall be paid out for work done on roads or bridges until said work has been personally inspected by the Commissioner in whose territory same is done, and the claim is countersigned by said Commissioner, except in cases of sickness or death the Supervisor shall temporarily perform these duties: *Provided, further*, That all supplies and materials for the county or work to be done for the county, after having been duly advertised for two weeks in advance, shall be given, in the discretion of the Board of County Commissioners, to the lowest responsible bidder. All goods and material, when received, shall be properly checked up and the invoice signed by the one checking and receiving same. The said Board of County Commissioners are hereby authorized and empowered to elect a Clerk for said Board, who shall be a competent bookkeeper, and who shall receive a salary not exceeding three hundred (\$300.00) dollars per annum, said salary to be paid out of the county funds as provided for; said Clerk to keep an itemized record and duplicate carbon copy, filed in book form, of all bills approved by a majority of the Board and ordered paid, and also a record in proper form of all contracts entered into by the Board of Commissioners for all work or material and supplies to be done or furnished. Said approved bills are to be marked paid whenever a warrant is issued for same, so as to show at all times by a proper audit, the amount of claims that have been paid and the amount of unpaid accounts.

1921, XXXII, 144.

(1719) § 4. Form of Contracts—Approval.—There shall be no contract let or entered into by the Supervisor for any work to be done for the county except upon a printed form to be furnished by the said Supervisor and signed by him and the contracting party, and approved by the member of the Board of his respective district, and to be further passed upon by a majority of the four Commissioners.

1921, XXXII, 144.

(1720) § 5. Duties of County Supervisor—Meetings of Board—Inspection of Roads, Poorhouse, Etc.—It shall be the duty of the Supervisor to devote his entire time to the duties of his office and he shall from time to time confer with the Commissioner of each district as to the condition of the roads and the affairs of the county in such district, and at the end of each month there shall be a meeting of the full Board of Commis-

sioners, or as often as they see fit to transact such business as in their judgment is necessary for the county's best interest, and it shall be the duty of the County Commissioners at least once a month to inspect the roads in their territory, the poorhouse and the county chaingang, giving special attention to the sanitary and hygienic condition of the camp and convicts, giving special attention to the proper care of the convicts, mules, machinery and tools.

1921, XXXII, 144.

(1721) § 6. Road Duty in Lexington County—Commutation Tax.—That all male persons in Lexington County between the ages of eighteen and fifty-five years, inclusive, except ministers of the Gospel actively in charge of a congregation, be, and hereby are, required to perform five days' labor upon the public roads of Lexington County, as hereinafter provided, or in lieu thereof to pay the sum of five (\$5.00) dollars not later than March 15th of the year in which such tax is due.

1912, XXVII, 856; 1913, XXVIII, 168; 1917, XXX, 287; 1919, XXXI, 54; 1921, XXXII, 81.

(1722) § 7. Eight Hours to Be a Day's Labor—When and How Performed.—That a day's labor under this Article shall consist of eight hours each and shall be performed when called for by and under the direct supervision of the road overseer, as hereinafter provided.

1921, XXXII, 81.

(1723) § 8. Division of Roads Into Sections—Road Overseers.—That the Road Supervisor of Lexington County shall lay off the county roads in sections of not exceeding five miles in length and shall appoint a road overseer to work under the direction of the Road Supervisor and County Road Commissioners.

1921, XXXII, 81.

(1724) § 9. Receipts for Labor Performed.—That it shall be the duty of all road overseers to issue receipts, furnished by the Road Supervisor to the road overseers (printed in form) to all persons performing five days' labor under this Article, and such receipts, when countersigned by the County Road Commissioner of the district in which the labor is performed, shall be given credit by the County Treasurer, when presented to him, against the pay part of this Article, such receipts to be presented at the time for paying regular taxes.

1921, XXXII, 81.

(1725) § 10. Tools Required.—That every person liable under this Article shall be liable also for furnishing one shovel, or pick, or axe, or plow, or such similar tools as the road overseer may direct and so warn.

1921, XXXII, 81.

(1726) § 11. Credit for Teams or Appliances Furnished.—That any road overseer may, by agreement, get a person or persons to furnish one or two mules, or wagon, or road scoop, or all three, and shall give one-half day's credit for each such thing furnished by such person against the labor part of this Article.

1921, XXXII, 81.

(1727) § 12. Expenditure of Commutation Tax.—That the funds received from the pay part of this Article shall be kept in a separate account from other county funds, and shall be spent back in the district from which paid, as near as possible, on the road from which paid, at the direction of the County Road Commissioner for that district, same to be paid out in the same manner as all other funds are paid out by the Road Supervisor and County Road Commissioners.

1921, XXXII, 81.

(1728) § 13. County Supervisor May Discharge Overseers and Alter Road Sections.—That the Road Supervisor shall have the authority to discharge any road overseer when same is not giving satisfaction, and to change the road sections when, in his judgment, it will be to the best advantage to do so.

1921, XXXII, 81.

(1729) § 14. Overseers Exempt from Road Duty.—That road overseers under this Article shall receive no pay other than the exemption from the other requirements of this Article.

1921, XXXII, 81.

(1730) § 15. Time Road Duty to Be Performed.—That at least three days' labor under this Article must be performed by April 15th and five days by December 15th of each year.

1921, XXXII, 81.

(1731) § 16. Warning for Road Duty.—That each road overseer may appoint a person liable under this Article to warn out all other persons liable under the work part of this Article, and such person shall be given credit for one day's labor for each such warning. No person shall be guilty of violating any such warning unless given notice at least twelve hours in advance of the time for such labor to be performed.

1921, XXXII, 81.

(1732) § 17. Place of Performance of Road Duty.—That persons living on highways, the maintenance of which is otherwise provided for, shall work upon such other roads nearest their place of domicile, as the Road Supervisor may direct.

1921, XXXII, 81.

(1733) § 18. Form of Certificate of Exemption.—That a doctor's certificate (printed in form) furnished by the Road Supervisor to the road overseer of permanent disability for labor shall exempt all such persons from all sections of this Article, and such certificate, when countersigned and presented as herein provided for work certificates, shall be given the same credit as such work certificates.

1921, XXXII, 81.

(1734) § 19. Residents of Towns Exempt—Street Tax to Be Same as Road Tax.—That no parts of this Article shall apply to citizens residents of incorporated towns or cities in Lexington County, except that such towns or cities shall tax their citizens similarly or for the same amount as citizens of rural districts are taxed under this Article.

1921, XXXII, 81.

(1735) § 20. **Election to Work or Pay Binding.**—That when the work part of this Article is once selected and any work performed under same, the later selection of the pay part of this Article shall not be allowed, and that the selection of either the work or the pay part of this Article must be made before or at the time of the first warning for work by the road overseer.

1921, XXXII, 81.

(1736) § 21. **Violation a Misdemeanor—Penalty.**—That all persons violating any of or all sections of this Article shall be guilty of a misdemeanor, and, upon conviction, subject to a fine of not less than twenty-five (\$25.00) dollars nor more than fifty (\$50.00) dollars, or not less than thirty days nor more than sixty days on the county chaingang.

Civ. '12, § 2081; 1912, XXVII, 856; 1913, XXVIII, 168; 1917, XXX, 287; 1919, XXXI, 64; 1921, XXXII, 81.

(1737) § 22. **Roads to Be Worked.**—That the road overseers when appointed by the Supervisor and County Board of Commissioners, shall proceed at once to work the various sections of road in said county under the direction of the Supervisor and County Board of Commissioners by summoning out all road hands herein required to work and to repair roads as aforesaid: *Provided*, That ministers of the gospel in charge of a congregation shall be exempt in said county from performing road duty.

1913, XXVIII, 168; 1921, XXXII, 81.

(1738) § 23. **Supervisor and County Commissioners to Enforce Law.**—That it shall be the duty of the Supervisor and County Commissioners to forthwith put into operation the provisions of this Article, and for failure so to do they shall each be liable to prosecution, and for each failure so to do shall be fined not less than ten dollars nor more than one hundred dollars, or suffer imprisonment not exceeding thirty days.

1913, XXVIII, 168.

(1739) § 24. **Penalty for Overseers.**—That any road overseer in said county when appointed as aforesaid who shall fail, refuse or neglect to perform the duties required of him under the provisions of this Article upon conviction shall pay a fine of not less than ten dollars or more than twenty-five dollars, or be imprisoned on the public works of Lexington County for a period of not less than ten days nor more than thirty days.

1913, XXVIII, 168.

(1740) § 25. **Substitute.**—That any road hand when summoned to work by the road overseer who cannot attend in person and work may send a proper substitute, who, if accepted by the road overseer, shall work in lieu of the person so summoned.

1913, XXVIII, 168.

(1741) § 26. **Commutation Tax.**—The County Auditor of Lexington County shall enter the commutation tax provided for herein on the tax duplicate of the county as other taxes are now entered thereon, and the

County Treasurer shall enforce the collection of said tax by execution if not paid.

Civ. '12, § 2080; 1910, XXVI, 670.

(1742) § 27. Contract to Be Let for Highway Repairs.—That the County Board of Commissioners of Lexington County shall let to contract the repairs of all public highways in said county as hereinafter provided.

1912, XXVII, 864.

(1743) § 28. Sections.—All highways shall be laid out in sections of five miles each, or as near this length as practicable, and properly marked and numbered.

1912, XXVII, 864.

(1744) § 29. Sections to Be Worked by Contract.—That each section of highway shall be let out annually by the County Board of Commissioners to responsible parties upon a contract to the lowest bidder, who shall therefor enter into bond conditioned for keeping in proper repair their several sections of highway during the year under the Supervisors and instructions of the County Board of Commissioners, the security of such bond to be approved by said Supervisor: *Provided*, The County Board of Commissioners shall have the right to reject any and all bids therefor.

1912, XXVII, 864.

(1745) § 30. Advertise for Bids.—The County Supervisor shall advertise for at least two weeks the sections to be let and time of the letting of such contracts.

1912, XXVII, 864.

(1746) § 31. Tax and Labor—How Expended.—That all persons liable to perform labor upon any section of any highway who shall not have paid his commutation tax shall perform the number of days of labor required by law under the person having the contract for such section, and all commutation tax paid by persons liable to labor on any section shall be expended on such section: *Provided*, That if the commutation tax be not sufficient to have the same put in good repair, the County Board of Commissioners shall supplement this fund and labor out of the county road fund, using only so much of this fund as is absolutely necessary to do the work in substantial and economical manners.

1912, XXVII, 864.

(1747) § 32. Names of Persons Liable.—The County Board of Commissioners shall furnish to each contractor the names of all parties liable to perform labor upon each section, and shall as required by law prosecute all such persons failing to respond to the notice to work of any contractor under whom he is liable to labor.

1912, XXVII, 864.

(1748) § 33. Bidders.—One bidder may contract for one or more sections, and several bidders may unite in a contract for any section thereof.

1912, XXVII, 864.

(1749) § 34. County Commissioners of Lexington Required to Have Chaingang Work in Certain Townships at Certain Seasons.—The County Commissioners of Lexington County be, and they are hereby, required to move the chaingang of said county for repairing the highways therein during each year so as to perform as near as practicable an equal amount of work upon the highways of each township on such part of the roads in each township as Township Inspectors may suggest, and such work shall be done in the townships south of the Southern Railroad, known as the Sandhill section of said county, during the winter months and those highways in the clay section during the summer months.

1912, XXVII, 677.

MARION COUNTY.

(1750) § 1. County Supervisor Abolished in Marion.—That the office of County Supervisor for the County of Marion be, and the same is hereby, abolished.

1916, XXIX, 859.

(1751) § 2. County Board of Commissioners—Appointment—Term.—That there shall be in and for said County of Marion a County Board of Commissioners composed of three members, who shall be appointed by the Governor, upon the recommendation of the Legislative Delegation of said county, and who shall serve for two years, and until their respective successors are appointed and qualified.

1916, XXIX, 859.

(1752) § 3. Chairman and Clerk.—The said County Board of Commissioners shall, immediately after qualifying, meet and organize by electing one of their number as Chairman, and also elect a Clerk who shall be designated as Clerk of the County Board of Commissioners; he shall hold his office at the will and pleasure of said Board and receive such annual salary as the Board of County Commissioners may fix, payable monthly upon the warrants of said Board.

1912, XXVII, 616; 1916, XXIX, 859.

(1753) § 4. Duties—Claims.—The said County Board of Commissioners shall perform all the duties, and have and exercise all the power, authority and jurisdiction now devolved upon the Supervisor of said county, under and by the laws of this State. They shall have power and authority to audit and approve and pay, by warrant drawn on the Treasurer, any claims or accounts against said county for ordinary expenses and salary of county offices.

1916, XXIX, 859.

(1754) § 5. Overseers—Commutation Tax.—That the said County Board of Commissioners shall appoint for each township, one or more overseers for the purpose of having the roads and highways worked, and shall require said overseers to ascertain the names of all persons, living in his township,

who are liable for road duty, and to file, with the County Commissioners, an alphabetical list of the names. The County Commissioners shall compare this list with the commutation tax list as filed by the County Treasurer, and shall report to the overseers, not later than April 1st each year, the names of all persons in his township who have not paid the commutation tax and are liable for road duty for that year. Each overseer shall summon out his road hands at such time or times as he thinks most beneficial to the public service, and shall work them upon the roads six days each year.

1916, XXIX, 859.

(1755) § 6. Warrants to Be Sworn Out Against Persons Not Performing Road Duty.—It shall be the duty of the overseer of each township to swear out warrants before a Magistrate against persons who shall fail or refuse to perform road duty after being summoned thereto.

1916, XXIX, 859.

(1756) § 7. Township Road Fund.—The township road fund shall consist of: (a) The sum apportioned by the County Board of Commissioners to each township; (b) the commutation tax for said township; (c) any special local tax levied in any township for improvements.

1916, XXIX, 859.

(1757) § 8. Capitation Road Tax in Marion County—Exemptions—Receipts for Payment.—That all able-bodied male persons, between the ages of twenty-one and fifty-five years, both inclusive, in the County of Marion shall be required annually to pay a capitation road tax of two (\$2.00) dollars on or before the 31st day of December of each year, except ministers of the gospel actually in charge of a congregation, persons permanently disabled in the military service of this State and of the United States, and persons who served in the late War Between the States, which capitation tax must be paid by the person subject thereto to the County Treasurer, and on payment of same a receipt shall be issued showing the date, amount and purpose for which paid, and signed by the person collecting the same: *Provided*, That any person claiming exemption from the provisions of this Section on the ground of physical disability, where such disability is not apparent, shall be required to give a certificate of disability from two regular physicians.

1912, XXVII, 842; 1916, XXIX, 859; 1917, XXX, 243; 1919, XXXI, 279.

(1758) § 9. Commutation Tax—Work in Lieu Thereof.—That all persons who are liable to road duty in said county, as fixed by Section 8 of this Article, in lieu of performing or causing to be performed, labor upon the public highways of said county, shall be required to pay to the County Treasurer of said county before March 15th in each and every year an annual commutation or road tax of two dollars per head: *Provided*, That all persons who are liable to road duty in said county, as fixed in Section 8 of this Article, in lieu of paying said commutation or road tax may perform six days' labor of ten hours each on the highways, five days of which shall be performed by or before October 15th, in each and every year, and any per-

son who shall elect to perform said work, in lieu of paying said commutation tax, shall be furnished by overseer of his road district a certificate setting forth the fact that he has worked full time, and the filing of said certificate with the County Treasurer, and the receipt of the latter therefor, shall be satisfaction of said tax or labor, and any failure to pay said road tax or perform such labor shall be a misdemeanor, and the offender, upon conviction, shall be punished by a fine of not less than ten dollars and not more than twenty-five dollars, or imprisonment for not more than thirty days, out of which fine the Magistrate shall be allowed to retain two dollars as compensation for his services therein.

1912, XXVII, 842; 1916, XXIX, 859; 1917, XXX, 243; 1919, XXXI, 279.

(1759) § 10. Duties of County Auditors Herein.—Every person in said county liable for said road tax shall return himself for taxation for such tax to the County Auditors of said counties, in each and every year, between the first day of January and the 20th day of February, and the County Auditors are hereby authorized and directed to solicit and take such returns. That thereafter the County Auditors shall make out and deliver to the County Commissioners of said counties lists of the names of the persons who have returned themselves for taxation for such tax in their respective townships, alphabetically arranged. The said Commissioners shall, with the aid and assistance of the various road overseers, add to said list all persons in the respective townships liable for said tax, but who have not returned themselves to the County Auditors. The said County Auditors in each and every year, on or before the fifteenth day of October, shall make out and deliver a list of the names of all persons liable for said road tax in said county, alphabetically arranged by townships, to the County Treasurers of said counties.

1912, XXVII, 842; 1916, XXIX, 859.

(1760) § 11. How Collected.—That the said County Treasurers are hereby authorized and directed to collect said tax, and to return the same into the road fund for said counties. That said County Treasurers shall keep a book in which shall be recorded by townships, the names of those paying said commutation or road tax, or performing the required labor in lieu thereof.

1912, XXVII, 842; 1916, XXIX, 859.

(1761) § 12. Penalty for Evasion.—Any persons hereunder made liable for the payment of said capitation road tax who shall fail to make such payment when same is due, or who fails to list said tax at the time provided for listing same with the Auditor, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine in a sum not less than five (\$5.00) dollars and not more than ten (\$10.00) dollars, or by imprisonment for not less than ten (10) or more than thirty (30) days.

1916, XXIX, 859.

(1762) § 13. Use of Funds.—The capitation tax received hereunder shall be used by the Board of County Commissioners upon the public highways of Marion County at such places and at such times as they may deem necessary.

1916, XXIX, 859.

(1763) § 14. **Residents of Towns Not Exempt.**—No person subject to pay the capitation tax hereinabove required shall be exempt or excused from such payment by reason of being a resident of any incorporated town or city of the county.

1916, XXIX, 859.

(1764) § 15. **Road Supervisor—Compensation—Duties.**—That for the purpose of working and improving the public roads and highways in Marion County, the County Board of Commissioners herein provided for, shall, as soon as practicable, after the organization of said Board, employ a competent man to be known as Road Supervisor, at a salary of not more than twelve hundred dollars per annum, whose duty it shall be to supervise the working and improvement of the public roads, to have control of chaingang and other forces that may be used for this purpose, under the general direction of the County Commissioners, and perform such other duties as said County Commissioners may require; said Road Supervisor shall not be engaged in any other work but that provided for in this Section, and shall be subject to removal at any time in the discretion of said County Commissioners.

1916, XXIX, 859; 1917, XXX, 243.

(1765) § 16. **To Have Charge of County Farm and Chaingang.**—The County Board of Commissioners shall have charge of the County Farm, and of the chaingang, and all equipment, and shall distribute its benefits among the various townships as impartially as possible, and shall appoint an overseer or overseers and guards therefor; and shall appoint such help as may be necessary at the county farm; but their compensation shall be fixed by the County Board of Commissioners.

Civ. '12, § 1084; 1916, XXIX, 859.

(1766) § 17. **Meetings.**—The County Board of Commissioners shall hold regular meetings on the first Tuesday after the first Monday in each month of each year, at the County Court House, for the transaction of business, and a majority of the said Board shall constitute a quorum: *Provided*, That in all matters regarding the county affairs a majority of said County Commissioners shall rule and be binding.

1916, XXIX, 859.

(1767) § 18. **Compensation.**—That each of said Commissioners shall receive as compensation for his services, the sum of one hundred and fifty dollars per year.

1912, XXVII, 616; 1916, XXIX, 859.

(1768) § 19. **County Commissioners in Marion County May Condemn Land for Road Building, Etc.**—That in addition to the power and authority now vested in the County Commissioners of Marion County, said Commissioners shall have the power to condemn lands for the purpose of removing sand, gravel and other material therefrom to be used in building, repairing or relocating public highways in said county: *Provided*, That where lands are condemned for said purposes, the damage shall be fixed as now provided by law.

1912, XXVII, 859.

MARLBORO COUNTY.

(1769) § 1. **Offices of County Supervisor and County Commissioners Abolished in Marlboro County—When Effective.**—That the offices of County Commissioners, as heretofore existing in Marlboro County, be, and they are hereby, abolished, and there shall be appointed by the Governor the five County Highway Commissioners hereinafter provided for and in the manner hereinafter provided. From and after the expiration of the term of office of the present Supervisor, or his vacation of said office, that the office of County Supervisor of Marlboro County be, and the same is hereby, abolished.

1915, XXIX, 581; 1916, XXIX, 862; 1920, XXXI, 1016.

(1770) § 2. **Board of County Highway Commissioners—Appointment—Terms.**—That a Board of County Highway Commissioners of Marlboro County, to consist of five members, is hereby created. There shall be appointed by the Governor, upon the recommendation of the Legislative Delegation, five (5) freeholders and taxpayers of Marlboro County, who shall constitute the Board of County Highway Commissioners of Marlboro County. Two of said members shall be appointed for a term of two years, and two for a term of four years, and one of said members for a term of one year, and until their successors are appointed and qualify. From and after the expiration of the term of office of the two Commissioners who are to be appointed hereunder for a term of two years, four of said Commissioners shall be appointed for a term of four years, and upon the expiration of the term of office of the Commissioner appointed hereunder for one year his successor shall be appointed for two years.

1915, XXIX, 581; 1916, XXIX, 862; 1920, XXXI, 1016.

(1771) § 3. **Chairman — Compensation — Bond.**— The said Board of County Highway Commissioners shall elect from among their number a Chairman, upon whom may be devolved by the Board, in its discretion, such executive and official duties as it may deem advisable. The Chairman of said Board shall receive, as compensation for his services, the sum of six hundred (\$600.00) dollars per annum, and each of the other members of said Board shall receive the sum of four hundred (\$400.00) dollars per annum. That each member of said Board, before entering upon the discharge of the duties of his office, shall enter into a bond, secured by a duly licensed surety company, to be approved by the Clerk of Court, payable to the county, in the sum of five thousand (\$5,000.00) dollars, conditioned for the faithful performance of his duties. The premiums on said bonds shall be paid out of the general funds of the county.

1915, XXIX, 581; 1916, XXIX, 862; 1918, XXX, 773; 1920, XXXI, 1016.

(1772) § 4. **Duties and Powers Devolved.**—That all the duties, obligations and functions now imposed by law upon the County Supervisor and the County Commissioners of Marlboro County, which may be consistent with the terms of this Article, together with all the powers and authority now vested by law in the said offices and officers are hereby devolved upon, and vested in, the said Board of County Highway Commissioners, created under the terms of this Article.

1915, XXIX, 581; 1916, XXIX, 862; 1920, XXXI, 1016.

(1773) § 5. **Office System—County Property—Roads and Bridges.**—That it shall be the general duty of said Board of County Highway Commissioners, for the discharge of which duty, full power and authority are hereby conferred, to organize and conduct the administration of the county's business, financial and fiscal affairs, upon a systematic, economical and efficient basis. To that end, the said Board shall provide and maintain at the county seat an office for the transaction of business, which shall be open as nearly as practicable during customary business hours, upon every business day of the year, and that in said office there shall be kept, in a safe and systematic manner, all books of account, contracts, correspondence, and other records of official business. The said Board shall inaugurate and maintain, under such expert supervision and direction as may be necessary, a system of receiving and disbursing funds, and keeping accurate check of same, and of accounting and bookkeeping, that will properly safeguard the public interest, and will accurately determine and show the cost of maintaining all public institutions and public property, and of performing all public work of every character. As far as it is practicable to do so, there shall be adopted and maintained such system of bookkeeping as will keep separate the funds of the county, and no fund raised or appropriated for a particular purpose shall be used for any other purpose, without express warrant of law. The said Board of County Highway Commissioners shall maintain, and keep in repair, and in efficient operative condition, all county property and county institutions. The said Board of County Highway Commissioners shall be chargeable with and responsible for the construction and proper maintenance and upkeep of the county roads, highways and bridges.

1915, XXIX, 581; 1916, XXIX, 862; 1920, XXXI, 1016.

(1774) § 6. **Clerk—Supervisor of Roads—Technical Help.**—That the said County Highway Commissioners are hereby authorized and required:

1. To employ a competent office assistant, who shall be a competent bookkeeper, and who shall be known as Clerk of the Board of County Highway Commissioners. The said Clerk shall be required to be in the office of the Board daily, within reasonable office hours, to keep the books, accounts and records, and to perform the clerical work of said office, and to perform such other duties as may be imposed by said Board.

2. To employ a competent and skilled person, to have in charge and to organize and manage the construction, maintenance and repairing of the roads, highways and bridges of the county, who shall be known as the Supervisor of Roads, and to whom shall be committed adequate authority and full responsibility for the construction of roads, highways and bridges, under the general direction of said Board. The Supervisor of Roads is required to devote his entire time and services to the duties as prescribed in this Article. No road construction or road work shall be begun or continued by the present Supervisor without the approval and consent of a majority of said Commission, and until the Commission as herein constituted shall have met and organized for business.

3. To employ such other assistants, agents and servants, and to obtain the services of such professional and technical experts as may be necessary properly to carry on the business of the county.

1915, XXIX, 581; 1916, XXIX, 862; 1918, XXX, 773; 1920, XXXI, 1016.

(1775) § 7. **Compensation of Employees—Bonds—Removal.**—That the compensation and salaries of said Clerk of the Board, Supervisor of Roads, and all other employees, agents and servants of the county, shall be fixed and determined by the said Board of Commissioners, and shall be as low as may be consistent with securing competent employees and efficient service. An adequate bond, with good and sufficient surety, payable to the said Board of Highway Commissioners, and conditioned for the faithful performance of their duties, shall be required of the Chairman of the County Board, of the Supervisor of Roads, and of such other employees and contracting parties as the Board may deem proper. The said Clerk of the Board of County Highway Commissioners, the Supervisor of Roads, and all other employees, shall be subject to removal or discharge, at the discretion of the Board.

1915, XXIX, 581; 1916, XXIX, 862; 1920, XXXI, 1016.

(1776) § 8. **Highway Districts—Deputy Supervisors—System of Highways.**—The said County Board of Commissioners is hereby authorized and empowered to subdivide the county, with respect to roads, highways and bridges, and into such districts or sections as it may deem best for the public interest, and to authorize and require the Supervisor of Roads to appoint and employ Deputy Supervisors of Roads in and for such districts or sections. Such Deputy Supervisors shall be employed upon such terms, and shall have such authority, and shall be charged with the performance of such duties, as may be conferred and imposed by the Supervisor of Roads, under the direction and approval of the Board of County Highway Commissioners. The said County Board of Highway Commissioners shall be required to lay out a system of county highways comprising the main thoroughfares of the county, and shall provide a system of construction and maintenance as shall carry out a systematic improvement of these highways.

1915, XXIX, 581; 1916, XXIX, 862; 1920, XXXI, 1016.

(1777) § 9. **Chaingang—Hired Laborers.**—The said Board of County Highway Commissioners is hereby authorized and empowered to use the chaingang of the county for the construction and maintenance of the roads, highways and bridges of the county in such manner and in such places as it may deem best for the public interests, to hire laborers to work in connection with said chaingang, and to use said chaingang in connection with any work being done for the county by contract or otherwise.

1915, XXIX, 581; 1916, XXIX, 862; 1920, XXXI, 1016.

(1778) § 10. **Commutation Road Tax—Road Duty—Evasion a Misdemeanor—Penalty.**—That from and after January 1, 1921, all able-bodied male persons between the ages of eighteen and fifty, both inclusive, residing in Marlboro County, not exempt under the general law, except those who are required to perform road duty or pay a commutation tax in incorporated cities or towns, shall be subject to road duty, and shall be required to perform, or cause to be performed, annually, six days' labor upon the roads of the county with respect to roads and highways in which he shall reside: *Provided*, All persons subject to road duty may, in lieu of per-

forming such labor, pay to the County Treasurer, on or before the first day of March of each year, the sum of one dollar and a half per annum as commutation tax. All persons subject to road duty who shall fail to pay the commutation tax herein provided, shall be called out to and caused to labor, or to furnish an acceptable substitute for the required number of days each year, at the direction of the Supervisor of Roads, or his duly authorized deputy or agent, and under such rules and regulations as the Board may prescribe. Any person liable to road duty, who shall fail or refuse, without lawful excuse, to appear and render the service required of him, in person, or by acceptable substitute, after receiving twenty-four hours' notice or warning in writing of the time and place he is required to report for duty, shall be guilty of a misdemeanor, and punished by a fine of not exceeding twenty-five (\$25.00) dollars, or imprisonment at hard labor not exceeding thirty days.

1915, XXIX, 581; 1916, XXIX, 862; 1920, XXXI, 1016.

(1779) § 11. Apportionment of Taxes.—All taxes and moneys collected for road purposes shall be equally divided between the townships on a mileage basis, so as to give the same amount to each and every mile of public road in the county.

1915, XXIX, 581.

(1780) § 12. Account for Moneys — Minutes, Etc. — The said Board shall keep an accurate account of all moneys collected and expended and shall keep and preserve accurate minutes of all other meetings, which said minutes and all books of accounts shall be annually inspected by the Grand Jury or their representative.

1915, XXIX, 581.

(1781) § 13. Contracts Regulated.—All the contracts by the said Board for any amount exceeding twenty (\$20.00) dollars shall be let by competitive bid, ten days' notice to be given before such work is to begin, by posting three notices in three public places, one of which must be posted where the work is to be done and one upon the Court House door.

1915, XXIX, 581.

(1782) § 14. Claims and Warrants.—All accounts, claims and demands of whatever nature existing against the county for opening, constructing, maintaining and operating any public highway or road, bridge or ferry shall be presented to the County Board of Highway Commissioners, duly attested, and if approved by said Board, the Chairman shall draw his warrant against the County Treasurer, under the seal of the County Board of Highway Commissioners, for the amount of any such claim, or claims, which warrant shall be countersigned by the Clerk of the Board and the sum shall be paid by the said Treasurer out of the county road fund

1916, XXIX, 862.

(1783) § 15. Statement to Be Rendered.—The County Board of Highway Commissioners of said Marlboro County shall submit to the presiding Judge on the first day of the first term of Court of General Sessions in each year, to be submitted by him to the Grand Jury of the county, an

itemized statement of all amounts ordered to be paid by them for the preceding fiscal year, the condition of highways, bridges and poor farm and other matters concerning the welfare of the county.

1916, XXIX, 862.

(1784) § 16. Record of Bills Payable.—The County Board of Highway Commissioners shall keep a book of "Bills Payable," in which they shall enter, as and when made, all notes for loans in anticipation of collection of taxes. The interest thereon shall show: (1) Note number; (2) date of note; (3) date due; (4) payee; (5) amount; (6) rate of interest; (7) date paid. Said notes shall be numbered in the order in which they may be executed.

1916, XXIX, 862.

(1785) § 17. Advertisement for Bids for Supplies—Award—Proviso.—Every three months the County Board of Highway Commissioners shall advertise for at least three weeks in at least three issues of one or more of the newspapers published in the City of Bennettsville for bids, based on delivery at the Court House, unless otherwise specified for all implements and supplies of whatever kind may be desired by the county and each and every officer thereof, including all supplies, implements, equipment and all purchases whatsoever for the Commissioners, Sheriff, Clerk of Court, Treasurer, Auditor, Judge of Probate, Magistrate, for Poor House, chaingang, roads and bridges, and for every other purpose, which advertisement shall set forth the articles and approximately the amounts thereof to be purchased, and the contract of purchase shall be awarded to the lowest responsible bidder for the period of three months: *Provided, however,* In case of emergency the County Board of Highway Commissioners may make purchases for the county where the cost thereof does not exceed fifty (\$50.00) dollars, for such purchase a majority of the Commissioners shall certify on the claim therefor the necessity therefor: *And provided, further,* In case of emergency an advertisement, as hereinbefore provided for, may be inserted at any time, but all contracts for purchase of supplies shall be in accordance with the provisions of this Section, and no bill, account or claim of any kind whatsoever against the county shall be paid unless previously contracted for by such competition or by the County Board of Highway Commissioners in cases of certified emergency.

1916, XXIX, 862.

(1786) § 18. Advertisement for Loans—Award.—Should the County Board of Highway Commissioners find it necessary to borrow money for any fiscal year for county expenses in advance of the collection of taxes therefor, as provided and authorized by law, they shall insert an advertisement in a county and State newspaper for at least three weeks, in at least three issues thereof, setting forth the amount wanted and when the same will be paid, and asking for competitive bids on terms and the rate of interest, and all money borrowed shall be at the best terms and at the lowest rate of interest the Board can get.

1916, XXIX, 862.

(1787) § 19. **Maintenance Department.**—That the said Board of County Highway Commissioners shall make adequate provision for the maintenance and upkeep of all roads that are constructed under its authority, and they shall maintain and operate a Maintenance Department, providing for such sections or units as will adequately accomplish the purpose of keeping the roads, bridges and highways in good condition. The funds herein or hereafter appropriated for the Maintenance Department shall be kept separate and apart from the other funds of the county, and used exclusively in the maintenance and upkeep of the roads and of such proper rules and regulations as may be established by the said County Board of Highway Commissioners.

1916, XXIX, 862.

(1788) § 20. **Care of Indigent.**—The said County Board of Highway Commissioners is hereby authorized and empowered to provide adequate means and facilities for the proper support and caring for all persons, who, by means of age, poverty or infirmity, are, or may become, public charges and entitled to maintenance and care at the expense of the county. That the County Home, and all other institutions of the county, shall be operated and maintained by such rules and regulations as may be adopted by the County Board of Commissioners, and said Board is to exercise all of the powers and authority in relation to such institutions, and all other business of the county, as was heretofore exercised by the County Supervisor and Commissioners.

1916, XXIX, 862.

NEWBERRY COUNTY.

(1789) § 1. **Supervisor of Newberry County Required to Keep "File Book of Claims."**—That the County Supervisor of Newberry County shall keep a book called "File Book of Claims," in which shall be entered all claims as presented. This book shall be printed and ruled with appropriate columns, showing: (1) Claim number; (2) date of filing; (3) by whom presented; (4) to whom claim belongs; (5) nature of claim; (6) date of action; (7) amount of claim; (8) amount allowed; (9) amount disallowed; (10) item number in Supply Act to which chargeable; (11) remarks. The number of the claim shall not be entered upon the book until claim shall have been allowed and entered on the "Claims Classification Book," hereinafter provided for, and shall then be made to conform to the number thereon. A separate claim must be filed for each account chargeable to any particular item in the County Supply Act or to any subdivision thereof. The principal of each note for money borrowed in anticipation of the collection of taxes shall be paid directly by the County Treasurer, the said Treasurer holding said note as his voucher for the principal thereof, and the lender filing claims with Supervisor in the usual form for the interest, but not for principal, except where a specific appropriation shall have been made for the payment of a particular note.

1912, XXVII, 731.

(1790) § 2. **Book of "Classification of Claims Allowed" to Be Kept.**—The County Supervisor shall keep a book called "Classification of Claims Allowed," in which shall be entered all claims allowed in numerical order. This book shall be printed and ruled with appropriate columns, showing: (1) Line number; (2) claim number; (3) warrant number; (4) item number in Supply Act to which chargeable; (5) claimant; (6) nature of claim; (7) amount allowed; (8) amount paid; (9) date paid; (10) amount unpaid; (11) columns headed and numbered, "Item Number 1" and upward, with tabulated statement at head of each column showing: (a) The amount of the appropriation made for the particular item; (b) the amount of claims allowed to date chargeable to such item; (c) the balance of the appropriation subject to future claims which may be allowed, or the balance of over allowed; (12) total. With similar tabulation within the first ten days of each and every month, the County Supervisor shall publish one time in a newspaper of the county, selected by him as calculated to give full publicity thereto, a statement, under his hand, attested by the Clerk of the Board, and approved by the County Auditor, showing the exact financial condition of each item at the end of the preceding month, as the same may appear from this book, Subdivision 11, briefly describing the item by title as in the County Supply Act. The advertising charges therefor shall not exceed \$4 for each insertion.

1912, XXVII, 731.

(1791) § 3. **"Bills Payable" Book to Be Kept.**—The County Supervisor shall keep a book of "Bills Payable," in which he shall enter, as and when made, all notes for loans in anticipation of collection of taxes. The entries thereon shall show: (1) Note number; (2) date of note; (3) date due; (4) payee; (5) amount; (6) rate of interest; (7) date paid. Said notes shall be numbered in the order in which they may be executed.

1912, XXVII, 731.

(1792) § 4. **"Bond Book" to Be Kept.**—The County Supervisor shall keep a book called "Bond Book," in which shall be entered all bonds outstanding and hereafter issued. This book shall be printed and ruled with appropriate columns, showing: (1) Series number; (2) title of bonds; (3) date of issue; (4) date due; (5) interest rate; (6) interest payable; (7) interest amount due January 1; (8) interest amount due July 1; (9) number of bonds; (10) bond number; (11) denomination; (12) total value issued; (13) remarks.

1912, XXVII, 731.

(1793) § 5. **Supervisor Prohibited from Drawing Warrant Except for Purpose for Which Specific Appropriation is Made.**—The County Supervisor is hereby prohibited from drawing any warrant upon the County Treasurer to be paid out of any of the several funds specifically appropriated for any purpose other than that for which the same shall have been so appropriated, and it shall be unlawful for the County Treasurer to pay any such inhibited warrant. It shall be unlawful for the County Supervisor, County Board of Commissioners, or any member thereof, to create, by contract, express or implied, any obligation against the county

which, with the obligation then existing and chargeable to any particular item of appropriation, shall exceed the amount specifically appropriated therefor: *Provided*, That in case of emergency, with the written consent of the County Delegation, this requirement may be dispensed with. Should the County Supervisor, County Board of Commissioners, or any member thereof, violate the provisions of the paragraph next preceding in this Section, the claim resulting therefrom shall be declared null and void as against the county, and the officer offending shall be held responsible to the claimant therefor upon his official bond. It is hereby made the duty of the County Supervisor and County Board of Commissioners to so apportion the appropriation for maintenance of convicts and road working organization as to cover the total expenses on account of these items for the entire fiscal year for which they may be respectively appropriated.

1912, XXVII, 731.

(1794) § 6. Item to Be Stated on Warrant.—The County Supervisor shall state upon each warrant drawn by him upon the County Treasurer the item of the appropriation in the County Supply Act on account of which it shall have been drawn; he shall also, in a tabulated form upon said warrant, state the amount of such appropriation, the amount theretofore drawn against it, the amount of the warrant then drawn and the balance against which future warrants may be drawn. No warrant shall be paid by the County Treasurer or be allowed as a credit to him in his settlement unless it conform with this requirement.

1912, XXVII, 731.

(1795) § 7. No Warrant to Be Drawn in Excess of Appropriation.—That whenever the appropriation for any specific item of county expenses, as provided in the County Supply Act of any year, shall have been exhausted by warrants of the County Supervisor upon the County Treasurer, the payment of further claims chargeable to the account of such item shall be immediately suspended. Such claims in excess of the appropriation, after having been audited, allowed and entered upon the book of "Classification of Claims Allowed," for the year to which they belong, shall be transferred in red ink to the same book for the succeeding year, numbered with the claims for that year; the number endorsed upon said claims in red ink, the amounts distributed in the item column for past indebtedness; and in the column headed "Nature of Claims," shall be entered, "Past indebtedness of 19—, No. —." Upon the book from which the claim shall have been transferred, opposite the claim, shall be noted, "Transferred to 19—, No. —." In the County Supply Act for the succeeding year these claims shall be provided for by an appropriation in the item "Past Indebtedness Claims," wherever they shall be classified by numbers, nature and amount. A certified schedule of these claims, itemized and classified, shall be furnished by the County Supervisor to the County Delegation during the first week in January of every year. At the annual settlement with the Comptroller General all cash balances to the credit of the revenue of the county for all county purposes and all uncollected assets, for the fiscal year to which said past indebtedness claims belong, shall be passed to credit of the revenue of the county for all county purposes for

the fiscal year to which said past indebtedness claims shall have been transferred, to the extent of the amount of the same, and of any other indebtedness of the preceding year provided for in the budget for the succeeding year; the balance, if any, shall be deposited by the County Treasurer in some reliable savings institution, at interest, for the purpose of accumulating a fund with which to put the county upon a cash basis: *Provided*, That this Section shall not apply to obligations incurred in violation of Section 5, but is intended to apply only to such obligations of the county as are not within the control of the County Supervisor or County Board of Commissioners.

1912, XXVII, 731.

(1796) § 8. Fines, Fees, Licenses, Etc., to Be Paid to County Treasurer.

—All income to the county from fines, fees, costs, license, commutation road tax, Register of Mesue Conveyance's office, and from all other sources, not otherwise appropriated by law, shall be paid to the County Treasurer and be applicable to all claims for the payment of which the appropriations for the year on account of county expenses shall have been made.

1912, XXVII, 731.

(1797) § 9. Road Forces—How Organized.—The Supervisor and County

Commissioners of Newberry County are hereby authorized and empowered to organize as many working gangs or squads to work on the public roads of said county as in their judgment is necessary, by employing a suitable person as foreman, who has sufficient judgment to work roads, repair bridges and do any work pertaining to the preservation of roads and bridges, and to employ as many hands as in the judgment of the Supervisor and Commissioners as they deem advisable to be worked in one gang or squad. The foreman and hands so employed shall be paid only when at work out of any funds available for the improvement of roads, bridges and ferries, from whatever source derived. The Supervisor and County Commissioners shall furnish such foreman with a list of such hands as may be assigned to their respective gangs or squads and to designate to them the roads that are to be worked under their management and supervision, also to furnish each foreman with a list of such persons as are liable to road duty under the laws regulating such liability and who have not paid their commutation tax, and who reside and are liable to road duty on the several roads designated to be worked by said foreman. The Supervisor and County Commissioners shall clothe the several foremen appointed under the provision of this Section with authority to warn out all persons liable to road duty who have not paid their commutation tax in the several districts as they may reach them and to require such persons to do road duty as now required by law, subject to the penalties now prescribed by law, at the same time and along with the hands provided for in this Section, or in separate squads, requiring the full number of days and the full number of hours that they are liable for road service. Each foreman shall report to the County Commissioners and the County Supervisor all persons who make default in performing road duty when warned. The Supervisor and County Commissioners, if they deem it important and necessary, and provided they have the funds to meet their contracts, may let out any section of the road in the county to

be worked by contract as they are now, and are hereby authorized to do. The Supervisor and County Commissioners shall require of the road foremen employed to work roads under the provisions of this Section to make monthly report of the number of days and number of hours worked and the number of hands employed on their separate roads, and shall also report the condition of the roads assigned to them to work. The Supervisor and the County Commissioners are hereby instructed and directed to have due regard for an equitable distribution of the money expended and the work done in the several townships of the county, as now required by law. All laws for the improvement of roads, bridges and ferries in Newberry County shall remain in full force, except in so far as they may be modified by the provisions of this Section. That the County Supervisor of Newberry County is hereby required to publish in his quarterly report a statement of the number of days' work performed by these work squads or gangs and by the county chaingang in each township of the county or by contract or otherwise.

1912, XXVII, 865.

(1798) § 10. Chaingang to Be Used.—The Supervisor and County Commissioners are hereby required to use the county chaingang in permanently improving the public highways and bridges in said county at places where the highways at certain seasons of the year become to all practicable purposes almost impassable, having due regard to an equitable distribution of that work in the several townships.

Civ. '12, § 2086; 1909, XXVI, 133.

(1799) § 11. Highways to Be Drained—Misdemeanor to Obstruct.—It shall be the duty of the Supervisor and County Commissioners, or any person having charge of road improvement in said county, to give each highway a proper and sufficient drainage, and any person who shall obstruct any ditch or culvert and thereby prevent the proper drainage of any highway, by plowing into the same, or by any manner of obstruction, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than twenty dollars for each offense, or imprisoned for not less than ten days nor more than twenty days; and it is hereby made the special duty of the Supervisor to strictly enforce this Section, as well as all others.

Civ. '12, § 2087; 1909, XXVI, 133.

(1800) § 12. Terms of Section 11 Exclusive of Other Laws.—The provisions of the foregoing Section are in addition to, and exclusive of, all other provisions now provided by law for the improvement of roads, bridges and ferries in said county, and all existing laws relating to the working of highways shall remain in force in said county, except so far as modified by the provisions of this Article.

Civ. '12, § 2088; 1909, XXVI, 133.

(1801) § 13. Protection for Bridges in Newberry County—Punishment for Violation.—That all persons driving, transporting or conveying any traction or other engine weighing over fifteen thousand pounds upon or

across any bridge in Newberry County shall lay upon such bridge suitable skids or other appliances for protecting the same from injury by the passage of such engine upon or across such bridge. Any violation of this provision shall be punished by a fine of not exceeding one hundred (\$100.00) dollars or imprisonment for not exceeding thirty (30) days.

1914, XXVIII, 852; 1915, XXIX, 396.

(1802) § 14. Road Duty in Newberry County.—All persons residing in Newberry County, who are liable to road duty, shall perform six days' service on the public highways of said county each year under the direction of the Supervisor and County Commissioners, or an overseer appointed by the Supervisor, or in lieu thereof shall pay a tax of six dollars, payable at the same time and in the same manner as is now provided for the payment of State and county taxes and up to March 15, following; and all moneys received from this source shall be used by the Supervisor and the County Commissioners for the improvement of the roads in the districts where the money is derived.

Civ. '12, § 2082; 1909, XXVI, 132; 1920, XXXI, 735, 935.

(1803) § 15. Special Tax Levy for Roads.—There shall be levied upon all the property, both personal and real, in Newberry County, a special tax of one mill, to be used exclusively for the maintenance of public highways, bridges and ferries in said county, which said tax shall be entered by the County Auditor upon the county duplicate and collected by the County Treasurer at the same time and in the same manner as other taxes are now collected: *Provided*, That in case said county shall hereafter vote a bond issue for the improvement of roads, then the levy provided for in this Section, of one mill, shall cease and be void.

Civ. '12, § 2083; 1909, XXVI, 132.

(1804) § 16. Funds to Be Used on the Highways.—Funds arising from taxes provided for in this Article shall be used upon the public highways in said county, so as to secure an equitable distribution of work on the highways in each township of the said county, having due regard to the condition of such highways.

Civ. '12, § 2084; 1909, XXVI, 133.

(1805) § 17. Rural Free Delivery Routes to Be Improved.—The Supervisor and County Commissioners are hereby authorized to make such suitable and reasonable agreement with the owners of land over which any rural free delivery mail routes may be established and to maintain and improve said road as a rural free delivery mail route whether said road be formerly or permanently opened as a public highway or not, so long as it is used for rural free delivery.

Civ. '12, § 2085; 1909, XXVI, 133.

(1806) § 18. Elections on Special Road Tax in Townships of Newberry County—Petition—Ballots—Returns.—That the County Supervisor of Newberry County is hereby required, whenever a petition of one-third of the freeholders in any township in Newberry County shall be filed in his

office praying for the holding of an election on the question of levying a tax on the taxable property within said township—the amount thereof to be fixed in said petition—to be expended on the improvement of the public roads and bridges therein, to order an election by giving at least thirty days' notice of the time and place of holding same, to appoint managers, prepare and furnish at each voting precinct a sufficient number of ballots for use in said election, in form as follows: "For the levy of mills for road improvement—Yes or No." Those voting in favor of such levy shall deposit a ballot with the word "No" erased; and those opposed shall deposit a ballot with the word "Yes" erased: *Provided*, That the blank in said ballot shall be filled in with the amount of levy fixed in the petition. The said managers shall receive and canvass the vote and declare the result of said election, and file a copy thereof in the office of the Clerk of Court as a permanent record and furnish a copy to the County Auditor.

1920, XXXI, 952.

(1807) § 19. **Levy and Collection.**—That in the event a majority of the votes cast at said election be in favor of such election, the Auditor of said county shall enter upon his duplicate the amount of said levy on all the property within said township, and the Treasurer shall collect said tax the same as other taxes are collected, and the funds so raised shall be expended for no other purpose than the improvement of the public roads and bridges within said township.

1920, XXXI, 952.

(1808) § 20. **Continuance of Tax.**—That the County Auditor and Treasurer shall continue to levy and collect said tax until upon a petition and election as hereinbefore provided for the levy of such tax it shall be discontinued by a majority vote of the qualified electors of said county.

1920, XXXI, 952.

(1809) § 21. **Township Road Commission.**—That the funds herein provided for shall be administered and expended by a Commission, who shall be named in the petition praying for the election hereinbefore provided for, to be known as the Special Township Road Commission.

1920, XXXI, 952.

(1810) § 22. **Highway Bond Election in Newberry County—Managers—Returns—Notice.**—That the Supervisor of Newberry County be, and he is hereby, authorized to order an election to be held at the usual voting precincts in said county on the 24th day of August, A. D. 1920, upon the question of issuing coupon bonds of the said county to the amount of four hundred thousand dollars, for permanent road building and maintenance of the same. The Commissioners of Election for State and county officers for Newberry County shall appoint the managers and receive and tabulate the returns as in other elections; they shall report the result of said election in writing, in duplicate, one copy of which shall be filed in the office of the County Supervisor of said county and one copy with the Secretary of State, and said duplicate reports shall be kept on perpetual record in said offices. Notice of said election shall be published by the said Com-

missioners of Election in one or more of the newspapers published in the County of Newberry once a week for three weeks preceeding said election. Said election shall be held under the laws governing the holding of general elections in this State.

1920, XXXI, 1025.

(1811) § 23. **No Compensation for Managers.**—The Managers of said election shall serve without compensation.

1920, XXXI, 1025.

(1812) § 24. **Ballots—Sale of Bonds.**—The ballot shall be provided according to law; on the one ballot shall be printed the words, "For permanent road bonds in the sum of four hundred thousand dollars—Yes;" and on the other, "For permanent road bonds in the sum of four hundred thousand dollars—No." If a majority of the ballots cast in said election shall be for the issuing of said bonds, the Commissioners hereinafter provided for, to be known as the Highway Commission of Newberry County, shall advertise for sealed bids on said bonds, the same to be sold in such lots and at such times as the said Commission may deem advisable; no bid for less than par value of the bonds shall be considered. The Commission shall have the right to reject any and all bids and readvertise for bids until the bonds are sold. The Commission may, if necessary, expend not more than one thousand dollars for issuing said bonds.

1920, XXXI, 1025.

(1813) § 25. **Terms of Bonds.**—The said bonds shall be known as "Highway Improvement Bonds of Newberry County," and shall be in such denominations as the said Highway Commission may fix, to run for forty years, and to bear interest from the date of issue at a rate not exceeding five per centum per annum, payable semiannually, from the date of said bonds.

1920, XXXI, 1025.

(1814) § 26. **Execution of Bonds.**—Upon the acceptance of any bid, said Commission shall have printed coupon bonds of said county of the tenor above set out. These bonds shall be signed by the County Supervisor of Newberry County, countersigned by the Chairman of said Commission, and the signatures of said officers may be lithographed upon the coupons for the semiannual installments of interest to be attached to said bonds.

1920, XXXI, 1025.

(1815) § 27. **Management of Sinking Fund — Reports.**—The sinking fund provided for the redemption of said bonds shall be annually set apart by the Treasurer of Newberry County, to be by him placed and kept on deposit as a separate fund in such banks or trust companies of Newberry County, or of other counties of this State, upon such interest as may be obtainable, not less than four per centum per annum, payable or compounded semi-annually. The Treasurer shall annually present to the Circuit Court of said County of Newberry an itemized statement of all such funds received by him, and where and when the same are deposited, and at what rate of interest. This report shall be filed with the Clerk of said Court.

1920, XXXI, 1025.

(1816) § 28. Disposition of Proceeds of Bonds.—The funds arising from the sale of the said bonds shall be deposited to the credit of the Treasurer of Newberry County in a separate fund, to be known as the "Highway Improvement Fund," in the several banks of Newberry County, according to and in proportion to the combined capital stock and surplus of each bank as nearly as may be practicable, at a rate of interest of not less than four per centum per annum from the date of the deposit until the funds are withdrawn from time to time by the Highway Commission as needed by them in the performance of their duties under this Act. Said fund shall be paid by the Treasurer upon the warrant of the Chairman, countersigned by the Clerk, when authorized by said Commission. Should any bank or banks in said county decline to receive such deposit at said rate of interest, the *pro rata* share of deposits due to such bank or banks so declining or refusing to accept same shall be deposited by said Commission among other banks of the county. Such funds shall be withdrawn from such banks as they are deposited with in an impartial manner and proportionately to the amount held in deposit by the various banks in so far as practicable.

1920, XXXI, 1025.

(1817) § 29. Highway Commission—Election—Term—Organization—Vacancies—Duties Devolved—Election of Successors.—The Highway Commission of Newberry County shall be composed of one member from each township of said county, to be elected as now provided for in case of other county officers in the election herein provided for on the question of issuing said bonds for a term ending January 1, 1925, and said Commission, when so elected, shall elect one of their number Chairman and a Clerk, who need not be a member of the Commission. Should any vacancy occur in the said Commission, it shall be filled as now provided by law in case of a vacancy on the present Board of County Commissioners. The Chairman of said Commission shall receive, as compensation for his services, a salary of five hundred dollars per year, and the other members of the Commission the sum of five dollars per day for each day actually engaged in the duties as such Commissioners, not exceeding thirty days each year for each member. At the expiration of the terms of office of the present County Supervisor and County Commissioners of Newberry County, the said Highway Commission herein provided for shall succeed to and perform all the duties now devolved upon and required to be performed by said County Supervisor and County Commissioners, and in the same manner, except as herein otherwise provided, as well as perform the duties herein prescribed. Their successors shall be elected at the general election in 1924, and every four years thereafter.

1920, XXXI, 1025.

(1818) § 30. Duties of Highway Commission—System of Highways—Condemnation.—The duties of the said Commission shall be to use the proceeds arising from the sale of the said bonds for the purpose of constructing a system of permanent or improved highways throughout Newberry County, the same to be laid out and constructed along such routes

and of such materials, in such order and in such manner as the said Commission shall deem most advisable and best for the interest of the county. In the location of the said highways the said Commission shall have the right to use any of the public highways of the said county now in use, or to lay out new roads or relocate old roads, as they may deem best. They shall have the same power and authority to condemn lands for the location of new roads or to relocate the old roads as is now vested by law in the Board of County Commissioners, the said power to be exercised in the same manner and under the same regulations as are prescribed by law for the exercise of the same by the Board of County Commissioners.

1920, XXXI, 1025.

(1819) § 31. **Selection of Roads for Improvement.**—The said Commission shall, in the selection of the roads or highways to be improved, and in the location of new roads, have regard, so far as may be practicable, for the established routes of travel and the demands of the population in the various parts of the county.

1920, XXXI, 1025.

(1820) § 32. **County Engineer.**—The said Commission shall employ a competent and efficient road building engineer and such assistants, and at such compensation as they may deem proper, the necessary expenses of such engineer and assistants, as well as their compensation, to be paid out of the said funds. The Highway Commission shall also fix the compensation to be paid its clerk. Such engineer shall be known as the County Engineer. Such engineer shall have charge of organizing and managing the construction, maintenance and repair of the roads, highways and bridges of the county, and shall have adequate authority and full responsibility for the construction, maintenance of roads, highways and bridges under the general supervision and direction of said Highway Commission: *Provided*, That his duties shall be confined to the roads, highways and bridges to be constructed from the proceeds of said bond issue until the Highway Commission succeeds to the duties of the County Supervisor and County Commissioners.

1920, XXXI, 1025.

(1821) § 33. **Contracts.**—The said Commission shall, so far as practicable, let out all work upon contracts, and all contracts let shall be to the lowest responsible bidder after due advertisement of the letting of any contract. The work shall proceed, so far as practicable, simultaneously in different portions of the county, so that all portions of the county may enjoy the benefits of the same as soon as possible.

1920, XXXI, 1025.

(1822) § 34. **Bonds of Highway Commission.**—The members of the said Commission shall enter into bond, with sureties as provided by law, in the sum of two thousand dollars each, conditioned for the faithful performance of their duties as such Commissioners, the premiums on said bonds to be paid out of said funds.

1920, XXXI, 1025.

(1823) § 35. **Records — Reports.**—The said Commission shall keep books, setting forth all contracts made by it for the construction or repair of said roads, which books shall be open for public inspection at all reasonable times. They shall also present annually to the Circuit Court of Newberry County an itemized statement of all funds received and discharged by them, which report shall be a part of the records of said Court.

1920, XXXI, 1025.

(1824) § 36. **Interest on Deposits.**—The interest accruing on the funds arising from the sale of the said bonds while deposited in the banks of Newberry County as hereinabove provided, shall be by the Treasurer of said county applied to the payment of the first year's interest payment on the said bonds, so far as it shall go, and any balance which may accumulate thereafter on such account shall be added to the principal of the said sum to be expended by the said Commission as hereinabove provided.

1920, XXXI, 1025.

(1825) § 37. **Election Expenses.**—The expense of conducting the election on the issuance of said bonds shall be paid out of the current funds of Newberry County upon the warrant of the Supervisor and Board of County Commissioners.

1920, XXXI, 1025.

(1826) § 38. **Members of Commission Not to Take Contracts.**—No member of said Highway Commission shall take a contract to furnish labor or material for the public improvements authorized under this Article.

1920, XXXI, 1025.

OCONEE COUNTY.

(1827) § 1. **County Advisory Board—Appointment and Term of Office.**—The Governor shall, upon the recommendation of a majority of the Legislative Delegation from Oconee County, appoint two discreet, competent men from Oconee County, who, with the County Supervisor, shall compose a Board to be known as the County Advisory Board, of which the Supervisor shall be Chairman; they shall each hold office for the term of two years and until their successors shall have been appointed and qualified, unless sooner removed upon the recommendation of a majority of the Legislative Delegation.

1914, XXVIII, 624; 1919, XXXI, 27.

(1828) § 2. **Duties and Powers.**—That it shall be the duty of the said County Advisory Board to meet with the County Supervisor at Walhalla the first Friday in each month and audit with him all claims against the county and as often as may be necessary for the purpose of laying out the work and devising plans for the prosecution of the important work of the county, and for the selection of the officers and employees working under the supervision of the Supervisor, and no selection of any officer or employee

shall be effective and binding without the approval of the County Advisory Board, neither shall any important or expensive work be undertaken without the approval of the County Advisory Board.

1914, XXVIII, 624; 1919, XXXI, 27.

(1829) § 3. **Compensation.**—That the members of the Advisory Board shall be paid for their services five dollars per day for necessary service, not to exceed thirty days in one year.

1919, XXXI, 27.

(1830) § 4. **Special Provisions as to County Advisory Board of Oconee County.**—In Oconee County in addition to the duties devolved by law upon such Board, the said Advisory Board shall have joint control of the county chaingang and Poor House Farm, and shall prepare and keep a record of the roads, with the number of miles of each highway, and the number of bridges over ten feet in length on each of said roads; and shall also furnish a certified statement of the receipts and expenditures of all the county officers, and shall transmit the same to the members of the General Assembly not later than ten days after the opening of the session thereof.

Civ. '12, § 941; 1903, XXIII, 26; 1919, XXXI, 27.

ORANGEBURG COUNTY.

(1831) § 1. **Orangeburg County Highway Commission Created.**—That there is hereby created a Commission for Orangeburg County, to be known as "The Orangeburg County Highway Commission."

Civ. '12, § 1089; 1910, XXVI, 688; 1912, XXVII, 656; 1916, XXIX, 815; 1918, XXX, 840; 1919, XXXI, 281; 1921, XXXII, 73.

(1832) § 2. **Personnel — Term — Organization — Vacancies.**—The said Orangeburg County Highway Commission shall be composed of five citizens, who are qualified electors of Orangeburg County. The said Commissioners shall hold their office for four years and until their successors are elected and qualified, and shall be subject to removal by the Governor upon recommendation of a majority of the delegation from Orangeburg County in the General Assembly, and the majority of the said Commission shall select one of their number as Chairman to preside over all meetings of the said Commission, and a Vice Chairman to preside in the absence of the Chairman. All vacancies in said Commission shall be filled by the Governor upon the recommendation of a majority of the Orangeburg delegation in the General Assembly.

1921, XXXII, 73.

(1833) § 3. **Bond—Compensation.**—The Orangeburg County Highway Commission, created and appointed under the provisions of this Article, shall each give bond in the sum of five thousand (\$5,000.00) dollars, conditioned in usual form, to be approved by the Clerk of Court and filed with the Secretary of State, before he shall be commissioned by the Governor and qualified to act. Each Commissioner shall receive as compensation the sum of four hundred (\$400.00) dollars per annum, and ten cents

a mile attending all meetings of the said Commission, payable monthly, out of the fund specifically appropriated for their expenditure.

1912, XXVII, 656; 1916, XXIX, 815; 1918, XXX, 840; 1919, XXXI, 281; 1921, XXXII, 73.

(1834) § 4. Clerk—Bond—Duties—Compensation—Attorney—Reports of Commission.—The Orangeburg County Highway Commission shall select a Clerk for such term as they may agree upon, not to exceed two years, who shall keep the minutes of all meetings and perform such duties as may be provided by law, and required of him or her by the Orangeburg County Highway Commission for Orangeburg County. He or she shall execute a bond in favor of the county in the sum of two thousand (\$2,000.00) dollars, to be approved, recorded and filed as herein provided for the Commissioners. He or she shall be required to give so much of his or her time to the work of the said Commission as may be required of him or her by the said Commission, and to receive such salary as the said Commission may fix, not to exceed nine hundred (\$900.00) dollars per annum. The Orangeburg County Highway Commission shall also select a County Attorney, to advise with them on all matter connected with the county government, and to perform such duties as are now provided by law or may be required of him or her by the said Commission. His or her salary shall be fixed by the said Commission, but it shall not exceed three hundred (\$300.00) dollars per annum. The Orangeburg County Highway Commission shall report annually to the Legislative Delegation on or before the first day of January of each year on the physical and financial condition of the county. They shall make such recommendations for legislation as will, in their opinion, reduce expenses, or cause more economical or efficient conduct of services in any department of the government in the county, and to recommend any readjustment of salaries, fees or compensation allowed the officials of the county as will prove more equitable and promote economy, and a copy of such report shall be filed with the Clerk of Court.

1912, XXVII, 656; 1916, XXIX, 815; 1918, XXX, 840; 1919, XXXI, 281; 1921, XXXII, 73.

(1835) § 5. Duties and Powers of Commissioners—Engineer—Vouchers.—The duties of the Orangeburg County Highway Commissioners shall be to make contracts and expend all funds for the construction, building and permanent improvement of the roads, bridges and culverts of the said county, especially appropriated or raised therefor, together with their proper maintenance. They shall have full power and authority to make such contracts as in their discretion may be necessary to carry out the purpose of this Article. The Orangeburg County Highway Commission shall have charge of the fiscal and financial affairs of the county, and such powers, duties and responsibilities as may be now or hereafter provided by law and required and expected of County Commissioners, and they shall adopt such rules and regulations as they deem best for the management of affairs and change the same from time to time and perform such other duties as may be within their jurisdiction and not in contravention with law and the special provisions of this Article. Such rules and regulations

when so adopted, shall be binding upon the members of the Orangeburg County Highway Commission. They may employ any person whose services may be required, at compensation to be fixed by said Commission, and shall employ an engineer, who shall be known as the Highway Engineer of said county, with such superintendents and assistants as may be deemed advisable, who shall be skilled and experienced in scientific and practical permanent road and bridge construction, and who shall be paid from the funds in their hands, such salaries as may be fixed by said Commission with due regard to the economical administration of said funds, but no salary of any party employed by the Orangeburg County Highway Commission shall exceed two thousand (\$2,000.00) dollars per annum: *Provided*, That the Commissioners shall not employ in any capacity any person related by blood or marriage to any member of the Commission within the sixth degree: *Provided, further*, That the Commission may accept the services of road experts tendered by the Federal Government. They shall have full power and authority to draw warrants upon the County Treasurer against the funds appropriated and for the purpose appropriated in such amount and in such installments as they may deem necessary, such warrants to bear the signature of at least three members of the Orangeburg County Highway Commission. No warrant shall be so drawn unless accompanied by a statement duly itemized under oath of the payee of said warrant that the account for services or material furnished is just and true, owing and unpaid. It shall be their further duty to apportion township road funds specially appropriated among the various townships, according to mileage of roads of the respective townships.

1912, XXVII, 656; 1916, XXIX, 815; 1918, XXX, 840; 1919, XXXI, 281; 1921, XXXII, 73.

(1836) § 6. County May Borrow.—The Orangeburg County Highway Commissioners are hereby authorized to borrow, in any year, upon the credit of the county for county purposes, and for any townships in the county, an amount of not exceeding eighty (80) per cent. of the probable available funds for the county and the townships to pay off claims of the county and the townships, and to pledge the taxes, commutation tax and available funds of the county and the townships therefor.
XXXII, 73.

(1837) § 7. State and Federal Aid.—The Orangeburg County Highway Commission hereby created is authorized to co-operate with the State Highway Department or other equivalent body that may now or hereafter be created for the State of South Carolina, in such manner as may be necessary for the purpose of securing to Orangeburg County the advantage of participation in any funds that may be apportioned for road construction to the State of South Carolina by the government of the United States or the State of South Carolina.

1921, XXXII, 73.

(1838) § 8. Quarterly Reports.—The Orangeburg County Highway Commission shall, at the end of each quarter of each year succeeding their Commission, make a full report of its transactions during that quarter, including an itemized statement of the moneys received and disbursed for whatever purpose, said report to be filed with the Clerk of Court for said county, and to be submitted by the Clerk to the Circuit Judge presiding at the next succeeding term of the Court of General Sessions for said county, and by him submitted to the Grand Jury for investigation. The Grand Jury shall make an examination of the books, papers and accounts, and the work of the said Commission as now required by law to be made of the county officers, and the said Commission shall have the said report published each quarter once in the newspaper that has the largest circulation in the County of Orangeburg.

1921, XXXII, 73.

(1839) § 9. Classification of Roads.—The Orangeburg County Highway Commission shall divide or classify all of the roads and highways in the county in two classes, to wit: County highways and township roads. The county highways shall be the roads and highways in the county of which lead most directly from the Courthouse to the towns in the county, and from town to town, and from the Courthouse and towns in the county to the county line in the direction of a town in an adjoining county. All of the roads of the county that come within this classification are designated as county highways. All of the roads within the county not within this classification shall be designated as township roads.

1912, XXVII, 656; 1916, XXIX, 815; 1918, XXX, 840; 1919, XXXI, 281; 1921, XXXII, 73.

(1840) § 10. Improvement of Roads.—It is the purpose of this Article to enable the Orangeburg County Highway Commission to have absolute control of the affairs and management of the county and to permanently construct, improve and maintain, as far as the funds will permit, first of all the main highways and thoroughfares of the county of Orangeburg throughout the entire county, or from county line to county line, so as to give each section of the county, as far as possible, a permanent highway over its main arteries of travel, and after this is done the other public highways of said county, according to their importance and amount of travel.

1921, XXXII, 73.

(1841) § 11. Location of Roads — Condemnation.—The Orangeburg County Highway Commission shall locate or relocate any of the highways of the said county in accordance with the scheme herein set forth so far as the same is to be reconstructed or surfaced, so as to make a permanent roadway, as far as possible and practicable, with due regard to distance and grade, and shall have full powers to condemn land and acquire rights of way, whether for construction or for road material for surfacing, in the manner authorized by law to condemn lands and acquire rights of way, and in such condemnation proceedings the jury of condemnation may assess benefits to the land so condemned as well as damages, which damages shall be paid out of the funds in the hands of said Commission.

1921, XXXII, 73.

(1842) § 12. Method of Road Building—Letting of Contracts—Use of Chaingang.—The Orangeburg County Highway Commission may build any section of road or roads, or any entire highway herein referred to, by contract or with the chaingang of said county, or with hired labor, under the supervision and direction of the Highway Engineer, who shall be charged with the general oversight and supervision of all roads so constructed and improved, due regard being had to the nature and amount of traffic over said roads, and in said construction necessary to withstand said traffic, and the said Commission shall have the right to discharge, at any time, any employee whose services shall be unnecessary or shall not be satisfactory to the Highway Engineer or to the Commission. Before letting any contract for work, material or supplies, it shall advertise for bids, and shall let the same to the lowest responsible bidder, or may reject any and all bids. In all cases where contracts are not let, and the roads are to be constructed and improved under the personal direction of the Highway Engineer or engineers and employees, the various chaingangs of the said county are hereby placed at the services of the Orangeburg County Highway Commission under their supervision, and the said Commission shall have the authority to appoint all necessary captains, guards and foremen of said chaingangs, with authority to discharge the same when their duties are being neglected or for other just causes. The chaingangs of said county are to be maintained out of the funds in the hands of the Orangeburg County Highway Commission specifically apportioned or placed in the hands of said Commission for expenditures.

1912, XXVII, 656; 1916, XXIX, 815; 1918, XXX, 840; 1919, XXXI, 281; 1921, XXXII, 73.

(1843) § 13. Office Hours of Clerk.—The Orangeburg County Highway Commission shall keep and maintain an office at the county seat to be used by said Commission and Engineer, in which they shall keep all records pertaining to their respective offices. They shall require the Clerk to keep this office open daily, except Sundays, from nine (9) a. m. to one (1) p. m., and from two (2) p. m. to five (5) p. m., and for a longer time as shall be necessary to transact the daily business of the Commission.

1921, XXXII, 73.

(1844) § 14. Office Equipment.—The Orangeburg County Highway Commission is hereby authorized and empowered to purchase such equipment and office furniture as shall be necessary to equip and maintain said office not to exceed five hundred (\$500.00) dollars.

1921, XXXII, 73.

(1845) § 15. Township Commissioners — Election — Term — Vacancies — Compensation.—There is hereby created the office of Township Commissioner, one for each township in Orangeburg County, who shall be elected on each even year in the general election from and by qualified electors of each township, and who shall hold office for a term of two years, and until the election and qualification of his successor. All vacancies in said office shall be filled by the Governor upon the recommendation of a

majority of the Orangeburg Delegation in the General Assembly: *Provided*, That the Governor shall appoint such Township Commissioners as aforesaid, upon the recommendation of a majority of said delegation, who shall hold their office only during the years 1921 and 1922, and until their successors shall have been elected and qualified. They shall each receive a salary of one hundred (\$100.00) dollars a year.

Civ. '12, §§ 1092, 1903; 1910, XXVI, 689; 1912, XXVII, 656; 1916, XXIX, 815; 1918, XXX, 840; 1919, XXXI, 281; 1921, XXXII, 73.

(1846) § 16. Duties—Bond—Vouchers—Expenditures.—It shall be the duty of the said Township Commissioners to maintain their township roads and bridges where the length of such bridge does not exceed twenty feet, with funds specifically appropriated therefor. They shall be entitled to expend for said purpose also all the commutation tax collected in their several townships. They are authorized and empowered to make contracts with citizens in their respective townships, to the extent of the funds in their hands, for the systematic maintenance and upkeep of the roads under their supervision. They are authorized and empowered to provide for the systematic dragging of the roads and to accept all offers, under their supervision, of persons or associations, for the use of this system of road maintenance, and to expend for such purposes whatsoever sums they may deem necessary to the extent of the funds in their hands. They shall file with the Clerk of Court for the County of Orangeburg a bond of five hundred (\$500.00) dollars each, in favor of Orangeburg County, in an approved surety company, the premium of which shall be paid out of the funds in their hands, for the faithful discharge of their duties. They shall draw all warrants on the County Treasurer for the expenditure of the funds apportioned to them, which shall be countersigned by at least three members of the Orangeburg County Highway Commission, and they shall, in no event, exceed by their contracts or expenditures the funds apportioned to them. Any unexpended funds shall be retained to their credit for road purposes to be expended by them in each succeeding year: *Provided*, That in all cases where expenditure or contracts let is \$50.00 or more, the said Commissioners shall advertise for bids and shall let the same to the lowest responsible bidder, or may reject any or all bids; said advertisement shall be for at least ten days in a newspaper published in and having the largest circulation in the county.

1921, XXXII, 73.

(1847) § 17. Approval of Claims.—All claims against the county and township funds shall be made out and approved as now required by law, and submitted to a meeting of the Orangeburg County Highway Commission, and before payment shall be approved of by a majority of the members of the Commission.

1912, XXVII, 656; 1916, XXIX, 815; 1918, XXX, 840; 1919, XXXI, 281; 1921, XXXII, 73.

(1848) § 18. Rural Policemen.—The Governor, upon the recommendation of the Orangeburg Highway Commission, shall appoint from the registered electors of said county six able-bodied men of good moral

character, known to be men who are not addicted to the use of alcoholic liquors, and shall commission them as Rural Policemen for the term of two years, subject, always, to removal by the Governor upon petition of a majority of the members of the said Orangeburg County Highway Commission: *Provided*, That the Sheriff of said county shall have the right to suspend any of said Policemen for cause: *Provided, further*, That it is not the purpose of this Section, in any way, to interfere with the present terms of office of the several Rural Policemen, but this Section shall govern in recommending and appointing their respective successors in office.

1921, XXXII, 73.

(1849) § 19. **File Book of Claims.**—The Commissioners shall keep a book called “File Book of Claims,” in which shall be entered all claims as presented. This book shall be printed and ruled, with appropriate columns, showing: (1) Claim number; (2) date of filing; (3) by whom presented; (4) to whom claim belongs; (5) nature of claim; (6) date of action; (7) amount of claim; (8) amount allowed; (9) amount disallowed; (10) item number in Supply Act to which chargeable; (11) remarks. The number of the claim shall not be entered upon the book until the claim shall have been allowed and entered on the “Claims Classification Book,” hereinafter provided for, and shall then be made to conform to the number thereon. A separate claim must be filed for each account chargeable to any particular item in the County Supply Act or to any subdivision thereof. The principal of each note for money borrowed in anticipation of the collection of taxes shall be paid directly by the County Treasurer, the said Treasurer holding said note as his voucher for the principal thereof and the lender filing claims with Commissioners in the usual form for the interest, but not for principal, except where a specific appropriation shall have been made for the payment of a particular note.

1915, XXIX, 562.

(1850) § 20. **Book “Classification of Claims Allowed.”**—The Commissioners shall keep a book called “Classification of Claims Allowed,” in which shall be entered all claims allowed in numerical order. This book shall be printed and ruled with appropriate columns, showing: (1) Line number; (2) claim number; (3) warrant number; (4) item number in Supply Act to which chargeable; (5) claimant; (6) nature of claim; (7) amount allowed; (8) amount paid; (9) date paid; (10) amount unpaid; (11) columns headed and numbered, “Item Number 1” and upward, with a tabulated statement at head of each column showing: (a) The amount of the appropriation made for the particular item; (b) the amount of claims allowed to date chargeable to such item; (c) the balance of the appropriation subject to future claims which may be allowed, or the balance of over-allowed; (12) total, with similar tabulation. Within the first ten days of each and every month or quarter, the Commissioners shall publish one time in a newspaper of the county selected by them as calculated to give full publicity thereto, a statement, under their hands, attested by the Clerk of the Board, and approved by the County Auditor, showing the exact financial condition of each item at the end of the preceding month or

quarter, as the same may appear from this book, Subdivision 11, briefly describing the item by title as in the County Supply Act. The advertising charges therefor shall not exceed four (\$4) dollars for each insertion.

1915, XXIX, 562.

(1851) § 21. Book of "Bills Payable."—The Commissioners shall keep a book of "Bills Payable," in which they shall enter, as and when made, all notes for loans in anticipation of collection of taxes. The entries thereon shall show: (1) Note number; (2) date of note; (3) date due; (4) payee; (5) amount; (6) rate of interest; (7) date paid. Said notes shall be numbered in the order in which they may be executed.

1915, XXIX, 562.

(1852) § 22. Books—How Kept.—All entries, footings and amounts carried forward in the books hereinbefore provided for, shall be made in ink. Each page shall show perfect balancing of all columnar additions, and of all footings carried forward.

1915, XXIX, 562.

(1853) § 23. Diversion of Funds Prohibited—Contracts in Excess of Appropriation—Liability on Bond.—The Commissioners are hereby prohibited from drawing any warrant upon the County Treasurer to be paid out of any of the several funds specifically appropriated for any other purpose other than that for which the same shall have been so appropriated, and it shall be unlawful for the County Treasurer to pay any such inhibited warrant. It shall be unlawful for the Commissioners, or any member thereof, to create, by contract, express or implied, any obligation against the county which, with the obligations then existing and chargeable to any particular item of appropriation, shall exceed the amount specifically appropriated therefor. Should the Commissioners or any member thereof, violate the provisions of the paragraph next preceding in this Section, the claim resulting therefrom shall be declared null and void as against the county, and the officer offending shall be held responsible to the claimant therefor upon his official bond.

1915, XXIX, 562.

(1854) § 24. Suspension of Payment—Claims in Excess of Appropriation.—That whenever the appropriation for any specific item of county expenses, as provided for in the County Supply Act of any year, shall have been exhausted by warrants of the Commissioners upon the County Treasurer, the payment of further claims chargeable to the amount of such items shall be immediately suspended. Such claims in excess of the appropriation, after having been audited, allowed and entered upon the book of "Classifications of Claims Allowed," for the year to which they belong, shall be transferred in red ink to the same book for the succeeding year, numbered with the claims for that year; the number endorsed upon said claims in red ink, the amounts distributed in the item column for past indebtedness; and in the column headed "Nature of Claims," shall be entered, "Past Indebtedness of 19—, No. —." Upon the book from which the claim shall have been transferred, opposite the claim, shall be noted, "Transferred to 19—, No. —." In the County Supply Act for

the succeeding year these claims shall be provided for by an appropriation in the item "Past Indebtedness Claims," wherever they shall be classified by numbers, nature and amount. A certified schedule of these claims, itemized and classified, shall be furnished by the Commissioners to the County Delegation during the first week in January of every year. At the annual settlement with the Comptroller General all cash balances to the credit of the revenue of the county for all county purposes and all uncollected assets, for the fiscal year to which said past indebtedness claims belong, shall be passed to credit of the revenue of the county for all county purposes for the fiscal year to which said past indebtedness claims shall have been transferred, to the extent of the amount of the same and of any other indebtedness of the preceding year provided for in the budget for the succeeding year; the balance, if any, shall be deposited by the County Treasurer in some reliable savings institution, at interest, for the purpose of accumulating a fund with which to put the county upon a cash basis: *Provided*, That this Section shall not apply to obligations incurred in violation of Section 23, but is intended to apply only to such obligations of the county as are not within the control of the Commissioners.

Civ. '12, § 1094; 1915, XXIX, 562.

(1855) § 25. File Book of Claims.—Every claim against the county must be entered in "File Book of Claims" for ten days before it can be paid. The Clerk of the Board shall notify the County Auditor ten days before the Board meets to pay claims, and the Auditor or his deputy shall thereupon make a notation in the "File Book of Claims" over his signature on the line immediately following the last claim filed, and no claim thereafter filed can be paid at the ensuing meeting of the Board.

1915, XXIX, 562.

(1856) § 26. Form for Claims.—The Commissioners shall obtain and keep on hand a supply of forms upon which all claims against the county shall be made as now required by law, and upon which shall also appear a certificate of the members of the Board to sign to the effect that the claim is either for a salary or fees allowed by law, and that claimant has filed all reports required by law, or for work, material or supplies furnished the county, and that he personally has examined the work, or knows that the material or supplies were furnished, and that the claim is just and reasonable and a proper charge against the county; and also a certificate for the County Attorney to sign, to the effect that the claim has been entered in "File Book of Claims," as required by law, is properly itemized and verified, authorized by law or provided for in the County Supply Act, and properly certified to by one of the Supervisors.

1915, XXIX, 562.

(1857) § 27. Advertisement — Implements — Supplies.— Every three months the Commissioners shall advertise for at least three weeks in at least three issues of one or more of the newspapers published in the City of Orangeburg for bids, based on delivery at the Court House, unless otherwise specified, for all implements and supplies of whatever kind may be desired by the county and each and every officer thereof,

including all supplies, implements, equipment and all purchases whatsoever for the Commissioners, Sheriff, Clerk of Court, Treasurer, Auditor, Judge of Probate, Magistrates, for Poor House, chaingang, roads and bridges, and for every other purpose, which advertisement shall set forth the articles and approximately the amounts thereof to be purchased, and the contracts of purchase shall be awarded to the lowest responsible bidder for the period of three months: *Provided, however*, In case of emergency the Commissioners may make purchases for the county where the cost thereof does not exceed twenty-five (\$25.00) dollars, and for such purchase a majority of the Supervisors shall certify on the claim therefor for the necessity therefor: *And provided, further*, In case of emergency an advertisement, as hereinbefore provided for, may be inserted at any time, but all contracts for purchases of supplies shall be in accordance with the provisions of this Section, and no bill, account or claim of any kind whatsoever against the county shall be paid unless previously contracted for by such competition or by the Commissioners in cases of certified emergency.

1915, XXIX, 562.

(1858) § 28. How Money Borrowed.—Should the Commissioners find it necessary to borrow money for any fiscal year for county expenses in advance of the collection of taxes therefor, as provided and authorized by law, they shall insert an advertisement in a county and State newspaper for at least three weeks in at least three issues thereof, setting forth the amount wanted and when the same will be repaid, and asking for competitive bids on terms and the rate of interest, and all moneys borrowed shall be at the best terms and lowest rate of interest the Board can get.

1915, XXIX, 562.

(1859) § 29. Apportionment of Funds.—It is hereby made the duty of the Commissioners to so apportion the appropriations for the maintenance of the chaingangs, for roads and bridges and other similar appropriations, as to cover the total expenses of the county for these items for the entire fiscal year for which they may be respectively appropriated.

1915, XXIX, 562.

(1860) § 30. Commutation Tax in Orangeburg County.—All male persons in Orangeburg County physically able and liable to perform road duty between the ages of twenty-one and fifty years, inclusive, except ministers of the gospel actually in charge of congregations or teachers employed in the public schools, shall be required annually to pay a commutation tax of three (\$3.00) dollars on or before the first day of March of each year, which tax must be paid by the person subject to road duty to the County Treasurer, and on payment of which he shall receive a receipt showing the date, amount, purpose for which it is paid, said receipt to be signed by the person collecting said tax.

1919, XXXI, 231.

(1861) § 31. Lists for Road Tax—Collection—Disposition of Commutation Tax and Fines.—Each Township Commissioner shall, immediately upon his appointment or on or before the 15th day of February of each

year hereafter, make a canvass of his township and list the names of all persons thereon who are liable for the commutation road tax. He shall prepare an alphabetical list of the same and file it with the County Highway Commission on or before the first day of March in each year. The Clerk to the County Highway Commission shall compare this list with the County Treasurer's list of persons who have paid the commutation road tax in the township for each year, and shall report back to the Township Commissioner the names of those who have not paid the tax, and he shall bring action against them before a Magistrate for nonpayment of road tax, and the fine collected shall be included in the special road funds for the township in which collected.

Civ. '12, § 1091; 1910, XXVI, 688; 1912, XXVII, 656; 1916, XXIX, 815; 1918, XXX, 840; 1919, XXXI, 281.

(1862) § 32. Notice.—The County Treasurer is directed and required to give notice, in the newspaper in which Sheriff's advertisements are published, once a week for four weeks, as to the time and place and person to whom the said commutation tax is payable.

1919, XXXI, 231.

SALUDA COUNTY.

(1863) § 1. Road Districts in Saluda County.—That hereafter Saluda County shall be divided into road districts as follows: No. 1 to be composed of the following school districts: Merchant, Butler, Suddath, Emory, Pine Grove, Richland, Sumter, Good Hope, Ridge Spring, South Norris and Willow Branch. No. 2 to be composed of the following school districts: Ward, Watson, Bethlehem, Oak Grove, Fruit Hill, Plum Branch, Trinity, Eulala, Celestia, Cedar Grove and Fairfax. No. 3 to be composed of the following school districts: Union, Hope, Mt. Enon, Zoar, Higgins, Hickory Grove, Enterprise, Bethany, Indian Creek, Saluda, Centennial and Eva. No. 4 to be composed of the following school districts: Pleasant Grove, Holley, Delmar, Fairview, Tillman, Sardis, Clyde, Providence, Batesburg, Monetta, Corinth and Cool Springs.

1919, XXXI, 228; 1920, XXXI, 1123.

(1864) § 2. County Commissioners.—The Governor shall appoint upon the recommendation of the Legislative Delegation of the said county, four members of the Board of County Commissioners, said members to be appointed from each road district and to continue in office for one year and until their successors are appointed and qualified.

1912, XXVII, 655; 1919, XXXI, 228; 1920, XXXI, 1123; 1921, XXXII, 151.

(1865) § 3. Duties of County Commissioners.—The member of the Board in each district shall be responsible for the upkeep and repair of the public roads within his district, and the expenditure of all commutation taxes collected therefrom and one-half of the special levy for road purposes, and shall have power to appoint men from the various school districts to oversee and keep up roads of said districts.

1918, XXX, 711; 1919, XXXI, 228.

(1866) § 4. Compensation.—Each member of said Board shall receive as compensation for their services two hundred dollars per year.

1912, XXVII, 655; 1914, XXVIII, 623.

(1867) § 5. Powers of County Commissioners—Contracts.—That each member of the said Board shall have equal voice in the management of the financial and business affairs of the county, and no contract for any material, supplies, labor or anything whatsoever shall be binding upon the county unless indorsed by at least a majority of said Board.

1917, XXX, 245; 1918, XXX, 711; 1919, XXXI, 228.

(1868) § 6. Office of Subcommissioner Abolished.—That the office of Subcommissioners is hereby abolished, and all the duties and powers belonging to them by law are hereby conferred upon the members of the said Board herein provided for.

1912, XXVII, 655.

(1869) § 7. Pay of Clerk.—That the Clerk of the County Board of Commissioners for Saluda County shall receive as payment for his services the sum of one hundred and seventy-five dollars per annum, payable quarterly.

1914, XXVIII, 623.

(1870) § 8. Commutation Road Tax in Saluda County.—All able-bodied male persons from the age of twenty-one (21) to fifty-five (55) years, both inclusive, in the County of Saluda, shall be required to pay a commutation tax of ten (\$10.00) dollars, which shall be levied and collected at the same time and in like manner as all other taxes, except as hereinafter provided.

Civ. '12, § 2096; 1911, XXVII, 187; 1912, XXVII, 844; 1913, XXVIII, 171; 1915, XXIX, 415; 1916, XXIX, 913; 1917, XXX, 303; 1918, XXX, 758; 1920, XXXI, 933.

(1871) § 9. Road Overseers—Performance of Road Duty—Use of Commutation Tax.—It shall be the duty of the Commissioner in each of the four road districts in Saluda County, on or before the 15th day of March, 1920, to divide their public highways into sections, and to appoint overseers for each section, and commission said overseers for not exceeding two years, to fill all vacancies therein. That each of the said overseers, after their appointment, and before the 1st day of April in each year, shall give notice to the persons liable to road duty upon their section of the public highway of the time and place for all persons to meet who desire to work upon the roads in lieu of the payment of the commutation tax. That all persons who desire to work upon the public highway in lieu of the payment of the commutation tax shall meet at the time and place designated by the said road overseer of their section, and shall provide themselves with such tools as the overseer may designate. That all persons who do at least five days' work upon the public highways of the county under the supervision and direction of a duly appointed overseer shall receive from the said overseer a certificate made under oath that the holder of the said certificate has performed five days' labor or its equivalent during the year upon the public highway under the direction of the overseer signing same, and such certificate, when countersigned by the Road Commissioner of that district, shall be receivable and acceptable to the County Treasurer in the payment of the commutation tax

of the person to whom the certificate is granted. That two of the five days' work above mentioned must be completed by the fifteenth day of April in each year, and another two days by the first day of September in each year, and the remaining day by the 15th day of December in the said year: *Provided*, That all money collected under this Article shall go to the credit of the road district from which it was collected and be expended by the Road Commissioner in that district, and the said Commissioner in expending the same shall place it upon the road or roads in the immediate vicinity from whence it was collected, in so far as it is practicable so to do.

1912, XXVII, 844; 1913, XXVIII, 171; 1915, XXX, 415; 1916, XXIX, 913; 1917, XXX, 303; 1918, XXX, 758; 1920, XXXI, 933.

(1872) § 10. **Use of Horsepower—Substitutes.**—That in the working of the roads under the provisions of this Article it shall be in the discretion of the Commissioner of each road district to accept horsepower, either in machinery or stock, to work upon such terms and conditions as the Commissioner may determine: *Provided*, That nothing in this Article shall be construed as prohibiting any person liable to road duty from furnishing a substitute who will be acceptable to the overseer and the Road Commissioner of the district: *Provided, further*, That any person who performs labor upon the public highway for part of the time required under Section 9, and thereafter desires to pay the commutation tax, shall be credited for the number of days so worked at the rate of two (\$2.00) dollars per day.

1912, XXVII, 844; 1913, XXVIII, 171; 1915, XXIX, 415; 1916, XXIX, 913; 1917, XXX, 303; 1918, XXX, 758; 1920, XXXI, 933; 1921, XXXII, 121.

(1873) § 11. **Certificates for Labor Performed.**—That the certificates provided for in Section 9 of this Article shall be made upon a printed form to be furnished by the Supervisor, which shall be uniform in size and convenient for filing. That the County Treasurer shall keep on file in his office all such certificates accepted by him and which shall be filed in a systematic order in his office.

1912, XXVII, 844; 1913, XXVIII, 171; 1915, XXIX, 415; 1916, XXIX, 913; 1917, XXX, 303; 1918, XXX, 758; 1920, XXXI, 933.

(1874) § 12. **Duty of Commissioners to Swear Out Warrants for Violation Hereof.**—It shall be the duty of the County Board of Commissioners or any members thereof, to go before a Magistrate of said county and swear out a warrant for the arrest of any person, or persons, for the violation of any of the provisions of this Article, and it shall be the duty of said Board of Commissioners to prosecute said person as herein provided.

1915, XXIX, 415; 1917, XXX, 303.

(1875) § 13. **Penalty for Failure to Work—No Substitute to Be Under Fifteen.**—Any person duly warned to perform the labor herein required who shall fail or neglect to perform the same shall be deemed guilty of a misdemeanor, and, upon conviction, shall pay a fine not exceeding one hundred dollars, or be imprisoned on the county chaingang for not exceeding thirty days: *Provided*, That no substitute under fifteen years of age and fully able to perform the labor required shall be accepted.

1915, XXIX, 415; 1917, XXX, 303.

(1876) § 14. **Procedure in Case of Disability—Proviso.**—That persons liable to road duty under this Article may be excused for disability: *Provided*, That any person who claims disability hereunder must appear before the County Board of Commissioners at one of their meetings prior to March 10th in each year and establish to the satisfaction of said Board such disability, whereupon said Board shall issue an order, under the hand of the Supervisor and seal of his office, attested by the Clerk of the Board, excusing such a one from road duty for the then current year: *Provided, further*, That no person shall be excused on the ground of disability who is able to perform, and does perform, manual labor.

1915, XXIX, 415; 1917, XXX, 303.

(1877) § 15. **Eight Hours a Day's Work.**—That eight hours' actual work shall constitute a day's work under this Article.

1915, XXIX, 415; 1917, XXX, 303.

(1878) § 16. **Hands to Work Near Their Homes.**—It shall be the duty of the County Board to assign hands to the roads nearest their respective homes, except in cases where such assignment is not practicable.

1915, XXIX, 415; 1917, XXX, 303.

(1879) § 17. **Elections Provided for Special Road and Commutation Tax for School Districts in Saluda County—Date of Election.**—That upon a written petition or request of at least one-fourth of the resident electors of any school district in Saluda County, and a like proportion of the resident freeholders of the age of twenty-one years therein, as shown by the tax books of the county, being filed with the County Board of Commissioners of Saluda County asking for an election in the school district named therein, and stating the rate of the tax levy proposed and the amount of the commutation tax to be required in lieu of labor, the said County Board of Commissioners shall order the Board of Trustees of said school district to hold an election at some place within the school district named by said Board of Commissioners, after giving notice of the time and place thereof for at least two weeks in some newspaper published within the county, and by posting the notice thereof in at least three public places within the school district for such length of time. In case no newspaper is published within the county, then the posting of said notice shall be sufficient: *Provided*, That the said election shall be held on the first Saturday of May every two years. In case the trustees for any reason should fail to hold said election on the date named, then the County Board of Commissioners of Saluda County may appoint managers and have such election held not later than the first day of June every two years.

1917, XXX, 301.

(1880) § 18. **Who Entitled to Vote.**—At such elections only such electors as reside in such school district, who return real or personal property for taxation, and who exhibit their tax receipts and registration certificates as required in general election, shall be allowed to vote.

1917, XXX, 301.

(1881) § 19. **Managers—Appointment—Duties.**—For such election the Board of Trustees shall appoint the managers, and in case they fail, the Board of County Commissioners shall appoint the same, who shall tabulate the vote, declare the result, and file the same with the County Auditor of said county within ten days after such election.

1917, XXX, 301.

(1882) § 20. **Form of Ballot—Tax Levy—Collection—Disbursement—**
Proviso.—At such election each elector favoring the proposed levy of tax shall cast a ballot with the words plainly written or printed thereon, "For levy of..... mills and dollars commutation tax, Yes," and each elector opposed to said levy shall cast a ballot with the words plainly written or printed thereon, "For levy of mills and dollars commutation tax, No:" *Provided*, That if a majority of the votes cast at such election be in favor of such levy, the Auditor shall thereafter enter the levy upon his tax duplicate, together with the amount of the commutation tax against those liable therefor, and the County Treasurer shall collect the same as other taxes are now collected, and keep the proceeds of such levy and commutation tax as separate fund to be expended under the direction of said school trustees and paid out upon warrants drawn upon said Treasurer by said trustees for road equipment or work upon the public roads of the school district for which it is levied: *Provided, further*, That such levy and commutation tax shall continue for the space of two years.

1917, XXX, 301.

(1883) § 21. **School Trustees May Borrow Money in Anticipation of Taxes.**—The School Trustees in any of the school districts levying such tax and fixing the commutation tax are authorized and empowered to borrow money in anticipation thereof, and pledge the same for its payment.

1917, XXXI, 301.

(1884) § 22. **Immediately Effective—Operation—Exemption from General Road Law—When Commissioners to Act.**—The provisions of the preceding five Sections shall in no case repeal any existing law unless such levies are made and commutation tax fixed by the elections herein provided for in any such school district: *Provided*, That those school districts voting the special road tax herein provided shall be exempt from the provisions of the general road law for Saluda County only while and for the time such special tax is of force: *Provided, further*, That the County Board of Commissioners shall act in all cases where the school trustees fail or neglect to act.

1917, XXX, 301.

(1885) § 23. **Legislative Delegation of Saluda County May Require Annual Audit of the Books of the County—Payment—Expenses.**—That the Legislative Delegation for Saluda County shall have the power and authority to require the auditing of the books of the various county officers of Saluda County, once each year, if it be desired by such Legislative Delegation that the same be done, and such Delegation is further vested with

the power and authority to employ expert accountants as such Delegation may desire for such purposes, and the expenses incurred by such audits and the employment of such auditor or expert accountant shall be paid by the County Treasurer on a warrant signed by the members of the General Assembly from said county.

1920, XXXI, 1061.

SPARTANBURG COUNTY.

(1886) § 1. County Supervisor of Spartanburg County—Election—Term—Vacancies—Salary—Bond.—That the government of the County of Spartanburg is hereby vested in the Supervisor of said county, who shall be elected on each even year, and whose term of office shall begin on the expiration of the term of office of the Supervisor and County Commissioners now comprising the County Board of Spartanburg County, and he shall hold office for a term of four years and until the election and qualification of his successor, and in the event of his death, resignation or removal from office, the Governor is hereby empowered to appoint his successor upon the recommendation of a majority of the Delegation from said county in the General Assembly, and who shall hold his office until after the next general election and until his successor shall have been elected and qualified. The salary of the Supervisor shall be \$2,000.00 a year, and the said officer shall be bonded in the sum of five thousand dollars in a reputable surety company, approved by the Clerk of the Court of Common Pleas of said county for the faithful performance of his duties; the premium of those bonds shall be paid out of ordinary county funds.

Civ. '12, § 1096; 1908, XXV, 1178, 1184; 1911, XXVII, 65; 1915, XXIX, 222; 1918, XXX, 792; 1920, XXXI, 1001.

(1887) § 2. Powers and Duties—Bridges—Highways—Convicts—Clerk—Expenditures—Apportionment of Road Funds—County Farm.—That said Supervisor shall have general supervision and charge of matters of the county and shall perform such duties as are usually performed by County Boards where not inconsistent with the subsequent provisions of this Article. It shall be his duty to exercise a general oversight over the affairs of the county, wherever the same is not in conflict with the subsequent provisions of this Article. It shall be his duty to let contracts for the building, construction and maintenance of all the bridges of the county, where the cost is over fifty (\$50.00) dollars. It shall be his duty to purchase and keep on hand at all times sufficient material for bridges, culverts or drains and furnish same to the Township Road Supervisors at cost, charging said material to each Township Road Supervisor as it is furnished. There shall be turned over to the County Supervisor by the Sheriff a sufficient number of convicts to operate the County Farm and two for work under the Sheriff about the county buildings, and all other convicts not so needed for the County Farm shall be turned over to the County Highway Commission. The said County Supervisor shall also turn over to the Township Road Supervisors all road machinery and road working tools belonging to the county, distributing same according to

the greatest needs in his discretion; reserving the right to redistribute same at any time. The County Supervisor shall keep an accurate record of the distribution of all machinery and road working tools and shall hold each Township Road Supervisor responsible for such equipment while in his possession. He shall have authority to call on the County Engineer for such professional services as he may from time to time need, and employ such officer and fix compensation when there is no such officer employed by county funds. He shall employ a Clerk to take charge of the clerical duties of his office. He shall make all contracts involving expenditure of county funds for any purpose, except funds for townships, expenditure of such funds to be made only after filing of an itemized, sworn statement, as to the correctness of the amount. It shall be his further duty, and he is hereby required, to apportion township road funds specifically appropriated among the various townships according to mileage of the roads of the respective townships. He shall have exclusive control and management of the County Farm. It shall be his duty to notify each Township Commissioner in writing on the first of each month the balance then appearing to his credit, together with an itemized statement of warrants from that Township Commissioner which were countersigned by the Supervisor during the past month.

Civ. '12, § 1097; 1908, XXV, 1178; 1920, XXXI, 1001; 1921, XXXII, 210.

(1888) § 3. Township Road Supervisors—Election—Term—Proviso for 1920—Salary.—There is hereby created the office of Township Road Supervisor, one for each township in said county, who shall be elected on each even year in the general election from and by qualified electors of each township, and who shall hold office for a term of two years and until the election and qualification of his successor, and in the event of a vacancy in said office, the Supervisor shall appoint, upon a recommendation of a majority of the Delegation from said county in the General Assembly. They shall each receive a salary of four hundred dollars a year.

Civ. '12, § 1100; 1908, XXV, 1178; 1911, XXVII, 66; 1915, XXIX, 222; 1918, XXX, 797; 1920, XXXI, 1001.

(1889) § 4. Powers and Duties—Bond—Expenditures.—It shall be the duty of the said Township Road Supervisors to maintain their township roads and bridges where the cost of such bridges does not exceed fifty (\$50.00) dollars, with funds specifically appropriated therefor. They shall be entitled to expend for said purposes also all the commutation tax collected in their several townships. They are authorized and empowered to make contracts with citizens in their respective townships, to the extent of the funds in their hands, for the systematic maintenance and upkeep of the roads under their supervision. They are authorized and empowered to provide for the systematic dragging of the roads and to accept all offers, under their supervision, of persons or associations, for the use of this system of road maintenance, and to expend for such purposes whatsoever sums they may deem necessary to the extent of the funds in their hands. They shall file with the Supervisor a bond of one thousand dollars each, in an approved surety company, the premium of which shall be paid out of the funds in their hands, for the faithful discharge of their duties. They shall draw all

warrants on the County Treasurer for the expenditure of the funds apportioned to them, which shall be countersigned by the County Supervisor, and they shall in no event exceed by their contracts or expenditures the funds apportioned to them. Any unexpended funds shall be retained to their credit for road purposes to be expended by them in each succeeding year.

Civ. '12, § 1101; 1911, XXVII, 66; 1918, XXX, 292; 1920, XXXI, 1001.

(1890) § 5. Township Tax for Roads in Spartanburg County.—That any township in the County of Spartanburg desiring to levy and collect a one-mill tax for the improvement of the public roads in such township may file with the County Supervisor of Spartanburg County a petition, signed by one-fourth of the qualified electors of said township, praying for an election. The Supervisor shall thereupon order an election to be held in said township at such time as the Supervisor may fix, which shall be conducted under the laws and regulations governing general elections, and if a majority of the qualified electors of said township shall vote in favor of the levy of a one-mill tax, it shall be the duty of the County Auditor to enter said levy upon the tax duplicate, and the County Treasurer to collect the same and pay it out subject to the provisions of this Section: *Provided*, That at least thirty days' notice of such election be given by publication in some newspaper published in the County of Spartanburg: *And provided, further*, That the County Board of Commissioners shall appoint managers to conduct said election, which shall be held at the usual voting precinct in the township, said managers to canvass the vote, declare the result and report same to the County Auditor.

1914, XXVIII, 760.

(1891) § 6. Township Road Supervisors to Expend Fund.—That in case said tax shall be levied and collected, it shall be held by the County Treasurer subject to the warrant of the Township Road Supervisors, and shall be expended for the improvement of roads under the supervision and control of the Township Road Supervisor in the township where levied.

1914, XXVIII, 760.

(1892) § 7. Spartanburg Highway Commission Created.—That there is hereby created a Commission for Spartanburg County to be known as "The Spartanburg County Highway Commission."

1917, XXX, 306.

(1893) § 8. Composition—Term—Removal—Vacancies—Bond.—The said Spartanburg Highway Commission shall be composed of five citizens who are qualified electors of Spartanburg County. The said Commissioners shall hold their office for four years and until their successors are appointed and qualified, and shall be subject to removal by the Governor upon recommendation of a majority of the Delegation from Spartanburg County in the General Assembly and the majority of the said Delegation to nominate the Chairman of said Commission. All vacancies in said Commission shall be filled by the Governor upon the recommendation of a majority of the Spartanburg Delegation in the General Assembly. Each member shall give bond in the sum of ten thousand dollars for the faithful

discharge of his duties, and the Commission may require bonds of its employees, in its discretion, the premiums of all said bonds to be paid from the funds specifically placed in their hands for expenditure.

1917, XXX, 306.

(1894) § 9. Duties of Commissioners—Highway Engineer—None Related to Member Within Sixth Degree to Be Employed—May Accept Services of Federal Road Expert.—The duties of said Commissioners shall be to make contracts and expend all funds for the construction, building and permanent improvement of the roads, bridges and culverts of the said county specially appropriated or raised therefor, together with their proper maintenance. They shall have full power and authority to make such contracts as in their discretion may be necessary to carry out the purposes of this Article. They shall have authority to call for the services of the County Attorney in any case requiring the assistance of an attorney, and may employ any person whose services may be required, at compensation to be fixed by the Commission, and shall employ an engineer, who shall be known as the Highway Engineer of said county, with such superintendents and assistants as may be deemed advisable, who shall be skilled and experienced in scientific and practical permanent road or bridge construction, and who shall be paid from the funds in their hands, such salaries as may be fixed by the Commission with due regard to the economical administration of said funds: *Provided*, That the Commission shall not employ in any capacity any person related by blood or marriage to any member of the Commission within the sixth degree: *Provided, further*, That the Commission may accept the services of road experts tendered by the Federal Government. They shall have full power and authority to draw warrants upon the County Treasurer against the funds appropriated and for the purposes appropriated in such amount and in such installments as they may deem necessary, such warrants to bear the signatures of at least three members of the said Commission. No warrants shall be so drawn unless accompanied by a statement under oath of the payee of said warrant that the account for services or materials furnished is just and true, owing and unpaid.

1917, XXX, 306.

(1895) § 10. May Co-operate With State Highway Commission.—The said Highway Commission hereby created is authorized to cooperate with a State Highway Department or other equivalent body, that may now or hereafter be created for the State of South Carolina, in such manner as may be necessary for the purpose of securing to Spartanburg County the advantages of participation in any funds that may be apportioned for road construction to the State of South Carolina by the Government of the United States or the State of South Carolina.

1917, XXX, 306.

(1896) § 11. Quarterly Report—Grand Jury to Examine.—The Commission shall at the end of each quarter of each year succeeding their Commission, make a full report of its transactions during that quarter, including an itemized statement of the moneys received and disbursed for what-

ever purpose, said report to be filed with the Clerk of Court for said county, and to be submitted by the Clerk to the Circuit Judge presiding at the next succeeding term of the Court of General Sessions for said county, and by him submitted to the Grand Jury for investigation. The Grand Jury shall make an examination of the books, papers and accounts, and the word of the said Commission as now required by law to be made of the county officers.

1917, XXX, 306.

(1897) § 12. Purpose of Article—Order of Work.—It is the purpose of this Article to enable the said Highway Commission to permanently construct, improve and maintain as far as the funds will permit, first of all the main highways and thoroughfares of the County of Spartanburg and in towns of less than fifteen hundred inhabitants throughout the entire county or from county line to county line, so as to give each section of the county as far as possible a permanent highway over its main arteries of travel, and after this is done the other public highways of said county according to their importance and amount of travel.

1917, XXX, 306; 1921, XXXII, 150.

(1898) § 13. Location and Relocation of Roads—Power of Condemnation.—The Commission shall locate or relocate any of the highways of the said county and of towns of less than fifteen hundred inhabitants if the town authorities of said towns provide rights of way for the location, as approved by the County Highway Commission, in accordance with the scheme herein set forth so far as the same is to be reconstructed or surfaced, so as to make a permanent roadway as far as possible and practicable, with due regard to distance and grade, and shall have full power to condemn land and acquire rights of way, either for construction or for road materials for surfacing, in the same manner as the County Board is now authorized by law to condemn lands and acquire rights of way, and in such condemnation proceedings the jury of condemnation may assess benefits to the land so condemned as well as damages, which damages shall be paid out of the funds in the hands of said Commission.

1917, XXX, 305; 1918, XXX, 721; 1921, XXXII, 150.

(1899) § 14. May Have Work Done by Contract or Chaingang or Hired Labor—Construction of Roads—Must Advertise for Bids for Work and Supplies—Construction to Be Under Personal Supervision of Engineer.—The Commission may build any section of road or roads, or any entire highway herein referred to, by contract, or with the chaingangs of said county or with hired labor, under the supervision and direction of the Highway Engineer and Commission, who shall be charged with the general oversight and supervision of all roads so constructed and improved, due regard being had to the nature and amount of traffic over said roads and the materials in said construction necessary to withstand said traffic and the said Commission shall have the right to discharge at any time any employee whose services shall be unnecessary or shall not be satisfactory to the Highway Engineer or to the Commission. Before letting any contract for work, material or supplies it shall advertise for bids, and shall let the same to

the lowest responsible bidder, or may reject any or all bids. In all cases where contracts are not let, and the roads are to be constructed or improved under the personal direction of the Highway Engineer or engineers and employees, the various chaingangs of the said county are hereby placed at the services of the Commission under the supervision of the Highway Commission or its Engineer, and the said Commission shall have the authority to appoint all necessary captains, guards and foremen of said chaingangs, with authority to discharge the same when their duties are being neglected or for other just causes. The chaingangs of said county are to be maintained out of the funds in the hands of the said Highway Commission specifically appropriated or placed in the hands of said Commission for expenditure.

1917, XXX, 306.

(1900) § 15. Supervisor to Maintain Roads, Bridges, Etc.—The Supervisor of said county is hereby charged with the duty of supervising the maintenance of the roads, bridges, culverts and appertaining structures of the roads constructed and improved by said Commission under the provisions of this Act, out of the funds specifically appropriated by said county for maintenance purposes.

1917, XXX, 306.

(1901) § 16. Compensation of Commissioners.—The said Commissioners shall receive as their compensation the sum of two hundred and fifty dollars each per annum, payable quarterly, out of the fund specifically appropriated for their expenditure.

1917, XXX, 306.

(1902) § 17. Personnel of Highway Commission.—That John A. Law, B. M. Gramling, R. E. Boggs, Paul H. Leonard and C. N. Drummond are hereby appointed and constituted the Highway Commissioners for said county authorized in Section 8 above.

1917, XXX, 306.

(1903) § 18. Commutation Tax in Spartanburg.—That all able-bodied male persons from the age of twenty-one (21) to fifty (50) years, both inclusive, in the County of Spartanburg, except residents of incorporated cities and towns, shall be required annually to pay one (\$1.00) dollar as a road tax, except ministers of the gospel actually in charge of a congregation, teachers employed in public schools, school trustees and persons permanently disabled in the military service of this State, and persons who served in the late War Between the States, and all persons actually employed in the quarantine service of this State, and all students who may be attending any school or college at the time when the road tax hereinabove provided for shall become due: *Provided, however,* That any of the persons comprehended in this Section, who shall claim such disability or disabilities as would take them out of the class hereinabove denominated "abled-bodied" shall be permitted to show the same by a certificate of at least two reputable physicians practicing in the respective counties, actually furnished at or after the making of returns or the listing for said tax as

hereinafter provided, and such showing shall be conclusive of the exemption of such persons by reason of such disability or disabilities from the operation of this Section.

1912, XXVII, 846.

(1904) § 19. Penalty for Failure to Pay.—That all persons who are required to pay said road tax, in said counties, as fixed by the foregoing Section, shall pay the same to the County Treasurers of said counties between the 15th day of October and the 15th day of March in each and every year, and it shall be expended upon the public roads of said counties, and any failure to pay said road tax shall be a misdemeanor, and the offender, upon conviction, shall be punished by a fine of not less than five (\$5) dollars and not more than twenty-five (\$25) dollars, or imprisonment for not more than thirty (30) days, out of which fine the Magistrate shall be allowed to retain two (\$2) dollars as compensation for his services therein, and the Constable serving the warrant, one dollar, and the same process and proceedings shall be had and taken as in cases of default in payment of poll tax.

1912, XXVII, 846.

(1905) § 20. Persons Liable Required to Make Return.—That every person in said counties liable for said road tax shall return himself for taxation for such tax to the County Auditor of said county in each and every calendar year between the first day of January and the 20th day of February, and the County Auditor is hereby authorized and directed to solicit and take such returns, and he shall make out and deliver to the Township Assessors of the several townships of said counties lists of the names of the persons who have returned themselves for taxation for such tax in their townships. That the Township Assessors and the County Supervisor shall add to said lists the names of all persons in their county liable for said tax and who have not returned themselves to the County Auditor, and the said lists shall be returned promptly to the County Auditor of said county. That said County Auditor in each and every year, on or before the 15th day of October, shall make out and deliver a list of the names of all persons liable for said road tax in said county, alphabetically arranged by townships, to the County Treasurer of said county.

1912, XXVII, 846.

(1906) § 21. Treasurer to Collect Tax.—That the said County Treasurer is hereby authorized and directed to collect said tax and turn the same into the road fund for said county, and the said County Treasurer shall keep a book in which shall be recorded by townships the names of those paying said commutation or road tax.

1912, XXVII, 846.

(1907) § 22. Quarterly Statements to Be Filed With the Supervisor.—In the County of Spartanburg, the County Treasurer shall file with the Supervisor, at the end of each quarter herein referred to, a statement showing the amount of moneys on hand to the credit of the county, and said

statement shall further show to what department or branch of the county funds said moneys properly belong.

1915, XXIX, 449; 1920, XXXI, 1001.

(1908) § 23. Office of Supervising Auditor of Spartanburg County Created.—That the office of Supervising Auditor of Spartanburg County be, and the same is hereby, established.

1920, XXXI, 1059.

(1909) § 24. Appointment—Removal.—That said Supervising Auditor shall be appointed by, and shall be removable by, the Governor upon the recommendation of a majority of the Spartanburg Delegation in the General Assembly.

1920, XXXI, 1059.

(1910) § 25. Term.—That his term of office shall be until the first day of April, 1924, and that thereafter upon appointment, in like manner, for four (4) years, and until his successor shall have been appointed and qualified.

1920, XXXI, 1059.

(1911) § 26. Salary.—That the salary of said Supervising Auditor shall be at the rate of fifteen hundred (\$1,500.00) dollars per annum, payable monthly.

1920, XXXI, 1059.

(1912) § 27. Bond.—That he shall give bond in the sum of two thousand (\$2,000.00) dollars, in the manner and form prescribed in Section (1060) of this Code.

1920, XXXI, 1059.

(1913) § 28. Duties.—That his duties shall be as follows: (a) He shall supervise the various county offices and institutions and see that the provisions of the law applicable to them, respectively, are faithfully and properly observed. (b) He shall carefully audit; at least once a month, the books of the several officers, with the end in view that they fully comply with all the provisions of law applicable to them, respectively, and account for all funds received by them. (c) He is charged with the duty of supervising the conduct and accounts of the Sheriff in the matter of tax executions, to the end that prompt and correct returns, according to law, be made by said officer in connection therewith; the said Sheriff being charged with the full amount of said tax executions, and discharging himself only by satisfactory evidence that the same cannot be enforced. (d) He shall make a full list of every piece of real estate in the county, according to the directions, and with the same power and authority as is contained in Section (439), Volume III, Code of Laws, and shall report to the Auditor such pieces of real estate as are not on tax books, whose duty it shall be to place the same upon his books, with a charge of such taxes for the preceding years, not exceeding ten (10) years, as shall not have been paid. (e) He shall act as expert for the Grand Jury, rendering them such assistance as may be needed in their investigations and presentments; upon the first day of each term of the Court of General Ses-

sions he shall submit to the Grand Jury a full report of the financial condition of the county, and of the results of his supervision and audit of the books of the several county officers. (f) He shall check up the books of the Clerk of the Court with the session docket, and see that all fines imposed have been promptly paid to him, and by him turned over to the County Treasurer. (g) He shall audit the books of the Magistrates at least one week before each term of the Court of General Sessions. (h) He shall require all county officers to turn over to the County Treasurer all public funds in their hands on or before the first day of each month, and he is hereby empowered and directed to enforce the terms of all of the provisions of this Article.

1920, XXXI, 1059; 1921, XXXII, 279.

(1914) § 29. Office—Furniture.—The Supervisor is directed to furnish said Supervising Auditor with office room, and such furniture and stationery as he may need, out of the funds provided for books, stationery and printing.

1920, XXXI, 1059.

(1915) § 30. Definition of "Officers."—The word "officers," as contemplated in this Article, embraces all persons, individuals, or other agencies handling any funds belonging to the county.

1920, XXXI, 1059.

SUMTER COUNTY.

(1916) § 1. Office of County Supervisor in Sumter County Abolished—Duties of Incumbent.—The office of County Supervisor for the County of Sumter be, and the same is hereby, abolished, but that the Supervisor now in office shall hold office until the expiration of the term and perform such duties as may be required of him by the County Board of Commissioners.

1919, XXXI, 262.

(1917) § 2. Board of Commissioners—Number—How Appointed, Etc.—The Board of County Commissioners of Sumter County shall consist of seven members to be appointed by the Governor on the recommendation of the Delegation of said county. That the said Board may select from their number a presiding officer or chairman and may confer upon a member or members of the Board the power to sign warrants, checks, and to perform such other duties as may be directed. That the said Board may create and set aside a fund of not more than five hundred (\$500.00) dollars for the payment of incidentals, to be paid by the Clerk or such other person as the Board may be directed or designated. That the Board may employ a competent person, not necessarily an engineer, to have charge and supervision of the road and bridge work of said county and any other work or duties that the Board may see fit to impose and for such length and at such salary as may be directed. That the Board is authorized and empowered to meet in session twice a month at a per diem of two dollars per day and mileage to be paid as now provided by law. That the same compensation shall be paid members for special meetings

out of any unused funds in the hands of the Treasurer. That the Board is authorized and empowered to sell the bonds now unsold, authorized to be issued under the Act of 1910, numbered four hundred and ninety-four (494) at the best obtainable rate of interest, and the said Act of 1910, numbered 494 is hereby so amended.

1919, XXXI, 262; 1921, XXXII, 297.

(1918) § 3. Execution of Warrants and Notes.—That from and after the expiration of the term of office of the present Supervisor the County Board of Commissioners shall appoint and authorize such person or persons to sign all warrants on the County Treasury for the payment of claims against the county, which shall be approved by a majority of the County Board of Commissioners, and who shall be authorized and empowered to sign all notes, to secure loans, if any, made to the county that may be authorized by the County Board of Commissioners, or a majority thereof; and in the meantime, during his term of office, the present Supervisor shall perform the duties aforesaid; that is to say, shall sign all warrants and notes or other instruments that the County Board of Commissioners or a majority thereof shall direct him to do.

1919, XXXI, 262.

(1919) § 4. County Commissioners to Select Person to Exercise Powers and Perform Duties of County Supervisor.—That upon the expiration of the term of office of the present Supervisor for Sumter County, or other end of the term of said office, the County Board of Commissioners shall from time to time appoint such person or persons to perform such duties and have such powers and responsibilities as are now or may hereafter be provided by law for a County Supervisor to perform, and he shall discharge his duties subject to such rules and regulations and under such directions as the County Board of Commissioners may direct, and shall perform such duties as may be required of him by said Board, and the said person or persons shall be employed for such time and upon such terms and conditions and at such compensation as may be fixed from time to time by the said County Board of Commissioners.

1919, XXXI, 262.

(1920) § 5. Designation of Person Employed.—That the person or persons that may hereafter be appointed under Sections 3 and 4 of this Article, if the Clerk of the Board, he shall be so designated; if other person, he shall be designated as the "Fiscal Agent."

1919, XXXI, 262; 1921, XXXII, 297.

(1921) § 6. Official Bonds.—That the Clerk of the Board and Fiscal Agent (if one be appointed) shall each furnish to the county at their own expense a bond in the sum of ten thousand dollars, signed by some surety company authorized to do business in this State, for the faithful performance of his duties.

1919, XXXI, 262; 1921, XXXII, 297.

(1922) § 7. **Powers of County Board of Commissioners.**—The County Board of Commissioners of Sumter County are hereby invested with all and singular the powers and rights as may be necessary to fully administer the affairs of Sumter County as may, in their discretion, appear just and proper, anything in this Article to the contrary notwithstanding.

1919, XXXI, 262.

(1923) § 8. **Elections for Bonds for Road Improvement in Townships of Sumter County—Form of Ballot—Where Electors Shall Vote.**—That upon a petition therefor submitted to the Commissioner hereinafter provided for, signed by not less than twenty per cent. of the qualified electors of any township in Sumter County, the said Commission shall order an election to be held in said township upon three weeks' public notice, whereat there shall be submitted to the qualified electors of such township the question of whether or not such township shall issue bonds not exceeding in amount eight per centum of the total assessed value of the property herein, for the purpose of permanent highway improvement; that the said election shall be held in each township petitioning therefor, respectively, in the same manner as the last general election for State officers, and the Commissioners of Election appointed to serve in the last said general election shall act as Commissioners of Election for the election herein ordered; that the form of the ballots in such election for those in favor of said bond issue shall be, "Shall this township issue bonds not exceeding in amount eight per centum of the assessed value of the property herein, for the purpose of permanent highway improvement?—Yes." And the form of the ballots in such election for those opposed to said bond issue shall be, "Shall this township issue bonds not exceeding in amount eight per centum of the assessed value of the property herein for the purpose of permanent highway improvement?—No." That the said election shall be held at the same polling places as were used at said last general election, and all persons qualified to vote in said last general election shall be qualified to vote therein: *Provided, however,* That each qualified elector shall vote in the nearest polling place in the township wherein he resides, irrespective of the polling place at which he formerly voted, and that no person shall vote at any polling place located without the boundaries of the township wherein he resides.

1917, XXX, 309.

(1924) § 9. **Denomination and Amount of Bonds—Issue—Proceeds to Be Used Solely in Township—Proviso.**—That each township, wherein said election shall result in favor of the issue of said bonds, shall issue coupon bonds for permanent highway improvement in said township; the bonds to be of such denominations, and to be issued at such time or times and to such an amount, or to such amounts, as the Commission, hereinafter provided for, may determine in its judgment and discretion, such issue not to exceed for each township eight per centum of the assessed value of the taxable property in such township, at the time said bonds are issued: *Provided,* That the proceeds from the bonds issued by each township shall be used solely for the permanent improvement of the highways in such town-

ship; except that should said bonds be issued by Sumter Township, in said county, the said Commission may, in their discretion, apply a portion of the proceeds therefrom to the improvement of the western half of the road known as the Bishopville Road, where it divides Sumter Township from Providence Township.

1917, XXX, 309.

(1925) § 10. Sumter County Commission for Highway Improvement—Vacancies—Term—Bond—Successors.—The persons hereinafter named shall constitute a Board of Commissioners, to be known as “The Sumter County Commission for Highway Improvement,” and shall have charge of the carrying out of the provisions of this Article. In case of a vacancy on said Commission by death, resignation or otherwise, such vacancy shall be filled by appointment by the Governor, upon recommendation of the majority of the members of the General Assembly from Sumter County, and the Governor shall have power to remove any member for cause, and to fill the vacancy as above provided for. The Commission shall serve for a term of three years, and until their successors are appointed and qualified. Each member shall give bond in some approved company, doing business in this State, under the laws thereof, in the sum of ten thousand dollars from the time the bonds are issued to the time the proceeds thereof are expended and accounted for; and the Commission may require bonds of its employees in its discretion, the premium of all bonds to be paid from the funds derived from said bond issue, and to be charged up against each township in proportion to the amount issued thereby. Upon the expiration of the term of office of the members of said Commission, the Governor shall appoint their successors upon the recommendation of the majority of the members of the General Assembly from Sumter County.

1917, XXX, 309.

(1926) § 11. Secretary — Attorney — Engineer — How Charges to Be Made—Commission Not to Employ Anyone Related Within Sixth Degree to Member—May Accept Service of Federal Road Experts.—The Commission shall have power to elect a Secretary, with such duties as the Commission may impose, and to employ an attorney, and any other persons whose services be required for the purposes of this Article, at compensation to be fixed by the Commission, and shall employ an engineer or engineers with such superintendents and assistants as may be deemed advisable, who shall be skilled and experienced in scientific road construction, and who shall be paid such salaries as may be fixed by the Commission, all compensation herein provided for to be paid from the proceeds of said bonds, and such expenses or salaries as relate to the construction or improvement of roads in each township shall be charged against the bonds issued by that township, and such salaries as relate to the general operation of this Article and of such Commission shall be charged to each of the townships in proportion to the amount of bonds issued by them respectively. The members of said Commission shall receive no compensation for their duties thereon. The Commission shall not employ in any capacity any person related by

blood or marriage to any member of the Commission within the sixth degree: *Provided, further*, That the Commission may accept the service of road experts tendered by the Federal Government.

1917, XXX, 309.

(1927) § 12. Location and Relocation of Roads—Power of Condemnation.—The Commission shall locate or relocate each of the highways to be improved under the provisions of this Article, with due regard to distance and grade, and shall have full power to condemn lands and acquire rights of way in the same manner as the County Boards of Commissioners are now authorized by law to condemn lands and acquire rights of way.

1917, XXX, 309.

(1928) § 13. Work May Be Done With Contract or Hired Labor—To Advertise for Bids on Work and Material.—The Commission may build or improve any section of road or roads now existing in any of the townships of the County of Sumter issuing said bonds, or may open new roads or parts of roads therein, by contract, or with hired labor, under the supervision and direction of its employees. Before letting any contract for work, material or supplies, it shall advertise for bids, and shall let the same to the lowest responsible bidder, or may reject any or all bids.

1917, XXX, 309.

(1929) § 14. Commission to Have Full Discretion as to Roads and Material—Provisos.—The Commission shall have full discretionary powers as to what highways are to be built or improved and in what manner such highways shall be built or improved, and of what material said highways shall be built or improved: *Provided*, That such material used shall be brick, cement or other permanent road material: *Provided, further*, That the proceeds from the issue of bonds by one township shall not be used within another township, except as to the Bishopville Road, above referred to.

1917, XXX, 309.

(1930) § 15. Annual Report—Grand Jury to Examine.—The Commission shall, at the close of each fiscal year, make a full report of its transactions during that year, including an itemized statement of the moneys received and disbursed for whatever purpose, said report to be filed with the Clerk of Court for Sumter County, and to be submitted by the Clerk of Court to the Circuit Judge presiding at the next ensuing session of the Court of General Sessions for said county, and by him submitted to the Grand Jury for investigation. The Grand Jury shall make an examination of the books, papers and accounts, and the work of the said Commission, as now required by law to be made of the county officers, and shall appoint a certified accountant to assist in said examination, if they deem it advisable.

1917, XXX, 309.

(1931) § 16. Sale of Bonds—Proviso—Form of Bonds.—The Commission shall offer the bonds issued under this Article for sale in such manner as they may deem to be the best interest of the respective townships issuing

them. Said bonds may be issued partially or entirely as terminal coupon bonds, maturing in forty years from the date of issue, or partially or entirely as serial bonds payable annually in such series as the Commission may determine: *Provided*, That the Commission shall have full power, if deemed advisable, by it, in the issuance of terminal coupon bonds, to provide the same may be called in after a period of years, which period of years shall be set forth in said bonds. Said bonds of either or both classes as aforesaid, shall be signed by the members of the Commission, or a majority of them as such Commission, and countersigned by the Secretary: *Provided*, That the signatures may be lithographed or engraved upon the coupons of the said bonds. Said bonds are to be made payable at such place or places as the Commission may determine, and shall be exempt from taxation. The bonds to be issued by any of said townships shall show upon their face for what township said bonds are issued, and the liability incurred thereby shall extend only to the township named therein.

1917, XXX, 309.

(1932) § 17. Disbursement of Funds.—The funds arising from the sale of said bonds shall be held subject to the warrants of the Commission. Said warrants shall be signed by the Commission, or by such member thereof as the Commission may designate, and countersigned by the Secretary, or shall be signed as may be otherwise provided by the Commission, and shall be drawn payable to the person or persons to whom funds may from time to time be due under this Article, as said work progresses, and is approved by the Commission and its engineer, and each warrant shall show the items for which payment is made.

1917, XXX, 309.

(1933) § 18. License Fee on Vehicles—Owners to Report Vehicles—Penalty for Failure So to Report—Provisos.—In order to pay the interest on said bonds and provide for the redemption of the same at maturity, the County Auditor for Sumter County is hereby directed and required to assess and levy, immediately, upon the issuing of the said bonds by any township, and each year during the period of of said bond issue, or such other bonds as may be subsequently issued under this Article, and any Acts amendatory hereto, a license fee on all resident owners of all horse drawn vehicles (which term shall include all vehicles drawn by live stock and other like vehicles in the township issuing said bonds, said license fee to be fifty cents per horse power per year. For the purpose of this Article in the case of horse drawn vehicles, "horse power" shall be deemed and construed to mean the number of horses ordinarily used in drawing the vehicle so licensed, one horse power being assessed and collected for each horse used to draw such vehicle subject to such assessment and license. Every license so assessed shall be a first lien upon each of said horse drawn vehicles, or other like vehicles, and upon all other property of the owner against whom it may have been levied as an assessment for a license and the County Treasurer, upon the failure of the owner to pay said license shall issue execution therefor as in the case of other assessments and taxes and it shall be the duty of every resident owner of any and every horse

drawn vehicle, or other like vehicle in said township issuing bonds to report such vehicle or vehicles so owned and not to use the same until so reported for license assessment, and any resident owner failing to make such report, giving the name or names thereof, and the rated horse power as herein-before provided, or using any such vehicle in said township without having reported the same as aforesaid, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten dollars and not more than one hundred dollars, or be imprisoned for not less than ten days nor more than thirty days, the fines to go to the road fund herein provided for, and to be credited to the township issuing bonds in proportion to the amount of bonds issued: *Provided*, That any regular dealer in horse drawn vehicles, automobiles, motorcycles or other power vehicles, resident in the county, and having a license to sell the same therein, shall not be required to pay a license on such vehicles that are for sale, and not in actual use: *Provided*, That the term "resident owners" herein shall include any and every person, firm or corporation, whether resident or nonresident, owning or operating regularly within the said township any such vehicle: *And provided, further*, That such report of the ownership and horse power of any and every such vehicle shall be made to the County Auditor before the first day of May next succeeding the issuing of bonds by any township, and thereafter each and every year within the time provided by law for the return of personal property for taxation.

1917, XXX, 309.

(1934) § 19. Sinking Fund—Tax to Be Levied for Shortage.—It shall be the duty of the Auditor for Sumter County, after making up the statement of the total number of horse drawn vehicles and other like vehicles licenses for the township that has issued bonds under this Article, to ascertain whether or not the proceeds will be a sum sufficient to pay the interest on the outstanding bonds and to provide eleven dollars for each thousand dollars of outstanding bonds as sinking fund for the retirement of the same at maturity, and in case the amount falls short of such sum or fails in whole or in part for any reason whatsoever arising out of the provisions of this Article of any and every nature whatsoever, or otherwise, then it shall be the duty of the County Auditor each year to levy upon the property taxable in each of such townships wherein the shortage occurs respectively, a tax sufficient to make up such deficiency or failure in amount, and to provide the total sum required for the payment of the current annual interest on the outstanding bonds, and the sum of not less than eleven dollars as an annual sinking fund for every thousand dollars of principal of outstanding bonds for the payment of interest as the same shall fall due, and for the accumulation of a fund sufficient for the payment and redemption of said bonds at maturity, in each of said townships respectively. Said licenses or taxes, or licenses and taxes, shall be collected annually by the County Treasurer at the time when other State and county taxes are due and collectible, and placed by him to the credit of each township issuing bonds in proportion to the amount of bonds outstanding, and applied by him in the payment of the interest on said bonds as the same may fall due, and the surplus shall be preserved as a fund for the payment and redemp-

tion of the said bonds, and such sinking fund shall be invested by the said County Treasurer by depositing the same in one or more banks of the City of Sumter, such bank or banks to be selected by him as will pay the highest interest on the deposit.

1917, XXX, 309.

(1935) § 20. Census of Vehicles — Commission to Check Work of Auditor and Treasurer.—It shall be the duty of the Commission to make a complete census of all of the resident owners of all vehicles as aforesaid, within the county, and of such vehicles as soon as practicable, and each year, while the Commission continues, it shall check the work of the County Auditor and Treasurer, and see that the full vehicle license fees are levied and collected; and the Auditor shall take a census each and every year of all the resident owners of such vehicles, and of the vehicles, and shall ascertain whether they have made proper returns of their liability for the said license fees, and shall prosecute, criminally, all owners using such vehicles without having properly returned the same for license fees as aforesaid.

1917, XXX, 309.

(1936) § 21. Election for Bonds or for Increasing Issue—Proviso—Should, at any time in the future, twenty per cent. of the qualified electors of any of said townships petition for an election upon the question of issuing bonds for road improvement, or for increasing an existing issue, within the limitation passed by the Constitution, the Commission herein provided for, or a majority thereof, shall order the same, and said election shall be held, and should it result in favor of the issuing of said bonds, then all of the provisions of this Article shall attach and apply: *Provided, however,* That said election should not be held in any township oftener than once in two years.

1917, XXX, 309.

(1937) § 22. Personnel of Commission.—That the Commission herein provided for shall consist of L. D. Jennings, Chairman, and J. P. Booth and M. L. Parler and D. V. Keils as Commissioner.

1917, XXX, 309.

(1938) § 23. Disposition of Funds in Case License Fees Herein Provided Cannot Be Collected.—Should the State levy a license on any vehicles herein mentioned and thereby prohibit the county from collecting the license fees herein provided, then, of the license collected by the State which is returned to the County of Sumter, so much thereof collected from any township issuing bonds under this Article shall be applied to the payment of the interest or principal, or both, of the bonds so issued.

1917, XXX, 309.

(1939) § 24. Provision for Collection of Poll and Commutation Tax in Sumter County.—Upon the expiration of the time now provided by law for the payment of the poll tax and the commutation road tax in Sumter County, the Treasurer of said county shall prepare a complete list of the

names of all persons in the county who are in default, specifying whether the same be for poll or road tax, or both, and he shall at once turn the same over to the Sheriff of Sumter County.

1914, XXVIII, 758.

(1940) § 25. Sheriff to Make Diligent Effort.—The Sheriff shall make diligent effort to collect said taxes, and for this purpose he may use the Rural Police of said county or his own deputy, and within ninety days after receiving said list he shall make an itemized verified return to the Treasurer, and he shall at the same time turn over to the Treasurer all taxes collected, together with the costs of the Treasurer. The said return shall show the names of all persons from whom taxes are collected and also the amount of costs collected from each, and the disposition of the same. The said return shall show the reason for failure to collect from each person whose name appears upon the list turned over to him by the Treasurer, where there has been a failure to collect.

1914, XXVIII, 758.

(1941) § 26. Additional Costs.—In addition to the tax and penalty as now provided by law, the Sheriff shall collect from each person the sum of one dollar for the Treasurer's costs, one dollar for the Sheriff's costs and one dollar for the costs of the deputy collecting the same, and in case of no collection of said costs, there shall be none allowed.

1914, XXVIII, 758.

(1942) § 27. Warrants to Be Issued.—The Treasurer thereupon shall proceed to have warrants issued for those who are still delinquents, as is now provided by law for those defaulting in the payment of poll tax, except that the Magistrate issuing the warrant shall designate the Sheriff to execute the same, for which purpose the Sheriff may use his Deputy or any Rural Policeman, and in case of conviction the fines, costs and penalties shall be the same as now provided by law.

1914, XXVIII, 758.

UNION COUNTY.

(1943) § 1. County Supervisor of Union County — Election — Term — Compensation — Duties.—A County Supervisor shall be elected by the qualified electors of said Union County, in the same manner as now provided for other county officers, whose term of office shall be four years, and until his successor is elected and qualified. He shall before entering upon the duties of his office enter into bond with sufficient surety, to be approved by and filed with the Clerk of Court of said county in the sum of three thousand (\$3,000.00) dollars, conditioned for the honest and faithful performance of his respective duties, and for his services he shall receive a salary of two thousand (\$2,000.00) dollars per annum. He shall be his own clerk, and shall have no clerk except at his own expense and not at the expense of the county, and shall advise and assist the County Engineer when requested. The Supervisor's office shall be kept open

for the transaction of any and all business connected with the affairs of the county; to act as Secretary or Clerk of the Supervisor's office, to keep the records of the business transactions of the county; to get prices on all things necessary to be bought for Union County and submit said prices to the Advisory Board of the county for their approval or disapproval; to be given the authority to purchase any and all things necessary to run the business of the county when approved and ordered purchased by the County Advisory Board; to be given the power to sign all notes for borrowed money for Union County, when the loan is authorized by the Advisory Board of the county and countersigned by County Treasurer; to get up any information wanted by the Advisory Board; to carry out any instructions given him by the Advisory Board; to sign all claims presented to the Supervisor's office when authorized by the Advisory Board or Engineer or those authorized by appropriations, such as county officers' salary and appropriations made by Delegation for various purposes, such as farm demonstration, Tomato Clubs, armory and things of this nature. Supervisor shall have the right to appoint County Attorney and County Physician.

Civ. '12, §§ 1096, 1097; 1908, XXV, 1178, 1184; 1911, XXVII, 65; 1912, XXVII, 641; 1914, XXVIII, 638; 1920, XXXI, 981; 1921, XXXII, 225.

(1944) § 2. When Supervisor's Office Shall Be Open in Union County.—In Union County the Supervisor shall be required to keep his office open for business at least four days during the week, except Sunday.

Civ. '12, § 1111; 1908, XXV, 1186.

(1945) § 3. County Engineer—Duties.—The County Engineer shall be charged with the duty and responsibility of the location, construction and maintenance of all public roads and bridges in Union County, and he shall locate new roads and improve now existing roads as he shall deem best and most advantageous to the public welfare. The County Engineer is authorized to let work by contract, or to hire forces as he shall think most economical and efficient: *Provided*, That no new road shall be opened unless approved by the Advisory Board. The County Engineer shall employ Superintendent and guards for chaingang and foreman, labor, teams and other necessary equipment for the operation of the road working organization of Union County. Salaries and wages to be fixed as hereinafter provided. County Engineer may be discharged by Advisory Board. Advisory Board shall employ a janitor for Courthouse and jail and fix his wages, prescribe his duties.

1920, XXXI, 981; 1921, XXXII, 225.

(1946) § 4. Highway Committee — Vacancies — Appointment of County Engineer—Bond of Engineer—Compensation.—There shall be a committee known as the Highway Committee, consisting of three, to wit: J. E. Minter, G. B. Sanders, Henry Smith, who shall in the event of death, resignation or incapacity of any one of said Highway Committee to perform the duties devolved upon said Committee, then the remaining members of the said Committee shall by a majority of said Committee, select a successor, they shall have the authority to act for Union County in any

capacity which is necessary for the carrying on of the affairs of the county. Such as buying material for the chaingang; food, clothing and all other things necessary for the Poorhouse; buying equipments for the road building of the county; mules, wagons, in fact, anything that is necessary to buy for the county; to have the authority to sell any and all things to be sold by the county; to employ a Superintendent for the Poorhouse and name his pay. The Advisory Board to meet in the Supervisor's office once a month, unless called for a special matter by the Supervisor, who is given the authority to call an extra meeting. For their services, they shall be paid five (\$5.00) dollars per diem and expenses, said per diem and expenses shall not exceed one hundred dollars per year. The Advisory Board shall have the power and authority to fix the price or salary for the Engineer or road man: *Provided*, They do not fix the salary for more than three thousand (\$3,000.00) dollars, nor less than two thousand (\$2,000.00) dollars, and necessary expenses to perform the work. Supervisor to be elected by the people; Advisory Board to be appointed by the Governor, with the consent of the County Delegation; the Engineer, hereafter to be selected by the Advisory Board. Said Committee shall select the County Engineer; said County Engineer shall hold said position at the discretion of said Highway Committee, and said County Engineer shall be authorized and empowered to perform the duties designated in this Act. The County Engineer shall, before entering upon the duties of his position, enter into a bond with surety company to be approved and filed with the Clerk of Court for Union County in the sum of twenty-five thousand (\$25,000.00) dollars, conditioned for the honest and faithful performance of his respective duties; and for his services he shall receive a salary of not less than two thousand and not more than three thousand dollars per annum, and necessary expenses for the work, which said salary that said County Engineer is to receive shall be fixed by the Highway Committee. The Advisory Board shall select one of their members as Chairman; the County Supervisor to act as Secretary and shall keep a record and minutes of all meetings. Advisory Board shall fix all salaries and wages for all superintendents, foreman, labor, teams, etc.; also the determination of policies shall be done by the Advisory Board.

1920, XXXI, 981; 1921, XXXII, 225.

(1947) § 5. County Borrowings—Collection of Commutation Tax—Road Duty.—The County Supervisor shall have power to borrow money for use of the county and the Supervisor, by signing and the County Treasurer by countersigning, shall execute the loan by virtue of a resolution of the Legislative Delegation, and no loan shall be made except in pursuance of such a resolution that no money shall be borrowed by the Supervisor without first giving ten (10) days' notice in one of the local newspapers at Union, S. C., of the time and place when bids shall be considered. The said Supervisor shall accept the lowest bid from one bank only. There shall be no division of the loan between the banks. Money thus borrowed shall be kept on deposit in the bank from which it is borrowed and only checked out in the regular course of business. The Supervisor shall have the right to reject any and all bids for said loan and readvertise for the loan as hereinabove set forth or go to some other place and procure money where it can

be done to the best advantage of Union County. It shall be the duty of County Supervisor to ascertain the names of all persons in the county who are liable for road duty. The County Supervisor shall compare this list with the commutation tax list as filed by County Treasurer, and not later than April 1st, of each year, shall summon out all persons who have not paid the commutation tax and are liable for road duty at such time or times as he thinks most beneficial to the public service, and shall have County Engineer work them upon the roads for three days each year.

Civ. '12, §§ 1101, 1103; 1909, XXVI, 185; 1911, XXVII, 66; 1914, XXVIII, 638; 1920, XXXI, 981.

(1948) § 6. **Warrants for Road Duty Evaders.**—It shall be the duty of the County Supervisor to swear out warrants before a Magistrate against persons who shall fail or refuse to perform road duty after being summoned thereto.

Civ. '12, § 1104; 1908, XXV, 1179, 1185; 1914, XXVIII, 638; 1920, XXXI, 981.

(1949) § 7. **When Effective.**—That this Article shall not take effect until the expiration of the terms of office of the Township Commissioners in office March 10, 1920.

1920, XXXI, 981.

(1950) § 8. **Commutation Road Tax.**—That there shall be collected annually the sum of three dollars (\$3.00) commutation tax in lieu of road duty, which said sum shall be collected by the Treasurer of Union County at the same time and in the same manner that the poll tax is due and payable.

1920, XXXI, 981.

(1951) § 9. **Court House Janitor—Care of Public Buildings.**—That the County Engineer for the County of Union shall select a janitor for the Court House and see that he performs the duties incident to said work. Said janitor shall be subject to removal by said County Engineer, and that the said County Engineer shall be charged with the further duty of maintaining and keeping of Union Court House and other public buildings and grounds belonging to said county.

1920, XXXI, 981.

(1952) § 10. **"Book of Claims."**—The County Supervisor of Union County shall keep a book called "File Book of Claims," in which shall be entered all claims as presented by the clerk, date of entry, and indexed. This book shall be printed and ruled with appropriate columns showing: (1) Claim number. (2) Date of filing. (3) By whom presented. (4) To whom claim belongs. (5) Nature of claim. (6) Amount of claim. (7) Date of action. (8) Amount allowed. (9) Amount disallowed. (10) Item number in county supply account to which chargeable. (11) Remarks. The number of the claim shall not be entered upon the "File Book of Claims" until the claim shall have been allowed and entered upon the "Claims Classification Book" hereinafter provided for, and shall there be made to conform to the number thereon. A separate claim must be filed for each account chargeable to any particular item in the county supply account

or to any subdivision thereof. The principal of each note for money borrowed in anticipation of the collection of taxes shall be paid directly by the County Treasurer, the said Treasurer holding said note as his voucher for the principal thereof and the lender filing claims with the Board of County Supervisor in the usual form, for the interest, but not for the principal; except where a specific appropriation shall have been made, for the payment of a particular note.

1912, XXVII, 641.

(1953) § 11. **Book of "Classification of Claims Allowed."**—The County Supervisor shall keep a book called "Classification of Claims Allowed," in which shall be entered all claims allowed in numerical order. This book shall be printed and ruled with appropriate columns showing: (1) Line number. (2) Claim number. (3) Warrant number. (4) Item number in county supply account to which chargeable. (5) Claimant. (6) Nature of claim. (7) Amount allowed. (8) Amount paid. (9) Date paid. (10) Amount unpaid. (11) Columns headed and numbered "Item Number 1" and upward, with a tabulated statement at the head of each column, showing : (a) The amount of the appropriation made for the particular item; (b) the amount of claims allowed to date chargeable to such item; (c) the balance of the appropriation subject to future claims which may be allowed, or the balance of over allowed. (12) Total. With similar tabulation within the first ten days of each and every month, the Supervisor shall publish one time in a newspaper of the county, selected by them as calculated to give full publicity thereto, a statement, under their hands and seals, attested by the Clerk of said Board, and approved by the County Auditor, showing the exact financial condition of each item at the end of the preceding month, as the same may appear from this book, Subdivision 11, briefly describing the item by title, as in the county supply account. The advertising charges therefor shall not exceed four (\$4.00) dollars for each insertion.

1912, XXVII, 643.

(1954) § 12. **Book of "Bills Payable."**—The said County Supervisor shall keep a book of "Bills Payable," in which shall be entered, as and when made, all notes for loans in anticipation of collection of taxes. The entries thereon shall show: (1) Note number. (2) Date of note. (3) Date due. (4) To whom payable. (5) Amount. (6) Rate of discount. (7) Rate of interest. (8) Date paid. (9) Date renewed. Said notes shall be numbered in the order in which they may be executed.

1912, XXVII, 643.

(1955) § 13. **"Bond Book."**—The said County Supervisor shall keep a book called "Bond Book," in which shall be entered all bonds outstanding and hereafter issued. This book shall be printed and ruled with appropriate columns showing: (1) Series numbers. (2) Title of bonds. (3) Date of issue. (4) Date due (a) in what payable. (5) Interest rate. (6) Interest payable (a) interest payable where. (7) Interest amount due

January 1st. (8) Interest amount due July 1st. (9) Number of bonds. (10) Bond number. (11) Denomination. (12) Total value issued. (13) To what chargeable, county, town, school district. (14) Remarks.

1912, XXVII, 643.

(1956) § 14. **"County Treasurer's Daily Cash Receipts" Book**.—The County Treasurer shall keep a book called "County Treasurer's Daily Cash Receipts," in which shall be entered daily all taxes and other moneys received by the County Treasurer for any and all services. This book shall be printed and ruled with appropriate columns showing: (1) Line number. (2) Date received. (3) Name. (4) Amount received. (5) State taxes, with subsidiary columns for taxes and penalty. (6) County taxes, with subsidiary columns for (a) taxes for all purposes; (b) penalty; (c) commutation road tax; (d) fines, fees, licenses; (e) Any fees; (f) miscellaneous income; (g) total receipts for county; (h) loans for county; (i) special local taxes. (7) School taxes, with subsidiary columns for (a) townships; (b) school districts; (c) three mill tax; (d) penalty; (e) special school tax; (f) penalty; (g) high school tax; (h) penalty; (i) interest on school bonds; (j) penalty; (k) poll tax; (l) penalty; (m) capitation dog tax; (n) penalty; (o) miscellaneous income; (p) total receipts for schools; (q) loans for schools. It is hereby made the duty of the County Auditor of Union County to distribute upon said bonds the items of receipts for taxes to appropriate columns, as herein required.

1912, XXVII, 643.

(1957) § 15. **"Disbursement of All Funds for County Expenses" Book**.—That the County Treasurer shall keep a book called "Disbursements of All Funds for County Expenses," in which shall be recorded all disbursements made by him on account of county expenses for each fiscal year. This book shall be printed and ruled with appropriate columns showing: (1) Line number. (2) Claim number. (3) Warrant number. (4) Item in supply account to which chargeable. (5) Date of payment. (6) Claimant. (7) Nature of claim. (8) Columns headed and numbered Item 1, and upward, with a tabulated statement intended to apply to such at the head of each column, showing: (a) The amount of the appropriation made for each particular item; (b) the amount of warrants paid to date chargeable to said item; (c) the balance of the appropriation subject to future warrants. (9) Loans. (10) Miscellaneous. (11) Total, with tabulation as in 8.

1912, XXVII, 643.

(1958) § 16. **"Disbursements of School Funds" Book**.—The County Treasurer shall keep a book called "Disbursements of School Funds," in which shall be recorded all disbursements made for school purposes during each fiscal year. This book shall be printed and ruled with appropriate columns showing: (1) Line number. (2) School district number. (3) Warrant number. (4) Treasurer's number. (5) Date of payment. (6) Claimant. (7) Nature of claim. (8) General cash book folio. (9) Amount.

(10) Common school and special school tax. (11) High school tax. (12) Interest on school bonds. (13) Sinking Fund Commission. (14) Miscellaneous.

1912, XXVII, 643.

(1959) § 17. "**County Treasurer's General Monthly Cash Book.**"—The County Treasurer shall keep a book called "County Treasurer's General Monthly Cash Book," in which he shall make up a statement within the first five days of every month, showing the amount of receipts and disbursements during the preceding month on account of State, county and school taxes for each fiscal year and not completely closed. This book shall be printed and ruled with appropriate columns, showing: (1) Date received. (2) Daily cash receipt book folio. (3) Department. (4) Ledger folio. (5) Taxes. (6) Penalty. (7) Total receipts. (8) Date of payment. (9) Disbursement book folio. (10) Department. (11) Ledger folio. (12) Total disbursement. Under the head of "Department" on the debit side shall be entered the amount of State taxes received during the preceding month; the amount of county taxes received for the same period, which shall include taxes for all purposes, commutation road tax, fines, fees, licenses, miscellaneous incomes, liquor profits, loans for county purposes, township local or special tax. The amount of school taxes received for the same period, which shall include the three mill tax, special school tax, high school tax, interest in school bonds, poll tax, capitation dog tax, miscellaneous income loans for schools. The debit side of the account shall also show, in tabulated form, the balance on hand from last month of State taxes, county taxes and school taxes, separately stated, aggregated and added to the total receipts for the month. Under the head of "Department," on the credit side of the account shall be shown separately, disbursements of State taxes for the preceding monthly disbursements of the county taxes for the same period, and disbursements of school taxes for the same period, separately stated and aggregated; also the balance in hand at the end of the month to be carried forward to next month, separately stated, showing State taxes, county and school taxes and aggregated. This statement shall also show separately, cash in the Treasurer's office and cash on deposit in bank aggregated and agreeing with the total balance shown. Within the first 20 days of each of the months of January, April and October the County Treasurer shall publish one time in a newspaper of the county selected by him as calculated to give full publicity thereto, a condensed statement, approved by the County Auditor, of receipts and disbursements from the beginning of the fiscal year on account of the foregoing taxes, separately stated, and the balances on hand at the end of the preceding quarter to the credit of each. The advertising charges therefor shall not exceed two and 50-100 (\$2.50) dollars for each insertion.

1912, XXVII, 643.

(1960) § 18. **Report of County Treasurer of Collections and Disbursements of Funds.**—The County Treasurer shall within the first five days of every month, make a report to the County Supervisor of the collections

and disbursements of all funds for county expenses during the preceding month of each fiscal year upon account of which the said collections shall have been received. Each fiscal year shall be kept separate and distinct, and the County Treasurer shall make out as many reports as there are fiscal years to which the same are to be charged. He shall keep a book in which these reports shall be made out. The County Supervisor shall keep a similar book, and shall on or before the first day of each month, deliver the same to the County Treasurer to be filled out in conformity with the book kept by said Treasurer. This book shall be printed and ruled with appropriate columns, and headed "County Treasurer's Monthly Report to the Board of County Commissioners of the Collections and Disbursements of All Funds for County Expenses from..... 19.... to..... 19.... and Ending December 31, 19...." This report shall contain two subdivisions, one of which shall show receipts for all county purposes, and the other shall show expenditures authorized, and total disbursements to date. The first subdivision shall show in tabulated form the balance on hand from last report, and receipts by County Treasurer since last report, aggregated from which shall be deducted disbursements since last report, showing balance on hand at date of report. The second division shall be printed and ruled with appropriate column, showing: (1) Classification item number. (2) Purpose. (3) Expenditures authorized by law. (4) Total disbursed to date. (5) Limit of disbursement for future claims. Under the subdivision "Purposes" shall be entered in numerical order the item of appropriation conformably with the county supply account. Under the column "Expenditures Authorized by Law" shall be entered, separately, the amount of appropriation for special items as contained in supply account for the year. Under the column "Total Disbursed to Date" shall be entered the total amount of disbursements made by the County Treasurer, chargeable to the several items by classification number. Under the column "Limit of Disbursements for Future Claims" shall be entered the difference between "The Expenditures Authorized by Law" and "Total Disbursed to Date" on account of the several items in the supply account. This report shall be signed and dated by the County Treasurer.

1912, XXVII, 643.

(1961) § 19. **Book of "Bills Payable."**—The County Treasurer shall keep a book of "Bills Payable," in which he shall enter as, and when made, all votes for loans in anticipation of collection of taxes. The entries thereon shall show: (1) Note number. (2) Date of note. (3) Date due. (4) To whom payable. (5) Amount. (6) Rate of interest. (7) Date paid. Said notes shall be numbered in the order in which they shall have been executed. Such loans shall be negotiated by the County Treasurer with such bank or banks or Sinking Fund Commission of Union County of approved responsibility, as may offer the most favorable terms upon competitor's bids, after 30 days' advertisement; the proposals shall be upon such terms and conditions as may be determined by the County Treasurer upon consultation with the County Supervisor. The notes therefor shall contain an option

in favor of the county to pay the same at any time before maturity, with interest to date of payment; and it is hereby made the duty of the County Treasurer, as he may be in funds applicable thereto, to pay the same.

1912, XXVII, 643.

(1962) § 20. Report to Superintendent of Education.—The County Treasurer shall within the first five days of every month make a report to the County Superintendent of Education of the collection and disbursements of school taxes during the preceding month for each fiscal year upon account of which the same shall have been received. Each fiscal year shall be kept separate and distinct, and the County Treasurer shall make one, and as many reports as there are fiscal years to which the same are to be charged. He shall keep a book in which these reports shall be made out. The County Superintendent of Education shall keep a similar book, and shall on or before the first day of each month, deliver the same to the County Treasurer to be filled out in conformity with the book kept by the said Treasurer. This book shall be printed and ruled with appropriate columns and headed, "County Treasurer's Monthly Report to the County Superintendent of Education of the Collections and Disbursements of All Funds for School Purposes from.....19.... to 19...., for the Fiscal Year Commencing July 1, 19...., and Ending July 30, 19...." This report shall contain in tabulated form a statement showing balance on hand from last report, amount collected since last report, aggregated, from which shall be deducted disbursements since last report, showing balance on hand at the date of the report and remarks. This report shall be signed by the County Treasurer and dated.

1912, XXVII, 643.

(1963) § 21. Receipt Book.—The County Treasurer shall keep a book of blank receipt forms, which he shall use in receipting for all moneys other than taxes. This book shall be printed with a stub and perforated lines, separating stub from receipt. Upon the stub shall be printed the following: (1) Number. (2) Date. (3) Received of. (4) Amount. (5) Cash book folio. (6) On account of. (7) Signature—Payee and Treasurer. The person paying money to the Treasurer shall sign in the blank space entitled "Payee" and the Treasurer, in like manner, sign in the blank space entitled "Treasurer." The receipt shall be in the following form:

No.....	Office of County Treasurer.
	Union, S. C.,....., 19....
Received of.....	.....
.....	Dollars (\$....) on account of
.....	
	County Treasurer.

1912, XXVII, 643.

(1964) § 22. How Books to Be Kept.—All entries, footings and amounts carried forward, in the books hereinbefore provided for, shall be made in ink. Each page shall show perfect balancing of all columnar additions and of all footings carried forward.

1912, XXVII, 643.

(1965) § 23. **Warrant to Be Drawn Only Upon Fund for Which Appropriation Is Made.**—The County Supervisor is hereby prohibited from drawing any warrant upon the County Treasurer to be paid out of any of the several funds specifically appropriated for any purpose other than that for which the same shall have been appropriated, and it shall be unlawful for the County Treasurer to pay any such inhibited warrant. It shall be unlawful for the County Supervisor to create by contract, expressed or implied, any obligation against the county, which, with the obligation then existing and chargeable to any particular item of appropriations, shall exceed the amount specifically appropriated therefor: *Provided*, That in case of emergency, with the written consent of the County Delegation, this requirement may be dispensed with. Should the County Supervisor violate the provisions of the paragraph next preceding in this Section, the claim resulting therefrom shall be declared null and void as against the county, and the officer offending shall be held responsible to the claimant therefor upon his official bond. It is hereby made the duty of the County Supervisor to so apportion the appropriation for maintenance of convicts and road working organization or Rural Policemen as to cover the total expenses on account of these items for the entire fiscal year for which they may be respectively appropriated.

1912, XXVII, 643.

(1966) § 24. **Item to Be Stated on Warrant.**—The County Supervisor shall state upon each warrant drawn by him upon the County Treasurer, the item of the appropriation in the county supply account, on account of which it shall have been drawn; they shall also, in a tabulated form upon said warrant, state the amount of such appropriation, the amount theretofore drawn against it, the amount of the warrant then drawn, and the balance against which future warrants may be drawn. No warrant shall be paid by the County Treasurer or be allowed as a credit to him in his settlement, unless it conform with this requirement.

1912, XXVII, 643.

(1967) § 25. **When Appropriation Exhausted.**—That whenever the appropriation for any specific item of county expenses, as provided in the county supply account of any year, shall have been exhausted by warrant of the County Supervisor upon the County Treasurer, the payment of further claims chargeable to the account of such item shall be immediately suspended. Such claims in excess of the appropriation, after having been audited, allowed and entered upon the book of "Classification of Claims Allowed," for the year to which they belong, shall be transferred in red ink to the same book for the succeeding year, numbered with the claims for the year; the number endorsed upon said claims in red ink; the amount distributed in the item column for past indebtedness, and in column headed, "Nature of Claim," shall be entered, "Past Indebtedness of 19...., No." Upon the books from which the claim shall have been transferred, opposite the claim, shall be noted, "Transferred to 19...., No." In the county supply account for the succeeding year these claims shall be provided for by an appropriation in the item, "Past Indebtedness Claims,"

wherein they shall be classified by numbers, nature and amount. A certified schedule of these claims, itemized and classified, shall be furnished by the County Delegation in the General Assembly during the first week in January of every year. At the annual settlement with the Comptroller General all cash balances to the credit of the revenue of the county for all county purposes, and all uncollected assets, for the fiscal year to which said past indebtedness claims belong, shall be passed to credit of the revenue of the county for all county purposes for the fiscal year to which said past indebtedness claims shall have been transferred, to the extent of the amount of the same and of any other indebtedness of the preceding year provided for in the budget for the succeeding year; the balance, if any, shall be deposited by the County Treasurer in some reliable savings bank or county sinking fund commission for investment for the purpose of accumulating a fund with which to put the county upon a cash basis: *Provided*, That this Section shall not apply to obligations incurred in violation of Section —, but is intended to apply only to such obligations of the county as are not within the control of the County Commissioners.

1912, XXVII, 643.

(1968) § 26. **Treasurer to Receive All Funds.**—All income to the County of Union, from fines, fees, costs, licenses, profits, commutation road tax, and from all other sources, not otherwise appropriated by law shall be paid to the County Treasurer and be applicable to all claims for the payment of which appropriations for the year on account of county expenses shall have been made.

1912, XXVII, 643.

(1969) § 27. **Treasurer to Pay Loans.**—The County Treasurer is authorized and specifically directed, on January 1 of every year, to pay upon the warrant of the County Supervisor the item on account of loans from the State Sinking Fund Commission out of any cash on hand on December 31, preceding, derived from any and all sources of county income, whether there be sufficient funds on hand at that time applicable to this specific item or not; it being intended that this item be preferred to all other items of county expenses so as to make January 1 the period of annual settlement with the State Sinking Fund Commission.

1912, XXVII, 643.

(1970) § 28. **Auditor Required to Examine and Verify Books.**—It shall be the duty of the County Auditor, on or before the 10th day of each and every month, to personally examine the several books herein prescribed for the County Supervisor and County Treasurer, such inspection covering the transactions for the preceding month, and to verify, by actual count of cash and certificates of deposit, the cash reputed on hand by the County Treasurer and the Union County Sinking Fund. If upon such inspection he shall find that they are correct, and conform with the requirements of the preceding Sections, both and all inclusive, he shall endorse upon each one so found the word "approved" and sign and date the same, and he shall report to the Grand Jury at its next session any delinquencies or fail-

ure upon the part of either of said offices (Clerk of Court, Treasurer, Sinking Fund Commission and County Supervisor) to comply with the requirements of the preceding Sections, both and all inclusive.

1912, XXVII, 643.

(1971) § 29. In the annual settlements with the County Treasurer, supervised by the Comptroller General, the County Auditor shall make up a full statement of the receipts and disbursements of county taxes and all other income from the semi-fiscal year ending December 31 preceding and June 30 preceding. Each fiscal year beginning January 1 or July 1 and ending December 30 or June 30, as the case may be, shall be kept separate and distinct at whatever time of the year said settlement may be made.

1912, XXVII, 643.

(1972) § 30. **Book of "Fines and Licenses."**—The County Auditor shall keep a book called "Fines and Licenses," in which shall be entered all fines, fees, costs, licenses and profits reported to him as having been collected by the Clerk of the Court, Magistrates or who else, of the county. To this end it is hereby made the duty of the Clerk of Court and the Magistrate of Union County within the first ten days of each of the months of January, April, July and October, to present to the County Auditor their books showing the collections made by them during the preceding quarter on account of fines, fees, costs, licenses, profits, etc., from which the Auditor shall enter upon his books the several items of collection. He shall thereupon check up the same with the County Treasurer's daily cash receipts book. The County Auditor, after the expiration of the ten days hereinbefore fixed for such reports, shall mail a notice to the officer failing to comply with this Section requiring him within three days thereafter to submit his books as herein provided, and upon his failure to do so, the said officer shall be reported by the County Auditor to the Grand Jury at the next session thereafter for such action as the Court may deem proper.

1912, XXVII, 643.

(1973) § 31. **Sinking Fund Commissioners — How Appointed.**—That three electors of Union County, on being appointed and commissioned by the Governor, and their successors in office, shall be, and are hereby declared to be, "The Sinking Fund Commission" for the County of Union, for a term of two, four, and six years; and at the expiration of each term the appointment of a successor shall be for a term of six years and said successor shall be recommended by the Delegation of Union County in the General Assembly to the Governor for appointment and appointed by the Governor by and with the consent of the Senate; and any vacancy occurring from any cause on said Commission shall be filled for the unexpired part of term as hereinbefore set forth for appointment of successors.

1912, XXVII, 643.

(1974) § 32. **How Organized.**—The said Commission shall be a body corporate and as such shall elect a Chairman, a Secretary and a Treasurer; shall have a seal; shall keep a correct, accurate and perfect system of book-keeping. They shall have the right to sue and be sued, to plead and be

impleaded in any and all of the Courts of this State, of any other State and of the United States of America. They shall, if they elect, use the office of Master of Union County for any specified days of the week or month, not conflicting with his appointed days of business, and jointly with the Master use the office, furniture and vault.

1912, XXVII, 756.

(1975) § 33. Meetings.—They shall meet regularly the first Wednesday in each month and as often as they may elect.

1912, XXVII, 756.

(1976) § 34. Bond.—They shall each enter into a bond in a surety company that legally is domesticated to do business in South Carolina, in the sum of twenty-five thousand dollars for the faithful and honest custody and management of all funds turned over to them or either of them for the sinking fund of Union County; and shall pay the premiums on said policies out of the sinking fund moneys in their custody, possession and hands, taking the proper voucher for same, a duplicate voucher to be sent by them to the Board of County Commissioners for Union County and by them filed for back checking the accounts.

1912, XXVII, 756.

(1977) § 35. Duties.—They shall keep a minute book in which shall be recorded each amount ordered by them to be paid out, and no money shall be paid out except by a vote of at least two of said Commissioners and the votes recorded in the minute book, and the minutes of each meeting wherein any business is recorded requiring money to be paid out to be signed during the meeting by all the members and the seal indented over their signatures. It shall be left to the discretion of said Commission, the depository banks; but said banks must allow interest on all balances on deposit with them of not less than 4 per cent. per annum. That it shall be the duty of the said Sinking Fund Commission to give a notice to some newspaper published in the City of Union, for publication quarterly during the year, the amount of money in their hands or under their control and in their possession to be loaned, inviting borrowers for the same to submit their wants and collateral securities.

1912, XXVII, 756.

(1978) § 36. Further Duties.—That it shall be the duty of said Sinking Fund Commission to receive all moneys that by law are directed into the sinking fund and to credit the same to the account for which it was appropriated; to take into their possession and custody all moneys, notes, obligations, choses in action or evidences of any moneys due sinking fund and all stock or bonds or mortgages or other securities in the possession of the old Sinking Fund Commission or wherever found; to receive the books, papers, minutes, and all other data or funds or evidence of past or present losses pertaining to the Union County sinking fund. It shall be the duty of the said Sinking Fund Commission to pursue in any manner in their discretion any losses heretofore sustained to the said sinking fund by their predecessors or the present acting Sinking Fund Commission of Union

County. It shall be the duty of the said Sinking Fund Commission to loan or lend or invest or deposit in interest bearing securities, fully secured, from time to time, and on such terms as may be most advantageous to Union County; to collect and reinvest from time to time the fund now on hand and hereafter accruing or accumulating or coming into their possession from any tax levy; and all sources whatsoever.

1912, XXVII, 756.

(1979) § 37. Treasurer to Furnish Statement.—The Treasurer of Union County shall on the third Friday of each month send or give to the said Sinking Fund Commission a statement of the amount of moneys he has collected up to that date for sinking fund purposes and accompany the same with his check or cash for the amount; and a copy or duplicate of said statement he shall give or send to the Board of County Commissioners to be filed by them for the purpose of back checking.

1912, XXVII, 756.

(1980) § 38. County Master to Turn Over Certain Moneys.—The Master of Union County shall turn over to the Sinking Fund Commission all moneys in his office that are non-interest bearing and that are the accumulations of old balances unpaid to litigants that have been over one year in his office; accompanying each with a statement of the case and the parties to the action; with the amount in each case and charge up the same to the Sinking Fund Commission's account and send a duplicate or copy of same to the Board of County Commissioners for the purpose of back checking, and keep the receipt of the said Boards of Sinking Fund Commission and Union County Commissioners as the vouchers against this disbursement in his office for the purpose of back checking or tracing.

1912, XXVII, 756.

(1981) § 39. Shall Obey Master's Warrant.—The Sinking Fund Commission shall obey the warrant of the Master on them for any moneys turned over by him to them in stated cases whenever the said Master settles said cases and is ready to pay out the moneys to the proper parties in interest in the action and duplicates of said transactions shall be given by both the Master and Sinking Fund Commission to the Board of County Commissioners of Union County for the purpose of back checking and tracing.

1912, XXVII, 756.

(1982) § 40. Referees to Turn Over Certain Moneys.—That any referee of Union County under the jurisdiction of any State Court shall turn over to the Sinking Fund Commission all moneys in his hands as referee or have come into his possession as referee and not already paid out to the proper parties in interest and which are non-interest bearing and have been in his possession over one year, accompanying the transfer with a statement to the effect that it is done in pursuance of this Act, stating the amount, and the title of the cause, its date and all parties in interest, and charge up the same to the account of the Sinking Fund Commission and send a duplicate

copy of same to the Board of County Commissioners and file the receipts of the Sinking Fund Commission and the County Commissioners as his proper vouchers, for back checking and tracing.

1912, XXVII, 756.

(1983) § 41. To Obey Warrants of Referees.—The said Sinking Fund Commission shall obey the warrant order of the said referee on them for said moneys whenever the said referee is ready to settle and pay the said moneys over to the proper parties in interest, and the payment by said Sinking Fund Commission to said referee, shall send duplicate statements of said transaction to the Board of County Commissioners for filing, for the purposes of back checking and tracing.

1912, XXVII, 756.

(1984) § 42. Probate Judge Shall Turn Over Certain Moneys.—The Probate Judge of Union County shall turn over to said Sinking Fund Commission any and all moneys in his office that are non-interest bearing, and that represent old balances unclaimed for over one year, accompany the same with a full and complete statement of the case for the Sinking Fund Commission and its duplicate copy for the County Commissioners for their filing, and the receipts of said Board shall be a proper voucher for his office against the moneys so paid out.

1912, XXVII, 756.

(1985) § 43. Shall Honor Warrants of Probate Judge.—The said Sinking Fund Commission shall obey the warrant order of the Probate Judge of Union County on them for said moneys whenever the said Probate Judge is ready to settle and pay the said moneys over to the proper parties in interest, and the payment by said Sinking Fund Commission to the said Probate Judge, and shall send duplicate statements of their transaction to the Board of County Commissioners for filing, for the purpose of back checking and tracing.

1912, XXVII, 756.

(1986) § 44. Reports.—The said Sinking Fund Commission shall by appointment furnish to the Solicitor or Grand Jury, its foreman or committee, all of its books, papers and securities as called for by either, any, or all of them, and be ready at any and all times for an inspection of their stewardship.

1912, XXVII, 756.

(1987) § 45. Publish Quarterly Statements.—The said Sinking Fund Commission shall publish quarterly a statement in a newspaper published in the City of Union, giving amount of cash on hand, how much loaned and how much received by them up to that date.

1912, XXVII, 756.

(1988) § 46. Further Duties.—The said Sinking Fund Commission shall charge up on their books all outstanding bonds voted by Union County, by any township, by any school district or for any purpose over which they

have cognizance or jurisdiction by virtue of the laws; the face value of each and the aggregate value; what interest payable on same, their market value, and when redeemable.

1912, XXVII, 756.

(1989) § 47. **Bonds May Be Redeemed.**—They shall always in their discretion redeem any outstanding bond before maturity, with moneys in hand, if the market value of same justifies the redemption.

1912, XXVII, 756.

(1990) § 48. **Treasurer Turn Over Cancelled Coupons.**—The Treasurer of Union County shall turn over to the Sinking Fund Commission all the cancelled coupons representing the paid interest on bonds and take receipt for same, and the said transaction made in duplicate so that a copy shall be given the County Commissioners for filing and tracing.

1912, XXVII, 756.

(1991) § 49. **Notify Legislative Delegation of Maturity of Bonds.**—That said Sinking Fund Commission shall notify the Union County Delegation in the General Assembly two years and one year before the maturity of any bonds of which they are the custodians of the sinking fund for their redemption, accompanied by a statement of the amount of money credited to said bonds account, for redemption.

1912, XXVII, 756.

(1992) § 50. **Compensation.**—The said Commissioners of the said Sinking Fund Commission shall each have as compensation for their services \$120 per annum.

1912, XXVII, 756.

(1993) § 51. **Penalty for Breach of Trust.**—That for any breach of the trust herein created the Commissioners found guilty shall be punished not exceeding five years in the State Penitentiary, or by fine not exceeding \$5,000.

1912, XXVII, 756.

(1994) § 52. **Penalty.**—For refusing to carry out any of the foregoing Sections of this Article relating to the Sinking Fund Commission, the officer so refusing shall be guilty of a misdemeanor, and, on conviction, shall forfeit his office and also be punished by imprisonment of not exceeding five years in the State Penitentiary, or by fine not exceeding \$1,000.

1912, XXVII, 756.

WILLIAMSBURG COUNTY.

(1995) § 1. **Election and Term of Office of County Supervisor, Williamsburg County.**—In Williamsburg County there shall be elected, as provided by law, a County Supervisor, whose term of office shall be four years, and until his successor shall have been elected and qualified.

Civ. '12, § 1113; 1908, XXV, 1191; 1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(1996) § 2. **Official Bond.**—That the County Supervisor so elected shall, before entering upon the duties of his office, execute a bond for the use of the county for the faithful performance of his duties, in the sum of two thousand dollars. Said bond to be approved in the same manner as now provided for bonds of County Auditors.

Civ. '12, § 1114; 1908, XXV, 1191; 1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(1997) § 3. **Records.**—That the said County Supervisor shall keep such books as may be necessary for the preservation of all official acts and records pertaining to the duties of his office and the duties of the Board of County Commissioners as hereinafter provided, and said Supervisor shall have power and authority to administer oaths to any person in reference to matters appertaining to his office.

1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(1998) § 4. **Appointment and Term of Office of County Commissioners.**—That there shall be in Williamsburg County a Board of County Commissioners, composed of the County Supervisor, who shall be Chairman of said Board, and five Commissioners, who shall be appointed by the Governor, upon the recommendation of the County Delegation of the General Assembly, or a majority thereof, whose terms of office shall be for two years, or until their successors shall be appointed and qualified. No two Commissioners appointed under the terms of this Article shall be commissioned from any one township in the county.

1912, XXVII, 540; 1916, XXIX, 868; 1917, XXX, 246; 1918, XXX, 702; 1919, XXXI, 196.

(1999) § 5. **Powers of Board of County Commissioners.**—That said Board of County Commissioners shall have general jurisdiction over all public highways, roads, bridges and ferries, and over paupers, and in all matters relating to taxes and disbursements of public funds for county purposes, and in any other case that may be necessary for the internal improvement and local concerns of public interest; with full power and authority to devise plans, enter contracts or agreements for the building and maintenance of public roads and bridges, employ civil engineers, as hereinafter provided, appoint overseers, and organize such working forces as may to them appear necessary for the practical construction and preservation of the roads and bridges of the county. They may, at their discretion, appoint a Township Supervisor for any township in which they think it necessary.

Civ. '12, § 1115; 1908, XXV, 1191; 1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(2000) § 6. **Bonds of County Commissioners.**—That before entering upon their duties the County Commissioners shall each execute a bond for the use of the county for the faithful performance of their duties in the sum of one thousand dollars. Said bond to be approved in the same manner as now provided for the bonds of County Auditors.

1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(2001) § 7. **Secretary.**—That as soon as practicable, and within thirty days after having received their commission, the Board of County Commissioners shall meet in the office of the County Supervisor and shall elect one of their number Secretary to the Board, whose additional duty it shall be to keep a complete and accurate record of the proceedings of each meeting of the Board, and shall file a copy of same with the County Supervisor for the permanent files of his office: *Provided*, That all other clerical matters pertaining to the duties of the Board of County Commissioners shall be performed by the County Supervisor.

1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(2002) § 8. **Meetings of Board of County Commissioners.**—That it shall be the duty of the Board of County Commissioners to hold monthly meetings upon such day or date as may be designated by them and upon such other dates as may appear necessary to said Board in the discharge of their duties.

1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(2003) § 9. **Compensation of Supervisor and Commissioners.**— That the salary of the County Supervisor shall be twelve hundred and fifty dollars per annum. Each of the other members of the Board of County Commissioners shall be paid a salary of four dollars per diem and mileage, ten cents per mile one way, for each day served: *Provided*, That such paid service shall not exceed twenty-four days per annum.

1912, XXVII, 540, 617; 1916, XXIX, 222; 1916, XXIX, 868; 1919, XXXI, 196.

(2004) § 10. **Road Engineer, Duties, Compensation, Etc.**—That it shall be the duty of the Board of County Commissioners, upon the recommendation of the State Highway Commission or Engineer, to employ a suitable and capable person who shall be designated as Road Engineer, and whose qualifications shall be that he is a graduate of a well-recognized school of instruction in civil engineering, and that he shall have had at least two years of practical experience in road building. He shall not be a resident of the county at the time he is first employed: *Provided*, That the Board of County Commissioners in their discretion may refuse to employ a person recommended by the State Highway Commission or Engineer. The salary of the Road Engineer shall not exceed twenty-five hundred (\$2,500.00) dollars per annum, and he shall be allowed three hundred (\$300.00) dollars per annum for traveling and other expenses necessary to the performance of his duties. The term of office, or contract, of persons so employed shall expire at the discretion of the Board of County Commissioners, except that thirty days' notice shall be given before the expiration of the tenure of office. It shall be the duty of the Road Engineer to personally supervise the constructive work of road and bridge building in the county, under such rules and regulations as may be prescribed by the Board of County Commissioners. He shall be subject at all times to the advice and direction of the said Board. Said Road Engineer shall be chosen or selected by such procedure or in such manner as the Board of County Commissioners may in their judgment elect: *Provided*, That nothing herein shall conflict with the requirements stated.

Civ. '12, §§ 1117, 1118, 2097; 1908, XXV, 1191; 1912, XXVII, 540; 1915, XXIX, 222; 1916, XXIX, 868; 1919, XXXI, 196.

(2005) § 11. Duties of Road Engineer.—That it shall be the duty of the Road Engineer to report to the Board of County Commissioners any and all violations of the road laws which may come under his observation, make recommendations or offer suggestions for the improvement of the roads, make requisitions for material, implements and supplies needed for county purposes, and to perform all other requirements prescribed for him by the Board of County Commissioners.

Civ. '12, §§ 1119, 2098; 1908, XXV, 1190; 1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(2006) § 12. Disposition of License Fees Collected by Clerk of Court.—That all moneys collected by the Clerk of Court for licenses of all kinds shall go into the general road fund of said county.

Civ. '12, §§ 1120, 2100; 1908, XXV, 1191; 1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(2007) § 13. Disposition of Proceeds of Road Levy.—That the road tax levied in each township of the county shall be used in the maintenance of roads in the township only from which it is derived: *Provided*, That the tax derived from railroads, telephone and telegraph companies shall go into a general bridge fund and to be used for such purpose: *Provided*, That any unexpended balance of the bridge fund shall be equally divided among the townships of the county.

Civ. '12, § 2102; 1908, XXV, 1193; 1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(2008) § 14. Road Duty.—That all able-bodied male persons from the age of twenty-one to sixty years, both inclusive, in the County of Williamsburg shall be required annually to pay \$2.00 commutation or road tax, except such persons who by statute are now exempt from poll tax: *Provided*, That taxes so derived shall be used only in the township from which they came.

Civ. '12, §§ 1121, 2111; 1908, XXV, 1191; 1909, XXVI, 138.

(2009) § 15. Commutation Tax.—That all persons who are liable to road duty as fixed by Section 14 of this Article, in lieu of performing or causing to be performed labor upon the public highways of said county, shall be required to pay to the County Treasurer of said county, at the same time other taxes are paid, an annual commutation or road tax of \$2.00 per head, which shall be expended upon the public roads of the township from which collected. Said tax to be collected as poll tax is now collected, and any failure to pay said road tax shall be a misdemeanor, and the offender, upon conviction, shall be punished by a fine of not less than \$5.00 and not more than \$50.00, or imprisonment for not more than thirty days.

Civ. '12, §§ 1121, 2112; 1908, XXV, 1191; 1909, XXVI, 138; 1913, XXVIII, 39; 1916, XXIX, 868; 1919, XXXI, 196.

(2010) § 16. Acceptance of Gifts for Road Purposes.—That it shall be lawful for the Board of County Commissioners to accept from individuals, firms or corporations gifts in money, material or labor: *Provided*, That such is given or donated unconditionally and for the sole purpose of supple-

menting public funds when said public funds are insufficient to complete or provide necessary or desired repair or improvements of any section or bridge of any public road in the county: *Provided, however*, That such gifts or donations can be used only upon section or bridge or road for which they were given or donated, and it shall be the duty of the County Supervisor to keep an accurate account of all such receipts and disbursements.

1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(2011) § 17. Publication of Disbursements.—That the Supervisor shall cause to be published monthly in some county paper or papers an itemized statement of all disbursements for the current month, said statement to be published in such manner as to show quantity or amounts or article bought and the price paid therefor.

1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(2012) § 18. Townships May Vote Special Tax.—That each township in the county may for the purpose of further development of roads vote upon itself a special tax to be so used, said tax to be placed with the funds of the township from which collected: *Provided*, That such election or elections shall be held as prescribed by law.

1912, XXVII, 540; 1916, XXIX, 868; 1919, XXXI, 196.

(2013) § 19. Vehicle License.—That for the further improvement of the highways of Williamsburg County there shall be collected an annual license fee by the Clerk of Court from the owner for the operation of any vehicle upon the roads of said county, except such vehicles as are already licensed by the State of South Carolina. The fees to be charged are as follows: One (\$1.00) dollar for one-horse vehicles; two (\$2.00) dollars for two-horse vehicles, except that five (\$5.00) dollars be charged for log wagons or log carts. It shall be the duty of the Clerk of Court to provide license tags showing the number of license, the year issued, and the name of the county, to be fastened by the owner of the vehicles to the rear axle, or in some other conspicuous place, in such manner that the number can be plainly seen from the rear. The cost of said license tag and license blanks to be paid out of the funds derived therefrom. In the event an owner of a vehicle licensed loses the tag, the Clerk of Court shall, upon request of owner, issue another license in its place, charging a fee of twenty-five cents (25c) therefor. The Clerk of Court shall retain as compensation for his services out of said license fee a fee of ten cents for each license or duplicate issued, the rest to be turned into the county treasury. The Clerk of Court shall keep a record of all licenses issued, showing the number, the name of the purchaser, the fee paid and the date of issue. The owner of any vehicle shall within ten days after the purchase thereof get license for said vehicle from Clerk of Court as above set forth. All license tags are nontransferable. Any person, persons, firms or corporations who are residents or have their place of business, operating or cause to be operated, any vehicle upon the roads of Williamsburg County without having first procured a license therefor as provided herein shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than five nor more than twenty dollars, or imprisoned not more than thirty days, at the discretion of the

Court for each offense: *Provided*, That any person, firm or corporation purchasing such license shall be required to display on the vehicle for which such license has been acquired, the tag with the number thereon, such tag to be in such a place on said vehicle as shall be easily seen by any person meeting or approaching said vehicle, and any violation of this provision shall be deemed to be a misdemeanor and punishable as is required by this Act for refusal to purchase said license.

1919, XXXI, 196; 1920, XXXI, 991; 1921, XXXII, 155.

(2014) § 20. Road Estimate.—At the beginning of each year the Road Engineer shall make a careful estimate of the amount which will be necessary for the building and maintaining of the bridges that are built and maintained by contract and make his report to the County Commissioner; and the County Commissioner shall keep an account of the funds so estimated separate and distinct from the account of the remainder of the general road and bridge fund, the first account being designated as “Bridge Account,” and the second as “Road Account;” and the said County Commissioner shall, not later than the twentieth of each month, report to the Road Engineer the amounts expended and the balance on hand belonging to each said “Bridge Account” and “Road Account.”

Civ. '12, § 2103; 1908, XXV, 1193.

(2015) § 21. Plans for Bridges.—Of each bridge now required by law to be let out by contract, the said Road Engineer shall prepare plans and specifications and estimate of cost in duplicate and, after the contract is let, shall file one of the duplicates in the office of the County Commissioner, which shall be open to the inspection of the public; and notice of letting shall be given as now provided by law.

Civ. '12, § 2104; 1908, XXV, 1194.

(2016) § 22. Duties of Engineer.—The Road Engineer shall divide and mark off the roads in each township into sections of convenient size, and designate each section by number; and shall make careful plans and specifications of the materials and work and manner of using said materials and performing said work necessary to put each section in good condition in all respects, including all bridges costing not more than ten dollars; and after the contracts as to said sections have been let, shall file a copy of said plans, specifications and estimate in the County Commissioner's office for public inspection.

Civ. '12, § 2105; 1908, XXV, 1194.

(2017) § 23. Bids for Road Repairs to Be Advertised.—After the division of the roads and the preparation of the plans, specifications and estimates above mentioned, said Road Engineer shall advertise for at least fifteen days, in some newspaper published in said county, the time and place in the township at which the contracts for building and repairing the section of roads in such township shall be let; and at said time and place he shall publicly let the contract for each section to the lowest responsible

bidder and furnish to the bidder securing the contract a copy of the plans and specifications for said section, but the estimate shall in no case be divulged before said contract be let.

Civ. '12, § 2106; 1908, XXV, 1194.

(2018) § 24. Contractor May Work Road Hands.—The person securing the contract mentioned in Section 23 shall, in carrying out his contract, call out and work all the road hands belonging to his section who do not produce at his request receipts for their commutation tax for the year, when so called out; and the Road Engineer when issuing his certificate on said contract shall deduct from the contract price at which said contract was let the sum of two dollars for each road hand so worked by said contractor.

Civ. '12, § 2107; 1908, XXV, 1195.

(2019) § 25. Payment on Completion of Contract.—Upon the completion of a contract, let under Section 23, in every detail the said Road Engineer shall receive the same and issue his certificate to the County Commissioner, certifying the completion of said contract as aforesaid and the amount due thereupon, and after the same shall have been approved, the County Commissioner shall issue his warrant for the payment thereof upon the County Treasurer, and shall charge to the "Road Account" of the township in which said section is situated the portion of the amount due on said contract in excess of the amount belonging to said section from commutation tax.

Civ. '12, § 2108; 1908, XXV, 1195.

(2020) § 26. Road Account.—All accounts against the road and bridge fund shall be certified by the Road Engineer; and said Engineer shall not let contracts or make purchases at any time in excess of the amount belonging to the "Road Account" or "Bridge Account."

Civ. '12, § 2109; 1908, XXV, 1195.

(2021) § 27. Powers and Duties of Auditing Board.—All the duties, privileges and authority now required of and given to the County Commissioners as to the opening and closing of roads of said county, are hereby required of and given to the Board of said county.

Civ. '12, § 2110; 1908, XXV, 1195.

ARTICLE II.**The Sheriff.**

(2022) § 1. When Election of Sheriff Held.—There shall be an election for Sheriff held in each county, except in the Counties of Berkeley, Cherokee and Hampton, at the general election in 1904, and on the same day in every fourth year thereafter. In the counties excepted the election shall be in 1902.

Civ. '12, § 1136; Civ. '02, § 820; G. S. 642; R. S. 703; 1870, XIV, 338, § 1; 1882, XVII, 682; 1888, XIX, 171; 1885, XIX, 144.

State v. Cockrell, 2 Rich. 6.

(2023) § 2. How Vacancies Filled.—In the event that a vacancy shall, at any time, occur in the office of Sheriff in any county of this State, whether from death, resignation, disqualification, or other cause, the Governor shall have full power to appoint some suitable person, who shall be an elector of such county, and who, upon duly qualifying, according to law, shall be entitled to enter upon and hold the office until the next general election for County Sheriffs, and shall be subject to all of the duties and liabilities incident to said officer, during the term of his service in said office.

Civ. '12, § 1137; Civ. '02, § 821; G. S. 643; R. S. 704; 1870, XIV, 374, § 1; 1877, XVI, 232; 1878, XVI, 507, 716.

(2024) § 3. Coroner to Act as Sheriff During a Vacancy.—The Coroner, during the continuance of such vacancy, and until the office is filled by appointment or election, shall assume the office, discharge its duties, incur its liabilities, and be entitled to its fees and emoluments; and shall, for such purpose, take charge of the books and papers of the office, and occupy the apartment allowed to the Sheriff for transacting the business of his office.

Civ. '12, § 1138; Civ. '02, § 822; G. S. 644; R. S. 705; 1839, XI, 78, § 42.

(2025) § 4. Clerk to Act Until Coroner Takes Charge or Vacancy Filled.—In case of vacancy in the office of Sheriff, and until the Coroner for such county may take charge of the same, or until a Sheriff shall be elected and commissioned for such county, the Clerk of the Court for such county shall take possession of the jail of such county, and charge of the prisoners confined therein, and, also, possession of the Sheriff's office, and the papers therein.

Civ. '12, § 1139; Civ. '02, § 823; G. S. 645; R. S. 706; 1839, XI, 113, § 39.

(2026) § 5. Coroner to Act When Sheriff is Interested.—If the Sheriff shall be a party plaintiff or defendant in any judicial process, execution, warrant, summons, or notice to be served or executed within his county, the Coroner shall serve the same, and incur the liabilities of the Sheriff.

Civ. '12, § 1140; Civ. '02, § 824; G. S. 646; R. S. 707; 1839, XI, 78, § 41; 1785, VII, 215, § 9.

(2027) § 6. Sheriff to File Bond.—When any person shall be declared duly elected to the office of Sheriff, he shall be bound to file in the office of

the State Treasurer his bond, duly executed and approved, within thirty days from the time he receives notice that the election is declared.

Civ. '12, § 1141; Civ. '02, § 825; G. S. 647; R. S. 708; 1839, XI, 37, § 7.

(2028) § 7. Amount of Sheriff's Bond and Number of Sureties.—The Sheriffs of the several counties, before receiving their commissions, shall enter into bonds to be executed by them, and any number of sureties, not exceeding twelve nor less than two, to be approved by a majority of the Board of County Commissioners, in the sum of ten thousand dollars; except in the County of Calhoun, where the bond of the Sheriff shall be in the sum of four thousand dollars; and except in the County of Charleston, where the bond of the Sheriff shall be in the sum of twenty-five thousand dollars; and in the Counties of Spartanburg and Greenville, in each of which the bond of the Sheriff shall be fifteen thousand dollars; and in the County of Horry, the bond shall be four thousand dollars; and in the Counties of Edgefield and Saluda, where it shall be six thousand dollars; and in the Counties of Abbeville and Greenwood, where it shall be seven thousand dollars, and in the County of McCormick, where it shall be five thousand dollars; and every Sheriff shall procure other satisfactory security when duly required.

Civ. '12, § 1142; Civ. '02, § 826; G. S. 648; R. S. 709; 1897, XXII, 441; 1868, XIV, 19, § 1; 1839, XI, 37, § 7; XVI, 4; 1878, XVI, 518; XVII, 366, 681; 1903, XXIII, 29; 1905, XXIV, 902; 1909, XXVI, 38; 1919, XXXI, 75.

(2029) § 8. Liability of Sureties of Sheriff.—The return of *nulla bona* on any execution against the Sheriff shall not be necessary before legal resort may be had against his sureties, or any of them: *Provided*, That there shall be liability to contribution among the sureties aforesaid, in case of joint suretyship.

Civ. '12, § 1143; Civ. '02, § 827; 1839, XI, 391, § 4.

As to the Sheriff's bond generally. Commissioners v. Moore, 2 Brev. 51; Commissioners v. Mayrant, 2 Brev. 288; Blanding v. Rogers, 2 Brev. 394; Commissioners v. Muse, 3 Brev. 150; Dunlap v. Bynum, 4 DeS. 646; Clifton v. Haig, 4 DeS. 330; Hawkins v. Sumter, 4 DeS. 446; Kelly v. Payne, 1 McC. 138; Commissioner v. Neuby, 1 McC. 184; Treasurers v. Stevens, 2 McC. 107; Treasurer v. McGuire, Harp. 474; Futch v. Walker, 1 Bail. 98; Treasurer v. Bates, 2 Bail. 362; Harris v. Ferguson, 2 Bail. 397; Treasurer v. Burch, 2 Hill 510; Treasurer v. Munday, 3 Hill 167; State v. Yates, Riley 256; State v. Irby, 1 McM. 485; Williamson v. King, McM. Eq. 41; Treasurers v. McPherson, 2 McM. 69; Leslie v. Taggart, 2 McM. 71; Treasurers v. Oswald, 2 McM. 145; Treasurer v. Buckner, 2 McM. 323; State v. Wylie, 2 Stroob. 113; Rowell v. Mulligan, 2 Stroob. 379; Posey v. Rainey, 4 Stroob. 20; Allen v. Ramey, 4 Stroob. 30; Black v. Ramey, 4 Stroob. 79; Bowie v. Ramey, 4 Stroob. 84; Norton v. Mulligan, 4 Stroob. 355; Taylor v. Easterling, 1 Rich. 310; Williams v. Sims, 1 Rich. Eq. 53; McKenna v. Secrest, 4 Stroob. Eq. 160; State v. Young, 6 Rich. 323; Treasurer v. Milliard, 8 Rich. 412; State v. Staggers, 12 Rich. 286; McElwee v. Jeffreys, 7 S. C. 233; Lyles v. Bolles, 8 S. C. 258; State v. Cason, 11 S. C. 392; State v. Boles, 13 S. C. 284; State v. Gilreath, 16 S. C. 364; Oliver v. White, 18 S. C. 242; State v. Williams, 19 S. C. 65; Goodgion v. Gilreath, 23 S. C. 388.

(2030) § 9. How to Qualify Before Assuming Office.—Every Sheriff before entering upon the duties of his office, shall, in addition to the oath of office prescribed in Article III, Section 26, of the Constitution, take the several oaths required of such officer by Sections (734) and (735), and which oath shall be endorsed on the commission, and shall be taken and subscribed before the Clerk of the Court of the county; and at the next term of the Circuit Court in the county he shall produce his commission, which shall be read in open Court and recorded in the Journal.

Civ. '12, § 1144; Civ. '02, § 828; G. S. 650; R. S. 711; 1816, VI, 27, § 3; 1880, XVII, 502.

(2031) § 10. No Sheriff or His Deputy or Clerk to Practice Law or Act as Clerk of Court.—No Sheriff, Deputy Sheriff or Sheriff's Clerk, while in office, shall act as an attorney-at-law or solicitor in equity, in his own name or in the name of any other person, or be allowed to plead or practice in any of the Courts in this State, nor shall hold the office of Clerk of Court of Common Pleas and General Sessions.

Civ. '12, § 1145; Civ. '02, § 829; G. S. 651; R. S. 712; 1839, XI, 41, § 9.

State v. Boyles, 80 S. C. 352, 354; 60 S. E. 233.

(2032) § 11. Appointment of Deputies — Tenure of Office — Bond — Responsibility of Sheriff for.—The Sheriff may appoint one or more deputies to be approved by the Judge of the Circuit Court or any Circuit Judge presiding therein; and such appointment shall be evidenced by a certificate thereof, signed by the Sheriff, and shall continue during his pleasure. He may take such bond and security from his deputy as he shall deem necessary to secure the faithful discharge of the duties of the appointment; but he shall in all cases be answerable for neglect of duty or misconduct in office of such deputy.

Civ. '12, § 1146; Civ. '02, § 830; G. S. 652, 653; R. S. 713; 1870, XIV, 332, § 1; 1880, XVII, 4.

Tax sale under execution levied by constable not a regular deputy is void. *Barrineau v. Stevens*, 75 S. C. 252, 55 S. E. 309.

State ex rel. Piedmont Mfg. Co. v. Goldsmith et al, 96 S. C. 484, 81 S. E. 147.

(2033) § 12. Deputy to Take Oath of Office—Duties of.—Every such deputy shall, previous to entering on the duties of his appointment, take an oath or affirmation, as prescribed by the Constitution of the State, faithfully to perform all the duties of his appointment, and the oath with regard to duelling, and the oath to enforce the law against gaming; and when so qualified he may perform any and all of the duties appertaining to the office of his principal.

Civ. '12, § 1147; Civ. '02, § 831; G. S. 654; R. S. 714; 1870, XIV, 332, § 1; 1880, XVII, 4.

(2034) § 13. Special Duputies—How and When Appointed—Sheriff Responsible for.—The Sheriff, without seeking the approval of the Circuit Judge, may appoint special deputies, as the exigency of his business may require, for the service of process in civil and criminal proceedings only; and for their conduct he shall be responsible.

Civ. '12, § 1148; Civ. '02, § 832; G. S. 652; R. S. 715; 1870, XIV, 332, § 1; 1880, XVII, 4.

Ford v. Villers, 2 McC. 114; *Jentry v. Hunt*, 2 McC. 410; *May v. Walters*, 2 McC. 470; *Chiles v. Holloway*, 4 McC. 164; *Singletary v. Carter*, 1 Bail. 467; *Barksdale v. Posey*, 2 Hill 647; *Ex parte Hanks*, Cheves Eq. 203; *Kleinck v. Black*, 14 S. C. 241; *Barrineau v. Stevens*, 75 S. C. 252, 55 S. E. 309.

(2035) § 14. Deputy Sheriffs for Newberry County.—That the Sheriff of Newberry County shall appoint from the registered electors of said county, three able-bodied men, of good habits, and known as men who are not addicted to the use of alcoholic liquors, and shall commission them as Special Deputy Sheriffs for the term of two years, subject always to removal by the Sheriff for cause. The Sheriff may appoint one of these Special Deputy Sheriffs to act as his Deputy under the provisions of Sections 11 and 12 of this Article.

1912, XXVII, 865; 1914, XXVIII, 537.

(2036) § 15. **Salaries of Deputies.**—That the salaries of each of said Deputies shall be seventy-five dollars per month, each, payable monthly by the County Treasurer, upon the warrant of the County Supervisor, out of the ordinary county funds; but before issuing said warrant to any Deputy, the said Supervisor shall require such Deputy to take and subscribe an oath that he has fully and faithfull performed during the preceding months the duties required of him herein. The County Board of Commissioners shall furnish to each of said Deputies two uniforms per year, to be prescribed and approved by the said Board; said Deputies shall provide themselves with deputies' billets and such firearms as may be prescribed by said County Board, and with horses for regular use in riding over the county and performing duty as mounted Deputies, and they shall bear all expenses incident to their service.

1912, XXVII, 569, 865.

(2037) § 16. **Duty to Patrol County.**—The said Deputies shall patrol the entire county at least twice a week by sections assigned to each by the Sheriff, remaining on duty at night when occasion or circumstances suggest the propriety thereof, to prevent or detect crime or to make an arrest, and they shall always be on duty for not less than ten hours a day, except when granted occasional indulgences or leaves of absence by the Sheriff. They shall frequent railroad depots, stores and other public places where people congregate or disorder is probable, or vagrants may be loafing or alcoholic liquors may be sold, bartered or given away, and they shall as often as practicable ride by houses that are off the public highways and in lonely parts of the county, especially such as are without male protectors, and shall use every means to prevent or detect, arrest and prosecute for breaches of the peace, drunkenness, using obscene language, boisterous conduct or discharging of firearms on the public highways or at any public place or gathering, carrying weapons contrary to law, gambling, vagrancy, setting out fire, violation of the game and fish laws, violation of the dispensary laws, cruelty to animals or children, violation of the child labor laws, lynching and for the violation of any and every law which is detrimental to the peace, good order and morals of the community.

1912, XXVII, 865.

(2038) § 17. **Authority of.**—That said Deputies shall have authority for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, to arrest without warrant, and in pursuit of the criminal or suspected criminal, to enter houses or break and enter the same, whether in their own county or in an adjoining county, and they shall have the right and authority to summon the *posse comitatus* to assist in enforcing the laws and in arresting violators or suspected violators thereof; and any citizen who shall fail to respond and render assistance when so summoned or called upon shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for thirty days, or by a fine of not less than thirty dollars nor more than one hundred dollars. When an arrest is made without warrant the person so arrested shall be forthwith carried before a Magistrate and a warrant of arrest procured and disposed of as the Magistrate shall direct.

1912, XXVII, 865.

(2039) § 18. **Bond and Oath.**—That each of said Deputies shall, before entering upon the discharge of his duty, enter into bond in the sum of one thousand dollars, with sufficient surety, to be approved by the Sheriff of said county, conditioned for the faithful performance of his duties and for the payment to the county, and to any person or corporation all such damages as they or any of them may sustain by reason of his malfeasance in office or abuse of his discretion, and shall, in addition to the oath of office now prescribed by Section 26, of Article III, of the Constitution, and by Section (734), of this Code, take and prescribe the following oath (or affirmative), to wit: I further solemnly swear (or affirm) that during my term of office as County Deputy, I will study the Act prescribing my duties, and will be alert and vigilant to enforce the criminal laws of the State and to detect and bring to punishment every violation of the same, and will conduct myself at all times, with due consideration to all persons, and will not be influenced in any matter on account of personal bias, or prejudice. So help me, God. The form of said bond shall be approved by the County Attorney and, with the oaths, shall be filed with and kept by the Clerk of the Court for said county.

1912, XXVII, 865.

(2040) § 19. **Deputies—Duties—Term—Compensation—Removal.**—That the duties heretofore performed by the said County Policeman shall hereafter be performed by one Deputy, appointed and commissioned by the Sheriff of Aiken County, who shall be under his immediate direction and control. In the performance of his duties the said Deputy shall pay particular attention to the enforcement of the laws prohibiting the sale and unlawful use of intoxicating liquors. The said Deputy shall be appointed for the term of one (1) year and shall receive for his services the sum of one thousand (\$1,000.00) dollars per annum, to be paid in monthly installments by the said county, as other salaries are now paid. The said Deputy may be removed by the Sheriff, at any time for cause, by giving ten days' notice thereof to the Deputy so sought to be removed.

1916, XXIX, 890; 1917, XXX, 201.

(2041) § 20. **Deputy for Darlington County—Duties.**—There shall be allowed the Sheriff of Darlington County one Deputy to be appointed by said Sheriff, who shall receive a salary of six hundred (\$600.00) dollars per annum. The said Deputy with the Sheriff shall serve all papers for the Magistrate at Darlington Court House without extra compensation; and shall, together, with the Rural Policemen of said county, collect all delinquent taxes, and all fees from or other moneys coming into their hands shall be placed in the County Treasury, to the credit of the ordinary county funds.

1916, XXIX, 799.

(2042) § 21. **How Industrial Corporations Procure Appointment of Peace Officers—Term of Office, Duties, Etc.**—Upon a written statement of the President or Treasurer or other executive officer having the management of any industrial corporation located in any county of this State, setting forth that in his opinion the interests of the industrial community

and locality under their management require special police supervision, and that in the said community fifty or more inhabitants are comprised, and directed to the Sheriff of the said county, it shall thereupon be the duty of the said Sheriff to appoint a discreet and suitable person as his Deputy and one satisfactory to the President and Treasurer or other executive officer of said corporation requesting the appointment, whose term of office shall expire with the term of the Sheriff, unless sooner by him removed; and who shall reside within the community and upon the property for whose protection he is appointed, and whose salary shall be paid by the corporation at the instance of whose President or Treasurer or other executive officer managing the said corporation the appointment is made, the amount to be fixed by contract with said corporation, acting through its President or Treasurer or other executive officer; and whose jurisdiction as its officer shall extend over the property controlled by the said President or Treasurer or other executive officer having the management of said corporation, and in addition over all territory within a radius of one mile from the main building in which the industry of the corporation is operated. Before entering upon the duties of his office, the said Deputy shall take the oath prescribed by the Constitution and Statutes of this State. The said Deputy shall be removed by the said Sheriff and another Deputy appointed by him satisfactory to the said President or Treasurer or other executive officer of said corporation, whenever the said President or Treasurer or other executive officer shall make a statement in writing to the Sheriff of said County, stating that the said Deputy is not discharging his duties to the satisfaction of said President or Treasurer or other executive officer, and requesting a change of appointment.

Civ. '12, § 1149; Civ. '02, § 833; 1899, XXIII, 75, § 1; Amd. 1898, XXII, 743.

State ex rel. Piedmont Mfg. Co. v. Goldsmith et al, 96 S. C. 484, 81 S. E. 147.

(2043) § 22. Rights, Powers and Duties of Peace Officers for Industrial Corporations.—The said police officer or Deputy Sheriff shall have, do and exercise all the rights, duties and powers prescribed by law for Constables or Magistrates, and such powers as are usually exercised by Marshals and Policemen of towns and cities, and shall also act as a conservator of the peace; shall take into custody and carry before the nearest Magistrate any person who may, in his view, engage in riotous conduct or violation of the peace, and refusing upon his command to desist therefrom; and shall also arrest any person who may, in his view, commit any felony or misdemeanor, and carry him before a Court of competent jurisdiction; and shall execute any and all criminal process from Magistrates' Courts, and shall have the power to call to his aid a *posse comitatus* to assist him in the discharge of his duties; and any person refusing to obey his summons shall be liable to indictment and prosecution as for a misdemeanor.

Civ. '12, § 1150; Civ. '02, § 834; 1899, XXIII, 75, § 1; Amd. 1898, XXII, 793.

(2044) § 23. Bond of Peace Officers for Industrial Corporations—Sheriff Not Liable for Their Misconduct.—The person so appointed police officer under the provisions of Section 21 shall execute the bond required

of Constables by Section (2268) and shall be subject to the provisions of Section (2275) of this Code.

Civ. '12, § 1151; Civ. '02, § 835; 1901, XXIII, 696.

State ex rel. Piedmont Mfg. Co. v. Goldsmith et al, 96 S. C. 484, 81 S. E. 147.

(2045) § 24. Who Responsible for Malfeasance of Peace Officers for Industrial Corporations.—Neither the Sheriff of the county nor the industrial corporation shall be responsible for the malfeasance, nonfeasance or misfeasance of such officers, but he and his sureties shall be answerable therefor on his official bond.

Civ. '12, § 1152; 1904, XXIV, 424.

(2046) § 25. Same.—The provisions of the last three Sections shall apply to any such industrial communities as are comprised of fifty persons or more, whether such persons are permanent or temporary inhabitants thereof.

Civ. '12, § 1153; 1904, XXIV, 424.

(2047) § 26. Sheriff May Appoint Deputy for Any Fair Association.—Upon a written statement of the President or Treasurer or other executive officer having the management of any fair association, amusement company, circus, political meeting, camp meeting, or other such concern, located or to be located in any county in this State, setting forth that in his opinion the interests of the association, amusement company, circus, political meeting, camp meeting, or other such concern under his management and the public peace require special police supervision and directed to the Sheriff of said county, it shall thereupon be the duty of the said Sheriff to appoint such discreet and suitable person or persons as his Deputy or Deputies, whose term of office shall continue during the public exhibition of such association, amusement company, circus, political meeting, camp meeting, or other such concern, unless sooner by him removed. The salary of such Deputy Sheriff or Deputy Sheriffs shall be paid by the association, amusement company, political meeting, camp meeting, or other such concern requesting such appointment. The jurisdiction of such Deputy Sheriff shall extend over the property controlled by such association, amusement company, circus, political meeting, camp meeting, or other such concern. Before entering upon the duties of his office the said Deputy shall take the oath prescribed by the Constitution and Statutes of this State: *Provided*, That nothing herein contained shall interfere with the right and duty of a Sheriff, upon his own motion, to appoint such Deputy or Deputies as may seem advisable.

Civ. '12, § 1154; 1908, XXV, 1152; 1910, XXVI, 763.

(2048) § 27. Duties and Powers of Deputy for Fair Association.—The said Deputy Sheriff shall have and exercise all the rights, duties and powers prescribed by law for Deputy Sheriffs or Constables and such powers as are usually exercised by Marshals and Policemen of towns and cities, and shall also act as a conservator of the peace; shall take into custody and carry before the nearest Magistrate any person who may, in his view, engage in riotous conduct or violation of the peace and refusing upon his command to desist therefrom; and shall also arrest any person who may,

in his view, commit any felony or misdemeanor and carry him before a Court of competent jurisdiction; and shall execute any and all criminal processes from Magistrates' Courts, and shall have power to call to his aid a *posse comitatus*, to assist him in the discharge of his duties; and any person refusing to obey his summons shall be liable to indictment and prosecution as for a misdemeanor.

Civ. '12, § 1155; 1908, XXV, 1153.

(2049) § 28. Bond of Deputy for Fair Associations.—The person so appointed under the provisions of Section 26 shall execute the bond required of Constables by Section (2268), and shall be subject to the provisions of Section (2275) of this Code.

Civ. '12, § 1156; 1908, XXV, 1153.

(2050) § 29. Sheriff Not Responsible for Malfeasance of Deputy of Fair Associations.—The Sheriff of the county shall not be responsible for the malfeasance or misfeasance of such officer.

Civ. '12, § 1157; 1908, XXV, 1153.

(2051) § 30. Upon Request Sheriff Shall Appoint Deputy for Parks or Places of Amusement—Oath.—Upon a written statement of the President or Treasurer or other executive officer, having the management of any park or place of amusement located in any county of this State, setting forth that in his opinion the interests of the patrons of such park or place of amusement require special police supervision, and directed to the Sheriff of said county, it shall thereupon be the duty of the said Sheriff to appoint a discreet and suitable person as his Deputy, and one satisfactory to the President and Treasurer, or other executive officer of said park, or other place of amusement, requesting the appointment, whose term of office shall expire with the term of the Sheriff, unless sooner by him removed, and whose salary shall be paid by the park, or other place of amusement, at the instance of whose President or Treasurer, or other executive officer managing the same, the appointment is made, the amount to be fixed by contract with the office of such park, or place of amusement, acting through its President or Treasurer, or other executive officer, and whose jurisdiction shall extend over the property controlled by the said President or Treasurer, or other executive officer having the management of said park, or other place of amusement, and in addition over all territory within a radius of one mile from the center of such park or place of amusement. Before entering upon the duties of his office, the said Deputy shall take the oath prescribed by the Constitution and Statutes of this State. The said Deputy shall be removed by the said Sheriff and another Deputy appointed by him satisfactory to the said President or Treasurer, or other executive officer of said park, or place of amusement, whenever the said President or Treasurer, or other executive officer, shall make a statement in writing to the Sheriff of said county, stating that the said Deputy is not discharging his duties to the satisfaction of said President or Treasurer, or other executive officer, and requesting a change of appointment.

Civ. '12, § 1158; Civ. '02, § 833; 1899, XXIII, 75, § 1; 1908, XXV, 1152; 1910, XXVI, 764.

(2052) § 31. **Powers of Deputy for Parks or Places of Amusement.**—The said police officer, or Deputy Sheriff, shall have, do and exercise all the rights, duties and powers prescribed by law for Constables or Magistrates, and such powers as are usually exercised by Marshals and Policemen of towns and cities, and shall also act as a conservator of the peace; shall take into custody and carry before the nearest Magistrate any person who may, in his view, engage in riotous conduct or violation of the peace, and refusing upon his command to desist therefrom; and shall also arrest any person who may, in his view, commit any felony or misdemeanor, and carry him before a Court of competent jurisdiction; and shall execute any and all criminal process from Magistrates' Courts, and shall have the power to call to his aid a *posse comitatus* to assist him in the discharge of his duties; and any person refusing to obey his summons shall be liable to indictment and prosecution as for a misdemeanor.

Civ. '12, § 1159; 1908, XXV, 1152.

(2053) § 32. **Where Offices Kept.**—The Sheriffs of the several counties throughout this State shall keep their several offices in the city, town, village, or place where the respective Court Houses are established, and in the Court House, if there be one.

Civ. '12, § 1160; Civ. '02, § 836; G. S. 655; R. S. 716; 1839, XI, 39, § 5.

State v. Walker, 5 S. C. 563.

(2054) § 33. **Books — Writ Book, Execution Book, Sale Book.**—The Sheriff of every county shall keep and preserve as public records in his office the following separate books, of good material and strongly bound, each containing not less than eight quires of medium paper, and labelled with its appropriate title, to wit:

1. "Writ Book," in which the Sheriff, immediately on the receipt of any writ of *habeas corpus*, citation, writ of *capias ad respondendum*, summons, subpœna writ, subpœna ticket, rule, interrogatories, or notice to be served upon any person, *subpœna ad respondendum*, writ of *ne exeat*, injunction, warrant, attachment, or any other mesne process whatever, issuing from either of the Circuit or Probate Courts, shall make any entry thereof, with the date, and endorse on the original the time of such entry in his office. The Writ Book shall be laid off into separate and suitable columns, in which the Sheriff shall enter the names of the parties, the name of the attorney, the kind of process, the kind of action, or kind of offense, when entered by whom served, how served, when served, or other return, and Sheriff's costs; the Sheriff shall make a true index in the said book to all the entries therein.

2. "Execution Book," in which the Sheriff, immediately on the receipt of any *feri facias*, *capias satisfaciendum*, attachment for not performing decree, writ of *habere facias possessionem*, restitution, military or other execution, or any other final process whatever (which, according to law, may be lodged with him), shall enter the same, and endorse on such final process the time of such entry in his office. The Execution Book shall be laid off into separate and suitable columns, in which the Sheriff shall enter the kind of process, when lodged, and the time of the original entry, the names of the parties, the debt and interest, and (underneath, in the same

column) the attorney's, Clerk's, Sheriff's, and other costs, attorney's name, the amount received, date of levy or other return, or disposition of the execution, and receipts of plaintiff, attorney, Clerk, Sheriff, witnesses, or others entitled to costs, or their agents or representatives; and the Sheriff shall make and keep correct and double indexes in the said book of the cases entered therein, so that the name of each and every defendant in the execution may be entered in alphabetical order.

XVI, 739.

Miller v. Hall, 1 Speer 1. A witness warrant issued by a Magistrate need not be entered on the Writ Book. *Lancaster v. Barnwell Co.*, 40 S. C. 445, 19 S. E. 74.

Secrest v. Twitty, 1 McM. 225; *Boulware v. Witherspoon*, 7 Rich. Eq. 450.

3. A "Sale Book," in which the Sheriff shall enter all sales which he may make under any order, decree, execution, or final process, of any of the Courts of this State, or any officer authorized by law to issue such process to the Sheriffs of this State, and he shall transcribe therein all levies which he shall have made (specifying the property and the date of each levy), and all advertisements of property levied on; and the parts of the said book in which accounts of sales shall be kept, shall be divided into separate and suitable columns, in which the Sheriff shall enter the names of the parties, a description of the property sold, when sold, to whom sold, amount of sale, and, if bond be taken, the names of the sureties thereto, and statement of the time when due, and to what case or cases the proceeds of such sale have been applied, or to whom paid; and the Sheriff shall make and keep correct and double indexes in the said book of the cases entered therein. The Sheriff shall keep the mesne and final processes in his office, in suitable boxes, and in separate apartments. Final process shall be arranged alphabetically in the defendants' names, in boxes labelled with appropriate letters. The miscellaneous papers shall be arranged under suitable titles and labels, such as "Attachment Bonds," "Bail Bonds," "Bonds for the Delivery of Property," "Money Bonds," etc.

Civ. '12, § 1161; Civ. '02, § 837; G. S. 656; R. S. 717; 1839, XI, 39, § 5.

State v. Commissioners, 2 Strob. 149; *Daniel v. Harley*, 3 Strob. 231; *Taylor v. Easterling*, 1 Rich. 310; *Elfe v. Gadsden*, 1 Strob. 225; *Farrow v. Farrow*, 88. S. C. 333, 339.

(2055) § 34. To Turn Over Furniture, Books and Papers to Successor—Penalty.—It shall be the duty of every Sheriff, and, if he be dead, of his personal representatives, to turn over to his successor all the furniture appertaining to his office, the original Writ Book and Sale Book, and also the original Execution Book, or a correct certified copy thereof, and also all original bonds officially taken by him, all mesne processes not served, and all final processes partially or wholly unexecuted. Such successor shall be bound to execute a receipt, and a duplicate to be lodged in the Clerk's office, specifying the matters and things so received by him, and shall be responsible for them. And it shall be the duty of such predecessor who has levied upon personal property and not sold it to deliver it to his successor at the time of turning over such books, bonds and processes, taking his receipt for the same, and his successor is authorized to sell such property.

Civ. '12, § 1162; Civ. '02, § 838; G. S. 657; R. S. 718; 1839, XI, 40; 1791, VII, 263; 1859, XII, 788.

Osborne v. Huger, 1 Bay. 179; *State v. Kennedy*, 5 Strob. 160.

(2056) § 35. To Pay to Successor Moneys Due as Sheriff—Within What Time.—Each Sheriff, on the expiration of his term of office, must turn over to his successor all moneys remaining in his hands as Sheriff, within one month from the time his successor shall have entered on the duties of his office, in the same manner as he is required to turn over to his successor the furniture, books, bonds, processes and other papers; and his successor shall receive and be responsible for the money so turned over to him in the same manner as he is liable for other money received by him as Sheriff.

Civ. '12, § 1163; Civ. '02, § 839; G. S. 694; R. S. 719; 1859, XII, 788, § 1.

(2057) § 36. Commissions on Moneys Collected and Turned Over to Successors—How Divided.—The retiring Sheriff shall be entitled to retain only one-half of the commission allowed by law on moneys collected and turned over, and his successor the other half for paying out the same.

Civ. '12, § 1164; Civ. '02, § 840; G. S. 695; R. S. 720; 1859, XII, 788, § 1.

(2058) § 37. Penalty for Failure to Pay Over Moneys.—If the retiring Sheriff, or his successor, neglects or refuses obedience to the requisitions contained in the two preceding Sections, he and the sureties to his official bond shall be liable to pay to the party entitled to receive such money the amount due to such party, with interest thereon from the time such successor shall assume the duties of his office, at the rate of five per cent. per month, until the whole amount shall be paid, to be recovered by action.

Civ. '12, § 1165; Civ. '02, § 841; G. S. 696; R. S. 721; 1859, XII, 788, § 1.

(2059) § 38. Personal Representatives of Deceased Sheriff—When to Pay Over Moneys—Penalty.—Upon the death of any Sheriff, his personal representative or representatives shall likewise pay over to the successor in office of such deceased Sheriff all moneys which such deceased Sheriff had in his hand officially at the time of his death, within twelve months after he, she or they shall have assumed the administration of such estate; and upon his, her or their neglect or failure so to do, the estate of such deceased Sheriff and the sureties upon his official bond shall be liable to pay to the party entitled to receive such money the amount due to such party, with interest at the rate of five per cent. per month hereon after the expiration of such term of twelve months to be recovered by action.

Civ. '12, § 1166; Civ. '02, § 842; G. S. 697, 698; R. S. 842; 1859, XII, 789, § 2.

THIS AND PRECEDING SECTION CUMULATIVE—EFFECT OF.—This and the preceding Sections shall be deemed cumulative, and not to bar or affect any right of action, rule or other proceeding authorized by law.

Civ. '12, § 1166; 1859, XII, 789, § 3.

(2060) § 39. Must Summon Constables to Attend Court, Etc.—The Sheriff shall summon the requisite number of Constables, not exceeding five, to attend the Court of Common Pleas and General Sessions, and provide a staff for each of them, and shall make a return of such summons to the Clerk of Court: *Provided*, That in Orangeburg County the Sheriff or his Deputy shall attend all sessions of the Courts and he shall not employ more than four Constables or bailiffs, including crier, at a per diem of not more than \$1.50 each, at any term of Court; and he is hereby authorized and

empowered to have the Rural Policemen of the County, so far as may be necessary, to attend the sessions of the Court, to perform the duties heretofore performed by Court Constables or bailiffs. Said Rural Policemen shall receive actual expenses while attending said Courts.

Civ. '12, § 1167; Civ. '02, § 843; G. S. 658; R. S. 723; 1839, XI, 45, § 25; 1894, XXI, 713; 1916, XXIX, 806.

(2061) § 40. Sheriffs to Appoint Bailiffs.—The Sheriffs of the respective counties in this State shall be empowered to appoint as many bailiffs as they see fit, not to exceed five in number, whose duties shall be as is now provided for by law.

1907, XXV, 543.

The said bailiffs may be removed, increased or decreased by the Circuit Judge within his discretion: *Provided*, That more than six shall be appointed in Union County, and in Lexington and Abbeville Counties only two may be appointed by the Sheriff of said county.

Civ. '12, § 1168; 1907, XXV, 543; 1917, XXX, 130.

(2062) § 41. To Attend All Courts, and to Serve Rules of Court.—The Sheriffs, or their lawful Deputies, shall attend all the Circuit Courts that may be held within their respective counties, and enforce such rules as the said Courts may establish; and during the term time of the said Courts, any Sheriff or his Deputy shall serve any rule of such Court or writ of attachment, for any contempt thereof, on any party or witness in any part of this State; and the party moving for the same shall be liable to pay such Sheriff the costs in cash for such service, on the return of such rule or writ of attachment.

Civ. '12, § 1169; Civ. '02, § 844; G. S. 629; R. S. 724; 1839, XI, 44, § 22; 1894, XXI, 713.

(2063) § 42. Duties and Liabilities.—The Sheriff, or his regular Deputy, on the delivery thereof to him, shall serve, execute and return every process, rule, order or notice, issued by any Court of record in this State, or by other competent authority; and if the Sheriff shall make default herein, he shall be subject to rule and attachment as for a contempt, and he shall also be liable to the party injured in a civil action.

Civ. '12, § 1170; Civ. '02, § 845; G. S. 660; R. S. 725; 1839, XI, 41, § 10; 1808, V, 571, § 7; 1784, VII, 209, § 11; 1791, 263, § 6; Code of Procedure, § 434; 1874, XV, 645.

Service of process. *Osborne v. Huger*, 1 Bay 179; *Stewart & Co. v. Childs*, 1 Bay 362; *Shoolbred v. Fossel*, 2 Brev. 201; *Grimke v. Mayrant*, 2 Brev. 202; *May v. Walters*, 2 McC. 470; *Miller v. Hall*, 1 Speer 1; *Richardson v. Croft*, 1 Bail. 264; *McWorter v. Reid*, 1 Hill 368; *Solomon v. Richardson*, 1 Hill 396; *Wood v. Crosby*, 2 Hill 520; *Moore v. Byne*, 1 Rich. 94; *Wallace v. Prince*, 3 Rich. 177; *Ervin v. Scott*, 15 Rich. 12.

Execution of. *State v. Thackham*, 1 Bay 358; *Greenwood v. Colcock*, 2 Bay 67; *Cholett v. Hart*, 2 Bay 156; *Commissioner v. Hart*, 1 Brev. 492; *Ross v. McCartari*, 1 Brev. 507; *Treasurer v. Forde*, 1 N. & McC. 234; *Walton v. Deignan*, 2 N. & McC. 248; *Graham v. Allen*, 2 N. & McC. 492; *Rochelle v. Campbell*, 1 McC. Ch. 53; *DeGraffenreid v. Mitchell*, 3 McC. 506; *Wilks v. Hasket*, Harp. 490; *Perry v. Williams*, 1 Bail. 10; *Steedman v. Keith*, 1 Bail. 476; *Ex parte Black*, 2 Bail. 8; *Graham v. Durant*, 2 Hill 517; *Thomas v. Aitkin*, Dud. 292; *Johnson v. McIlwain*, Rice 368; *Caulie v. Hoke*, 1 Speer 168; *Broughton v. Broughton*, 4 Rich. 491; *Bachman v. Sulzbacher*, 5 S. C. 58; *Goodison v. Gilreath*, 32 S. C. 388, 11 S. E. 207; *Rogers v. Marlboro County*, 32 S. C. 555, 11 S. E. 383; *Burnett v. Gentry*, 32 S. C. 597, 11 S. E. 96.

Return of. *Huger v. Sheriff*, 1 Bay 319; *Wilder v. Grimke*, 2 Brev. 261; *Belser v. Graves*, 1 N. & McC. 125; *City Council v. Price*, 1 McC. 299; *Ford v. DeVillers*, 2 McC. 144; *Matheson v. Moore*, 2 McC. 315; *Walton v. Parsons*, 4 McC. 368; *Mills v. Kennedy*, 1 Bail. 17; *Saunders v. Bobo*, 2 Bail. 492; *Saunders v. Hughes*, 2 Bail. 505; *Jeannerett v. Redford*, Rich. Eq. Ca. 469; *State v. Wylie*, 2 McM. 1; *Treasurer v. Hilliard*, 8 Rich. 412; *Farrar v. Barnes*, 12 Rich. 224; *Dawson v. Dewan*, 12 Rich. 499; *Bancroft v. Sinclair*, 12 Rich. 617; *Bank v. Kinard*, 28 S. C. 101, 5 S. E. 464.

(2064) § 43. Liability for Illegal Arrest.—If any Sheriff, or Deputy Sheriff, without writ, warrant, or process, shall summon any one, by arresting the person or attaching the goods to appear in any of the Courts of this State (not having at that time any process to justify the same), upon complaint thereof, on oath, such Sheriff or Deputy shall be liable to be punished for a contempt, by either the Court of Common Pleas or General Sessions for his county: *Provided*, That nothing herein contained shall prevent the Sheriff, or his Deputy, from arresting any person for treason, felony, or breach of the peace, committed in his presence, or from arresting any person for treason or felony, upon probable and reasonable grounds.

Civ. '12, § 1171; Civ. '02, § 846; G. S. 661; R. S. 726; 1839, XI, 41, § 11; Con., Art. II, § 17; Art. VIII, § 6.

(2065) § 44. No Person to Be Arrested While Engaged in Military or Militia Duty—Exception.—No person shall be arrested while actually engaged in or attending military or militia duty, or going to or returning from the same, nor while attending, going to, or returning from any Court, as party or witness, or by order of the Court, except for treason, felony, or breach of the peace; but in such case process may be served without actual arrest of body or goods.

Civ. '12, § 1172; Civ. '02, § 847; G. S. 662; R. S. 727; 1839, XI, 41, § 12.

Non-resident witness or party attending Court in this State is exempt from service. *Breon v. Miller Lumber Co.*, 83 S. C. 221, 65 S. E. 214, 137 Am. St. Rep. 803, 24 L. R. A., N. S., 276n.

Witnesses in attendance on Court are not privileged from arrest when charged with indictable offense. *Ex parte Levi*, 28 Fed. 651.

(2066) § 45. Service of Civil or Criminal Process on Sunday—Arrest of Females.—No civil or criminal process shall be served on Sunday, except for treason, felony, or breach of the peace. Nor shall any female be arrested in any civil action, except for a wilful injury to persons, character or property.

Civ. '12, § 1173; Civ. '02, § 848; G. S. 663; R. S. 728; Code of Procedure, § 200.

Eason v. Witcofskey, 29 S. C. 239, 7 S. E. 291.

(2067) § 46. Escaped Prisoners May Be Retaken on Sunday, Etc.—It shall be lawful for the Sheriff, Deputy Sheriff, or Jailer, to retake on Sunday, as on any other day, and at Court, muster, or any other place, any prisoner who has escaped.

Civ. '12, § 1174; Civ. '02, § 849; G. S. 664; R. S. 729; 1839, XI, 45, § 27.

(2068) § 47. Power to Arrest and Take Bail.—The Sheriff or his Deputy shall arrest all persons against whom process for that purpose shall issue from any competent authority, commanding such person to be taken into custody, or requiring him or her to give bond, with security; and if the party so arrested, being entitled to bail, shall give it, or shall give the bond with security required, such person shall be enlarged; and if not, he or she shall be kept in custody until discharged from confinement, according to law.

Civ. '12, § 1175; Civ. '02, § 850; G. S. 665; R. S. 730; 1839, XI, 42, § 13.

Arrest and Bail. *Teasdale v. Kennedy*, 1 Bay 316; *Teasdale v. Hart*, 2 Bay 173; *Atkinson v. Martin*, 1 Brev. 481; *Laval v. Gell*, 2 Brev. 265; *Blanding v. Rogers*, 2 Brev 394; *Pepoon v. Mooney*, 1 Mill 314; *Antonio v. Arthur*, 1 N. & McC. 251; *Jones v. Blair*, 4 McC. 281; *State v. LeClerf*, 1 Bail. 410; *Saunders v. Hughes*, 2 Bail. 505; *Treasurer v. Barksdale*, 1 Hill 272; *Poole v. Vernon*, 2 Hill 667; *Brissac v. Moore*, Dud. 228; *Chiswell v. Ellzey*, Rice 29; *Berry v. Hoke*, 1 Rich. 94; *Glover v. Gomillion*, 2 Rich. 554; *Dickinson v. Coward*, 3 Rich. 49; *Rosenberg v. McKain*,

3 Rich. 145; *Bennet v. Brown*, 1 Strob. 303; *Meyers v. Centre*, 2 Strob. 439; *Simonton v. Yongue*, 3 Strob. 538; *Bennet v. Brown*, 5 Rich. 347; *Ervin v. Scott*, 15 Rich. 12; *Ware v. Miller*, 9 S. C. 13.
 Custody. *Smith v. Hart*, 2 Bay 395; *McLain v. Hayne*, 3 Brev. 291; *Prather v. Clark*, 3 Brev. 393; *Yates v. Yeaden*, 4 McC. 18; *Boyce v. Barksdale*, 4 McC. 141; *Baker v. DeLiesseline*, 4 McC. 372; *Walton v. Oswald*, 4 McC. 501; *Harvey v. Huggins*, 2 Bail. 252; *Treasurer v. McDowell*, 1 Hill 184; *Aiken v. Moore*, 1 Hill 432; *Thomason v. Kerr*, 2 McM. 340; *Burns v. Brian*, 1 Speer 131; *Berry v. Hoke*, 1 Rich. 76; *Kelsey v. Rosborough*, 2 Rich. 241; *Hyatt v. Michel*, 3 Rich. 303; *Cook v. Irving*, 4 Strob. 204; *Menude v. Butler*, 5 Rich. 440; *State v. Halford*, 6 Rich. 58; *Irving v. Robertson*, 6 Rich. 228; *State v. Sellers*, 7 Rich. 368; *Conyers v. Rhame*, 11 Rich. 60; *Farrar v. Barnes*, 12 Rich. 224.

(2069) § 48. Not to Take Attorney at Law or Officer of Court as Bail.—No Sheriff shall take any attorney at law or officer of Court as bail for any person whomsoever in any civil or criminal case.

Civ. '12, § 1176; Civ. '02, § 851; G. S. 667; R. S. 731; 1839, XI, 45, § 24.

(2070) § 49. May Break Into Any House in Certain Cases.—It shall be lawful for the Sheriff or his Deputy to break and enter any house (after request and refusal), to arrest the person or to seize the goods of any one in such house: *Provided*, Such Sheriff or his Deputy have process requiring him to arrest such person or seize such goods.

Civ. '12, § 1177; Civ. '02, § 852; G. S. 669; R. S. 732; 1839, XI, 43, § 16; Code of Procedure, § 235.

State v. Thackham, 1 Bay 358; *Rowe v. Cockrell*, Bail. Eq. 126; *Brian v. Strait*, Dud. 19. But one who officiously accompanied a deputy, and, without his command, forcibly entered and took property, is a trespasser, without justification. *McElhenny v. Wylie*, 3 Strob. 284.

(2071) § 50. Must Give Notice of Money Collected—When, How and to Whom—Penalty.—The Sheriff, on the receipt of any money on account of any plaintiff in execution, or other person entitled thereto, must, within one month, give notice in writing of the same to such plaintiff or his attorney, or other person entitled thereto, by personal service or by mail; on failure to do so he shall be liable to pay interest for the money in his hands at the rate of five per cent. per month till notice is given.

Civ. '12, § 1178; Civ. '02, § 853; G. S. 670; R. S. 733; 1856, XII, 534.

Safran v. Safran, 107 S. C. 452, 93 S. E. 140.

(2072) § 51. Rule to Show Cause or Attachment Barred Two Years After Term.—No Sheriff shall be liable to be served with any rule to show cause, or attachment, at any time after two years from the expiration of his office.

Civ. '12, § 1179; Civ. '02, § 854; G. S. 671; R. S. 734; 1839, XI, 44, § 19; 1801, V, 412.

(2073) § 52. Open Contempt or Breach of Duty—Proceedings.—Any Sheriff shall be liable to be proceeded against in any Court of record in this State for an open contempt, or for a breach of official duty. For an open contempt he shall be liable to be attached forthwith; and for a breach of official duty he may be required, by rule, to answer to the complaint of any suitor of the Court; and upon failing to answer or to comply with the order of the Court, made on hearing of said rule, he shall be liable to be attached as for a contempt and committed to close custody until he shall have complied with the requisition of the Court. In all cases, interrogatories may be propounded to him, which he shall answer on oath, either orally or in writing, as the Court may order.

Civ. '12, § 1180; Civ. '02, § 855; G. S. 672; R. S. 735; 1839, XI, 44, § 20.

Mongie v. Cheney, 1 Hill 145; *James v. Smith*, 2 S. C. 183; *Emory v. Davis*, 4 S. C. 23; *Kirby v. Woods*, 5 S. C. 1; *Prince v. Sutherland*, 12 S. C. 110; *Charles v. Charles*, 13 S. C. 385; *Warren v. Simons*, 16 S. C. 364.

(2074) § 53. Liability for Failure to Execute Final Process or Pay Over Money.—If any Sheriff shall fail to execute or return final process in any civil suit, or to pay over money, when demanded, that has come into his hands as Sheriff, to the party entitled thereto, and shall be unable, on the return of the rule that may be issued against him, to show sufficient cause, he shall be liable to be attached for a contempt and committed to custody until he shall comply with the order of Court.

Civ. '12, § 1181; Civ. '02, § 856; G. S. 673; R. S. 736; 1839, XI, 44, § 21.

State v. Sheriff, 1 Mill 145; Summers v. Caldwell, 2 N. & McC. 341; Ex parte Stephens, 1 McC. 87; Levy v. Roberts, 1 McC. 395; Chiles v. Holloway, 4 McC. 164; Noonan v. Gray, 1 Bail. 437; Ex parte Thurmond, 1 Bail. 605; McLean v. DuBose, 1 Bail. 646; Dawkins v. Pearson, 2 Bail. 619; Bank v. Condy, 1 Hill 209; Johnson v. Shubert, 2 Hill 502; Thomas v. Aitkin, Dud. 292; Rice v. McClintock, Dud. 354; Pitman v. Clarke, 1 McM. 316; Cooper v. Scott, 2 McM. 150; Connor v. Archer, 1 Speer 89; Kirkpatrick v. Ford, 2 Speer 110; Canady v. Odum, 2 Rich. 527; Brown v. Furze, 2 Rich. 530; Treasurer v. Cleary, 3 Rich. 372; Maddox v. Williamson, 1 Strob. 23; Emory v. Davis, 4 Strob. 23; Starnes v. Prince, 6 Rich. 319; Hook v. Byrd, 10 Rich. 120; Dawson v. Dewan, 12 Rich. 499; Wallace v. Graham, 13 Rich. 322; Kuhn v. Law, 14 Rich. 18; Caskey v. McMullen, 3 S. C. 196; Emory v. Davis, 4 S. C. 23; Gibson v. Gibson, 7 S. C. 356; State v. Gilreath, 16 S. C. 106; Bragg v. Thompson, 19 S. C. 577.

(2075) § 54. To Pay Over Money One Day After Demand—Penalty for Refusal—Proviso.—If any Sheriff, upon the demand of any plaintiff, or his attorney, shall wilfully refuse to pay over any sum of money collected for such plaintiff, within twenty-four hours, the Sheriff so in default, besides being liable to rule and attachment, shall be liable also to pay to such plaintiff, or his legal representative, the said sum withheld, and interest thereon, for the time he may withhold such sum after demand, at the rate of five per cent. per month; and if any regular Deputy Sheriff (in the absence of such Sheriff), having such fund, shall refuse, one day after demand, to pay over the same, the Sheriff shall, for such default, be liable to the same penalties as are herein provided; but nothing herein contained shall apply to the detention of money on account of *bona fide* conflicting claims.

Civ. '12, § 1182; Civ. '02, § 857; G. S. 675; R. S. 737; 1846, XI, 358, § 1; 1839, XI, 55, § 63.

Commissioner v. Allen, 2 Mill 88; Kilpatrick v. Vandiver, 2 Mill 341; Kelly v. Payne, 1 McC. 138; Daniel v. Capers, 4 McC. 237; Wilks v. Hasket, Harp. 490; Wright v. Hamilton, 2 Bail. 51; Treasurer v. Oswald, 2 Bail. 214; Graham v. Durant, 2 Hill 517; Thomas v. Aitkin, Dud. 292; Thomas v. Yates, 1 McM. 179; Williamson v. King, McM. Eq. 41; Taylor v. Easterling, 1 Rich. 310; Walker v. Kennerly, 3 Rich. 64; State v. Wiley, 2 Strob. 113; Posey v. Rainey, 4 Strob. 20.

(2076) § 55. Statement of Reasons for Failure to Make Execution.—The Sheriff, in case of partial or entire failure to make execution, must, when required by any person having control of the execution, furnish a written statement, subscribed by him, of the reason for such partial or entire failure.

Civ. '12, § 1183; Civ. '02, § 858; G. S. 676; R. S. 738; 1839, XI, 53, § 56; 1847, XI, 483, § 2.

(2077) § 56. Penalty for Purchasing Executions.—If any Sheriff, or his Deputy, shall contract for, buy or purchase any judgment or decree of any Court which may become his duty to enforce, or any execution lodged in his office, or cause the same to be done, directly or indirectly, the said Sheriff, or his Deputy, shall forfeit and pay, for every such offense, treble the amount of such judgment, decree, or execution, one-half of which said forfeiture shall be paid to the State and the other half to the informer; and the same shall be recoverable with full costs by action or by indictment.

ment in any Court of competent jurisdiction, and, by any such purchase, such judgment, decree or execution shall be *ipso facto* satisfied.

Civ. '12, § 1184; Civ. '02, § 859; G. S. 677; R. S. 739; 1839, XI, 47, § 36; 1823, VI, 213, § 1.

(2078) § 57. Penalty for Permitting Prisoners Committed by Civil Process to Go at Large—Proviso.—If any Sheriff, or his Deputy, shall permit any prisoner, committed to his custody on mesne or final process, in any civil action, to go or be without the prison walls, without lawful authority, or if any Sheriff, or his Deputy, suffer such prisoner to go or be at large, out of the rules of the prison (except by some writ of *habeas corpus*, or rule of Court, which rule shall not be granted but by motion in open Court), any such going and being out of the prison walls, or prison rules, as the case may be, shall be adjudged and deemed an escape. If any Sheriff, or his Deputy, shall, after one day's notice in writing, given for that purpose, refuse to show any prisoner committed to his charge to the plaintiff at whose suit such prisoner was committed, or to his attorney, such refusal shall be adjudged to be an escape: *Provided*, That the Sheriff shall discharge a defendant in custody on mesne process in a civil case where the plaintiff is nonsuited.

Civ. '12, § 1185; Civ. '02, § 860; G. S. 678; R. S. 740; 1839, XI, 45, §§ 26, 29; 8 and 9 W. 3d, 27; 1712, II, 554, 555, §§ 1-8; 1788, V, 80, §§ 8, 9.

Baker v. DeLiesseine, 4 McC. 372; Burns v. Brian, 1 Speer 131; Cook v. Irving, 4 Strob. 204; State v. Halford, 6 Rich. 58; Conyers v. Rhame, 11 Rich. 60.

(2079) § 58. In What Cases Plaintiff Shall Be Liable for Maintenance of Debtor—Proviso.—When any person shall be taken on mesne or final process in any civil suit, and from inability to pay the demand, debt or damages, or find bail, if committed to the jail, and such person has no lands, tenements, goods, chattels, or choses in action, whereby his maintenance in jail can be defrayed, the plaintiff or person at whose instance such party shall be imprisoned, shall pay and satisfy the same; and if such person, or his attorney, shall refuse or neglect, after ten days' previous notice, to pay, or give security to pay, the same, when demanded, the Sheriff or Jailer, in whose custody such prisoner is, may discharge him from such confinement: *Provided, however*, That such prisoner shall, before he is discharged, render, on oath, a schedule of all his estate, and assign the same.

Civ. '12, § 1186; Civ. '02, § 861; G. S. 679; R. S. 741; 1839, XI, 46, § 30.

McLain v. Hayne, 3 Brev. 291; Walton v. Oswald, 4 McC. 501; Thomason v. Kerr, 2 McM. 340; Irving v. Robertson, 6 Rich. 228.

(2080) § 59. Liable for Negligent Escape on Mesne or Final Process.—The Sheriff shall be liable for the negligent escape of any prisoner on mesne or final process to such damages as the plaintiff may have sustained: *Provided*, That the insolvency of the prisoner shall not mitigate the damages below the amount sufficient to carry costs.

Civ. '12, § 1187; Civ. '02, § 862; G. S. 681; R. S. 742; 1839, XI, 46, §§ 31, 32, 33.

Smith v. Hart, 2 Bay. 295; Yates v. Yendon, 4 McC. 18; Boyce v. Barksdale, 4 McC. 141; Baker v. DeLiesseine, 4 McC. 372; Harvey v. Huggins, 2 Bail. 252; Aiken v. Moore, 1 Hill 432; Hall v. Taggart, Dud. 368; Kelsey v. Rosborough, 2 Rich. 241; Conyers v. Rhame, 11 Rich. 60.

(2081) § 60. Punishable as for Escape of Criminal.—If any Sheriff, Deputy Sheriff, Jailer, or other officer, wilfully suffer a prisoner in his custody,

under conviction or under any criminal charge not capital, to escape, he shall suffer the like punishment and penalties as the prisoner suffered to escape was sentenced to, or would be liable to suffer, upon conviction of the crime or offense wherewith he stood charged.

Civ. '12, § 1188; Civ. '02, § 863; G. S. 682; R. S. 742; 1869, XIV, 309, § 7; 1839, XI, 46, § 35.

(2082) § 61. Penalties for Purchasing at Their Own Sale.—No Sheriff or Deputy Sheriff shall be concerned or interested, directly or indirectly, in the purchase of any property sold by either of them officially; and if any such Sheriff or Deputy Sheriff shall be concerned or interested in any such purchase at any such sale, made by either of them, he shall, on conviction thereof, be deprived of his office, and shall be liable to be fined and imprisoned at the discretion of the Court; and such purchase shall be null and void.

Civ. '12, § 1189; Civ. '02, § 864; G. S. 684; R. S. 743; 1839, XI, 55, § 59; 1823, VI, 213; 1791, VII, 263, § 8.

Singletary v. Carter, 1 Bailey 467; *Lewis v. Brown*, 4 Strob. 293; *Matheny v. McDonald*, 5 Strob. 77; *Leger v. Doyle*, 11 Rich. 109; *Barrineau v. Stevens*, 75 S. C. 254, 55 S. E. 309.

(2083) § 62. To Pay Over Proceeds to Prior Lien.—The Sheriff shall pay over the proceeds of sale of any real estate sold by him to any judgment having prior lien thereon.

Civ. '12, § 1190; Civ. '02, § 865; G. S. 685; R. S. 744; 1839, XI, 55, § 60.

A prior judgment to another does not acquire a prior lien on lands acquired by the judgment debtor subsequent to the entry of both judgments, as their lien attaches at the same time, and they are entitled to a pro rata distribution. *Belknap v. Greene*, 56 S. C. 119; 34 S. E. 26. See also *Davis v. Hunt*, 2 Bail. 412; *Taylor v. Ensterling*, 1 Rich. 310; *Furman v. Christie*, 3 Rich. 1; *Lynch v. Hannahan*, 9 Rich. 186; *Wallace v. Graham*, 13 Rich. 322; *State v. Bolles*, 13 S. C. 283; *Trimmier v. Winsmith*, 23 S. C. 452; *Garvin v. Garvin*, 34 S. C. 383, 13 S. E. 625. Applies to prior judgment of Federal Court in re. *Voorhees*; *Hurst v. Latimer*, 46 S. C. 114, 24 S. E. 170.

(2084) § 63. Titles Executed by Successors of Sheriffs, Probate Judges, Clerks of Court and Masters.—In all cases where any Sheriff, Probate Judge, Clerk of Court, or Master, shall have heretofore legally sold or hereafter shall legally sell, any real or personal estate, and such Sheriff, Probate Judge, Clerk of Court, or Master, is now dead, resigned or otherwise out of office, or shall hereafter die, resign or otherwise go out of office before he shall have executed title therefor to the purchaser, it shall be lawful for any subsequent Sheriff, Probate Judge, Clerk of Court, or Master, of the same county, upon terms of sale being complied with, or satisfactory evidence produced that they have been complied with, to make and execute good and sufficient title to the purchaser for the property so sold.

Civ. '12, § 1191; Civ. '02, § 866; G. S. 686; R. S. 745; 1899, XXIII, 44.

Carolina Sav. Bank v. McMahon, 37 S. C. 309, 16 S. E. 31.

(2085) § 64. May Make Judicial Sales—Exception—Fees on.—All judicial sales shall be made by the Sheriff, unless otherwise provided by law. In all such sales made by him his fees shall be the same as allowed by law on sales under executions issuing from the Court of Common Pleas, except in the Counties of Lancaster, Georgetown, Charleston, Chester, Beaufort and Lexington Counties, where they shall be allowed the same commissions as are now allowed the Clerks of the Courts in similar cases, and except in Charleston County, where it shall be lawful for Sheriff's sales to be conducted at the

Charleston Real Estate Exchange or such other place in said county as the Court may direct, any law or custom to the contrary notwithstanding.

Civ. '12, § 1192; Civ. '02, § 867; G. S. 691; R. S. 746; 1878, XVI, 336; 1870, XVI, 324, § 2; 1891, XX, 1250; 1908, 1211.

Childs v. Alexander, 22 S. C. 169; *Williams v. McLendon*, 44 S. C. 174, 21 S. E. 616.

(2086) § 65. Collection of Money—How Entered.—Whenever a Sheriff shall collect moneys in cases that have been entered in the books of his predecessors, he shall enter such cases in his own execution book, with an account of the money so collected.

Civ. '12, § 1193; Civ. '02, § 868; G. S. 699; R. S. 747; 1859, XII, 789, § 1.

(2087) § 66. Monthly Statement to Auditor and Treasurer of Fines, Etc.—All Sheriffs are required, on the first Wednesday in every month, or within ten days afterward, to make in writing to the Auditor and Treasurer of the several counties a full and accurate statement of all moneys collected by them on account of licenses, fines, penalties or forfeitures during the past month.

Civ. '12, § 1194; Civ. '02, § 869; G. S. 700; R. S. 748; 1878, XVI, 753.

(2088) § 67. Duty of Sheriffs to Arrest Escaped Convicts.—It shall be the duty of the Sheriffs of this State, and they are hereby required, under the penalty hereinafter provided, to arrest in their respective counties, with or without a warrant, all escaped convicts from the Penitentiary or from the chaingang or jails found in their said counties; and upon said arrest it shall be the duty of said Sheriffs to immediately notify the proper authority from whose care said convicts escaped.

Civ. '12, § 1195; Civ. '02, § 870; 1900, XXIII, 305.

(2089) § 68. Sheriffs to Receipt for Tax Executions.—Whenever the County Sheriff shall receive tax executions from the County Treasurer, he shall give the County Treasurer an itemized receipt therefor, and shall enter each execution separately upon the execution book in his office wherein he enters executions issued out of the Court of Common Pleas, and in the same manner.

Civ. '12, § 1196; Civ. '02, § 871; 1900, XXIII, 305.

Dillon County v. Lane et al, 114 S. C. 494, 104 S. E. 184.

(2090) § 69. To Pay to Treasurer Taxes Collected.—It shall be the duty of the Sheriff of the county to pay over to the County Treasurer, upon his written demand therefor, at the expiration of the time allowed by law for the enforcement of said tax executions, and to take the County Treasurer's receipt therefor in each case on the execution book where said execution is entered.

Civ. '12, § 1197; Civ. '02, § 872; 1900, XXIII, 305.

(2091) § 70. Uncollected Tax Executions to Be Returned to Treasurer—When, How, Etc.—It shall be the duty of the Sheriff, at the expiration of the time allowed by law for the enforcement of tax executions, upon the written demand of the County Treasurer, to return to him all uncollected tax executions with his return endorsed on each execution, stating his reason or reasons for his failure to collect the same, and to take the County

Treasurer's receipt for each uncollected execution on the execution book where the same is entered. The Sheriff shall also enter his return on the execution book where the uncollected execution is entered, as well as on the execution itself.

Civ. '12, § 1198; Civ. '02, § 873; 1900, XXIII, 305.

Dillon County v. Lane et al, 114 S. C. 494, 104 S. E. 184.

(2092) § 71. Penalty for Failing to Return Uncollected Tax Executions.

—For failure to return any uncollected tax execution, as herein required, within five days after the expiration of the time allowed by law for enforcing the same, and after the written demand by the said County Treasurer, the Sheriff shall forfeit and pay to the County Treasurer the taxes, penalties and County Treasurer's costs for which such execution was issued, which shall be recoverable by said County Treasurer from the Sheriff and the sureties on his official bond in any Court of competent jurisdiction: *Provided*, That the Sheriff so failing to return any uncollected executions shall make it appear that such failure is due to the loss or destruction of such execution without fault on his part, then he shall not be subject to such penalty.

Civ. '12, § 1199; Civ. '02, § 874; 1901, XXIII, 306.

(2093) § 72. Forfeiture for Making False Return on Tax Execution.—

For negligently or fraudulently making a false return on any tax execution, the Sheriff shall forfeit and pay to the County Treasurer the taxes, penalties and Treasurer's costs for which such execution was issued, which shall be recoverable by said County Treasurer from the Sheriff and the sureties on his official bond in any Court of competent jurisdiction.

Civ. '12, § 1200; Civ. '02, § 875; 1901, XXIII, 306.

(2094) § 73. Penalties May Be Recovered by Sinking Fund Commissioners.—

In all cases where the Sheriff has failed to return uncollected tax executions, as herein required, or has negligently or fraudulently made false returns of any tax executions, and the County Treasurer has failed for twelve months to enforce the penalty provided herein for the failure of the Sheriff to return any tax execution as herein required or for making such false return, the Commissioners of the Sinking Fund may, within twelve months thereafter, sue for and recover from the Sheriff and the sureties on his official bond the taxes and penalties for which such execution was issued, in same manner as the County Treasurer could have sued and recovered under the preceding Section.

Civ. '12, § 1201; Civ. '02, § 876; 1901, XXIII, 306.

(2095) § 74. Not Relieved From Other Penalties.—Nothing herein contained shall be construed to relieve the Sheriff from any of the penalties, civil or criminal, now provided by law for his failure to comply with the law prescribing his duties in relation to tax executions.

Civ. '12, § 1202; Civ. '02, § 877; 1901, XXIII, 306.

RURAL POLICE.

(2096) § 1. **Reports by Rural Policemen in Certain Counties—Publication.**—That each Rural Policeman within counties containing cities of fifty thousand (50,000) inhabitants, or more, in the State of South Carolina, shall make and file with the County Supervisor each month a verified report of all arrests made by him, the name of the party arrested, together with the offense charged, and the name of the Magistrate to whom the case was referred for trial or preliminary hearing. A list of the arrests made, the name of each party arrested, together with the offense charged and the name of the trial Magistrate reported by each Rural Policeman shall be published quarterly by the County Supervisor, and the costs of said publication shall be disbursed out of the funds for ordinary county purposes.

1917, XXX, 111.

(2097) § 2. **Reports Condition Precedent to Payment of Salaries—Penalty—Salaries Not to Be Paid Until Verified Report Made, and Penalty in Default of Carrying Out Provisions of the Foregoing Section.**—That the said County Supervisors shall not pay any salaries to any Rural Policeman until he has made and filed the verified report herein required; and further, in default thereof, the said Rural Policeman violating the provisions of this Section shall, on conviction, be liable to a fine not exceeding one hundred dollars, or imprisonment in the County Jail not exceeding two months, at the discretion of the Court.

1917, XXX, 111.

ARTICLE III.**The Coroner.**

(2098) § 1. **Election of Coroners.**—There shall be an election for County Coroner in each county, except in the Counties of Berkeley, Cherokee, Darlington and Hampton, by the qualified voters thereof, at each alternate general election, reckoning from the election in the year one thousand eight hundred and seventy-two. In the counties excepted the election shall be reckoned from the year one thousand eight hundred seventy-four.

Civ. '12, § 1277; Civ. '02, § 878; G. S. 701; R. S. 749; 1870, XIV, 338, § 1; 1897, XXII, 591.

(2099) § 2. **Term of Office.**—The term of office of the Coroner shall be four years, and until his successor shall be elected or appointed, and shall qualify.

Civ. '12, § 1278; Civ. '02, § 879; G. S. 702; R. S. 750; 1870, XIV, 338, § 2.

(2100) § 3. **Vacancy—How Filled.**—In the event of a vacancy in the office of Coroner, the Governor shall have full power to fill the same by appointment, as provided in Section (284).

Civ. '12, § 1279; Civ. '02, § 880; G. S. 713; R. S. 751; 1882, XVII, 1126, § 75.

(2101) § 4. **Official Bond.**—Before receiving his commission he shall enter into bond, to be executed by him and any number of sureties, not exceeding twelve nor less than two, to be approved, recorded and filed as prescribed in Article I of Chapter XVIII. In the County of Charleston the bond shall be the penal sum of ten thousand dollars, in the County of McCormick the bond shall be in the penal sum of five thousand dollars, and in each of the other counties two thousand dollars.

Civ. '12, § 1280; Civ. '02, § 881; G. S. 703; R. S. 752; 1868, XIV, 19, § 1; 1919, XXXI, 75.

McBee v. Hoke, 2 Speer 138.

(2102) § 5. **Official Oaths—When to Be Commissioned.**—Before he is qualified to act he must take and subscribe the Constitutional oath of office, and also the additional oaths required of such officer by Sections (734) and (735). When a person has been elected, or designated, for appointment, to the office of Coroner, and has taken and subscribed the oaths and given the bond as required by law, the Governor shall issue a commission to him accordingly.

Civ. '12, § 1281; Civ. '02, §§ 882, 883; G. S. 705, 706; R. S. 753, 754.

(2103) § 6. **Coroners' Deputies — Appointment and Duties of.**—The Coroner of any county, except Charleston, may appoint one or more Deputies, to be approved by the Judge of the Circuit, or by any Circuit Judge presiding therein, who shall take and subscribe the oath prescribed by the Constitution, and also the oaths with respect to duelling and gaming, prior to entering upon the duties of said appointment; said oaths may be administered by any officer authorized to administer oaths in the county. Such appointment must be evidenced by a certificate thereof, signed by the Coroner, and shall continue during his pleasure. He may take such bond and surety from his Deputy as he may deem necessary to secure the faithful discharge of the duties of the appointment, but shall always be answerable for the neglect of duty or misconduct in office of such Deputy. When duly qualified, as herein required, the Deputy so appointed may do and perform any or all of the duties appertaining to the office of his principal.

Civ. '12, § 1282; Civ. '02, § 884; G. S. 706, 707; R. S. 755; 1870, XIV, 332, § 1.

(2104) § 7. **Not to Act Under Appointment of Sheriff—Penalty.**—No Coroner shall act as Jailer, Deputy Sheriff, or under any appointment by a Sheriff; and if he shall accept or shall act under the appointment of the Sheriff of his county, his office shall be vacated and the same shall be filled in the manner provided by law in case of vacancy from any other cause.

Civ. '12, § 1283; Civ. '02, § 885; G. S. 708; R. S. 756; 1899, XI, 71, § 7.

(2105) § 8. **Office—Where Kept—Book of Inquisitions.**—He shall keep an office at the Court House in his county, which shall have proper fixtures, and in which he shall keep his book of inquisitions, which book shall be public property and shall be turned over to his successor in office.

Civ. '12, § 1284; Civ. '02, § 886; G. S. 709; R. S. 757; 1839, XI, 78, § 38.

(2106) § 9. Coroners to Take Inquests.—Every Coroner, within the county for which he has been elected or appointed, is empowered to take inquest of casual or violent deaths, where the dead body is lying within his county. And it is hereby made the duty of all Coroners and Magistrates to file with the Railroad Commission, upon written request for the same and the tender of fee of nine cents per hundred words, an exact copy of all evidence and proceedings of inquests held over bodies when death is caused by any accidents whatever by railroads; this report to be filed with the Railroad Commission not later than five days after the inquest is finished.

Civ. '12, § 1285; Civ. '02, § 887; G. S. 711; R. S. 758; 1839, XI, 72, § 8; 1874, XV, 529; 1911, XXVII, 160.

Coroner v. Cunningham, 2 N. & McC. 454.

(2107) § 10. Magistrate to Act as Coroner—In What Cases.—Any Magistrate of the county, except in the County of Charleston, is authorized and required to exercise all the powers and discharge all the duties of the Coroner in holding inquests over the body of deceased persons, and taking all proper proceedings therein, in all cases when the Coroner of the county is sick or absent, or at a greater distance than fifteen miles from the place for such inquiry, or when the office is vacant.

Civ. '12, § 1286; Civ. '02, § 888; G. S. 710; R. S. 759; 1839, XI, 33, § 29; XVII, 51.

Acker v. Anderson County, 77 S. C. 478, 480, 58 S. E. 337.

(2108) § 11. Books of Inquisitions.—Every Coroner shall keep a book to be called "The Coroner's Book of Inquisitions," into which he shall copy all inquests found within his county, together with evidence taken before the jury, and all proceedings had before or after their findings.

Civ. '12, § 1287; Civ. '02, § 889; G. S. 718; R. S. 760; 1839, XI, § 32.

(2109) § 12. When Inquisition, Etc., to Be Returned to Clerk.—The original inquisition and evidence, as taken by him, shall be returned by the Coroner, within ten days next after the finding thereof, to the Clerk of the Court of General Sessions for the county in which it was found.

Civ. '12, § 1288; Civ. '02, § 890; G. S. 719; R. S. 761; 1839, XI, § 32.

State v. Campbell, 1 Rich. 124; Acker v. Anderson County, 77 S. C. 478, 480, 58 S. E. 337.

(2110) § 13. Endorsement on Return.—The Coroner, before he returns such inquisition and evidence, shall endorse the same in this form:

"SOUTH CAROLINA, }
..... County, }

The State vs. The Dead Body of A. B.

Inquisition taken this day of, A. D., by
....., Coroner for said County, entered and recorded in Coroner's
Book of Inquisitions, page, this day of, A. D."

Civ. '12, § 1289; Civ. '02, § 891; R. S. 762; G. S. 720; 1839, XI, § 33.

(2111) § 14. Coroner to Act as Sheriff—In What Cases.—If the Sheriff shall be a party plaintiff or defendant, in any judicial process, execution, warrant, summons or notice to be served or executed, within his county, the Coroner shall serve or execute such process, execution, warrant, summons

or notice; in the discharge of which duties he shall incur such liabilities as would by law attach to their performance by the Sheriff himself.

Civ. '12, § 1290; Civ. '02, § 892; G. S. 712; R. S. 763; 1839, XI, 78, § 41.

Miller v. Yeaden, 3 McC. 11; *State v. Irby*, 1 McM. 485; *Caulbe v. Hoke*, 1 Speer 168; *McBee v. Hoke*, 2 Speer 138.

(2112) § 15. **Acting as Sheriff During Vacancy of Office—Books to Be Kept.**—The Coroner, during a vacancy in the office of Sheriff, shall act as Sheriff, and while discharging the office of Sheriff shall provide a suitable book, in which he shall enter such executions or other papers as he may be directed to enter by competent authority; and also all new writs, processes, executions or other papers proper to be entered by a Sheriff; and also all his proceedings as Sheriff in manner and form as Sheriffs are required by law to do; which book, or a certified copy thereof, he shall leave in the Sheriff's office as a record.

Civ. '12, § 1291; Civ. '02, § 893; G. S. 714; R. S. 764.

Richardson v. Croft, 1 Bail. 264; *State v. Irby*, 1 McM. 485.

(2113) § 16. **Not Bound to Act Upon Papers in Sheriff's Office, Except Specifically Instructed, Etc.**—The Coroner shall not be bound to act upon any papers in the Sheriff's office, unless he is specially instructed; nor shall he be bound to embrace, in his return to the Clerk's office, any execution found in the Sheriff's office which is not entered in his book, or upon which he may not have taken any proceedings.

Civ. '12, § 1292; Civ. '02, § 894; G. S. 715; R. S. 765; 1839, XI, 78, § 44.

(2114) § 17. **List of Prisoners to Be Made When Coroner Acts as Sheriff.**—As soon as the Coroner shall enter upon the duties of Sheriff, he shall, in the presence of the Clerk of Court, or Jailer of the county, if there be one, make a list of the prisoners in the jail, which must be signed by himself and the Jailer, entered in the Coroner's book, and the original lodged in the Clerk's office.

Civ. '12, § 1293; Civ. '02, § 895; G. S. 716; R. S. 766; 1839, XI, 78, § 45.

(2115) § 18. **To Turn Over Papers, Etc., to Succeeding Sheriff.**—Upon retiring from the Sheriff's office he shall turn over the papers of the office and the prisoners in jail to the succeeding Sheriff in manner and form as Sheriffs may be required to execute the same duty.

Civ. '12, § 1294; Civ. '02, § 896; G. S. 717; R. S. 767; 1839, XI, 78, § 46.

(2116) § 19. **Salary of Coroner — To Appoint Deputy — Salary of — Special Deputy.**—The Coroner of Charleston County shall be paid a salary at the rate of two thousand dollars per annum. He shall appoint one Deputy, who shall reside at the county seat, and shall perform all the services of the Coroner, and shall receive a salary of eight hundred dollars per annum. The Coroner may appoint a Special Deputy Coroner, with jurisdiction in any part of the county, whenever any special occasion may require such appointment; but such Special Deputy shall have no right to make any charge against the county for his services.

Civ. '12, § 1295; Civ. '02, § 897; G. S. 722; R. S. 768; 1879, XVII, 50; 1885, XIX, 425; 1886, XIX, 524, §§ 2, 3, 4.

The evidence of appointment of special deputy should be in writing. *Buttz v. County of Charleston*, 17 S. C. 535.

(2117) § 20. **Duties of Coroner and Deputy.**—The Coroner and his Deputy, subject to his orders and instructions, shall perform all the duties of Coroner within said county, and shall summon and warn all jurors for inquests held by them or either of them; and every person so summoned and warned and failing to appear and act as such juror shall forfeit and pay the sum of twenty dollars, if without reasonable excuse, to be recovered by action.

Civ. '12, § 1296; Civ. '02, § 898; R. S. 769; 1879, XVII, 50; 1885, XIX, 425; 1886, XIX, 524, §§ 2, 3, 4.

(2118) § 21. **Certain Magistrates in Charleston County May Hold Inquests.**—All the Magistrates residing outside of the limits of the City of Charleston, and appointed for the County of Charleston outside of the city limits, shall, in the absence of the Coroner, hold such inquests as may be necessary and do such other business as pertains to the office of Coroner in cases arising within his vicinity. In all such cases the said Magistrates shall receive for such services, beside their salaries as Magistrate, the sum of fifty dollars per annum, if so much be necessary.

Civ. '12, § 1297; Civ. '02, § 899; 1896, XXII, 306.

(2119) § 22. **Salaries — How Paid.**—All the salaries herein provided shall be paid out of the funds of the county upon the order of the County Commissioners, and shall be in lieu of all charges, costs and fees, except the costs, fees and compensation to which the Coroner may be entitled while acting as Sheriff.

Civ. '12, § 1298; Civ. '02, § 900; 1885, XIX, 426.

(2120) § 23. **County Commissioners to Provide Office, Books, Etc., for Coroner.**—The County Commissioners of said county shall provide for the Coroner an office in the City of Charleston and necessary books and stationery, provided the same shall not exceed the cost of twenty-five dollars per annum.

Civ. '12, § 1299; Civ. '02, § 901; R. S. 772.

ARTICLE IV.

The Clerk of Circuit Court.

(2121) § 1. **Election.**—There shall be an election for Clerk of the Court of Common Pleas in each county by the qualified voters thereof at each alternate general election, reckoning from the election in the year 1888, except in the Counties of Berkeley and Cherokee, where the reckoning shall be from the election in the year 1890.

Civ. '12, § 1300; Civ. '02, § 902; 1882, XVII, 1124; Con. V, 27; 1897, XXII, 591.

Reister v. Hemphill, 2 S. C. 325; *Wright v. Charles*, 4 S. C. 178; *McCoy v. Curtis*, 14 S. C. 371; *Williams v. Ostendorff*, MS. Dec. 1877; *State v. Sims*, 18 S. C. 462.

(2122) § 2. **Clerk of Courts of Sessions and Common Pleas, Etc.—How Vacancies Filled.**—The Clerk elected in each county shall be Clerk of the Courts of General Sessions and Common Pleas, and of all other Courts of record therein, except the Court of Probate. In the event of any vacancy

in the office the Governor shall have full power to fill the same by appointment, as provided in Section (284). Until such vacancy be filled by appointment or election, the Judge of Probate of the county shall take charge of the office, discharge the duties and receive the fees thereof, and be subject to all its liabilities as provided by law.

Civ. '12, § 1301; Civ. '02, § 903; G. S. 759; R. S. 775; 1882, XVII, 1125, § 75; 1884, XVIII, 744.

State v. Harmon, Cheves, 265; *State v. Coleman*, 54 S. C. 282, 32 S. E. 406.

(2123) § 3. Official Bond.—Before receiving their commissions they shall enter into bond, to be approved and recorded and filed, as prescribed in Chapter XVIII, Article 1, in the penal sums following: The bond of the Clerk for Charleston County, twenty thousand dollars; for Oconee and Horry Counties, six thousand dollars; for Edgefield, Dorchester, Calhoun, McCormick and Saluda Counties, each five thousand dollars; for Greenwood County, seven thousand dollars; and for each of the other counties, ten thousand dollars.

Civ. '12, § 1302; 1905, XXIV, 902; 1907, XXV, 652; 1919, XXXI, 75.

Treasurers v. Ross, 4 McC. 273; *Treasurers v. Lang*, 2 Bail. 430; *State v. Moses*, 18 S. C. 372; *Chester County v. Hemphill*, 29 S. C. 564, 8 S. E. 195; *State v. Lake*, 30 S. C. 43, 8 S. E. 322; *Strain v. Babb*, 30 S. C. 342, 9 S. E. 271.

(2124) § 4. Official Oaths—Commission to Be Read and Entered in Journal.—The Clerk before entering on the duties of his office shall, in addition to the oath of office prescribed by the Constitution, take the several oaths required of such officer by Sections (734) and (735). Said oaths must be endorsed upon the commission, subscribed by the officer and attested by a Magistrate or Notary Public of the county for which the said Clerk shall have been elected or appointed. At the opening of the first term of the Court which may be held thereafter the Clerk shall produce his commission, with the endorsement aforesaid, and after the same has been read in open Court shall make a fair entry thereof in the journals of the Court.

Civ. '12, § 1303; Civ. '02, § 905; G. S. 724; R. S. 777; 1816, VI, 27; 1839, XI, 92; 1880, XVII, 502.

(2125) § 5. May Appoint Deputy—His Oaths—Evidence of Appointment, Etc.—The Clerk may appoint a Deputy or Deputies, to be approved by the Court of Common Pleas, a record of whose appointment shall be made in the Clerk's office. Before entering on the duties of his appointment such Deputy must take the oath prescribed by the Constitution and the oath with respect to dueling; and when so qualified, the Deputy may do and perform any and all of the duties appertaining to the office of his principal. Such appointment shall be evidenced by a certificate thereof, signed by the Clerk, and shall continue during his pleasure. He may take such bond and security from his Deputy as he shall deem necessary to secure the faithful discharge of the duties of the appointment, but shall in all cases be answerable for the neglect of duty or misconduct in office of his Deputy.

Civ. '12, § 1304; Civ. '02, § 906; G. S. 723, 726, 727; R. S. 778; Code Pro., § 33; 1870, XIV, 332, §§ 2, 3; 1918, XXX, 872.

State v. Hopkins, 15 S. C. 156; *King v. Belcher*, 30 S. C. 381, 9 S. E. 359; *Miller v. George*, 30 S. C. 527, 9 S. E. 659; *Linley et al v. Citizens National Bank of Anderson et al*, 103 S. C. 372; 94 S. E. 874.

(2126) § 6. **Office Days and Hours, Duties, Etc.**—Every Clerk shall, except on public holidays, give constant attendance, either personally or by Deputy, in his office, which shall be kept in a room provided for that purpose in the Court House. He shall discharge all the duties required by law, or the rules of Court, from time to time, or that may be incident to the office. He shall make a full, fair and correct entry and record of the proceedings of the Courts and other matters pertaining to his office in the various books required to be kept, conforming to the mode prescribed by law, order of the Court or usage of the office. He shall file in their proper order original papers in causes instituted or other authorized proceedings, and preserve with care all papers, books and furniture pertaining to or connected with his office.

Civ. '12, § 1305; Civ. '02, § 907; G. S. 779; R. S. 779; 1839, XI, 100, § 4.

As to record of proceedings. *Williams v. Jones*, 2 Hill 555; *Brown v. Coward*, 3 Hill 4; *Jones v. Stiefer*, 1 Speer 15; *Schoonmaker v. Lloyd*, 9 Rich. 173.

(2127) § 7. **Clerical Regulations of Office—Cases for Papers—Seal—Record Books.**—The office of every Clerk shall be furnished with suitable cases, with proper partitions, for filing papers, under appropriate labels, well secured from dust by means of shutters filled with glass, to slide on rollers, with labels painted on the outside, indicating the kind of records; and on the case inside, label the number roll (or if in Sessions the term) of the papers contained within each partition. The lower part of the cases shall be divided into convenient apartments for the books of the office, with doors secured with proper fastenings, with labels painted outside indicating the particular descriptions of records contained in each division, that is to say: "Journals," "Dockets," "Records after Judgment," "Miscellaneous Records" and "Register's Department." Each office shall be furnished with a seal of office, with a proper device, a screw, and such blank books for the various records as may be needed from time to time, to be procured by the Clerk, and the expenses thereof defrayed by the County Board of Commissioners.

Civ. '12, § 1306; Civ. '02, § 908; G. S. 729; R. S. 780; 1839, XI, 100, § 5.

(2128) § 8. **Clerk to Have Charge of the Court House—Penalty for Keeping Open at Night.**—Every Clerk shall have charge of the Court House within his county; open the same, when required for public use, and at all other times keep it closed; and for every night any Court House shall be kept open, the Clerk shall be liable to a penalty of five dollars, for the use of the county, to be recovered by indictment.

Civ. '12, § 1307; Civ. '02, § 909; G. S. 730; R. S. 781; 1839, XI, 101, § 6.

(2129) § 9. **Filing and Endorsement of Papers.**—The original papers of record in each cause wherein judgment may be signed or confessed, or decree may be entered, shall be filed, according to the number of enrollment, in the book of abstracts of judgments, or of decrees, placing all the papers in each cause together. Original papers in the Sessions shall be filed according to the term at which they were disposed of, alphabetically arranged for each term, according to defendants' names, all relating to the same cause together. Other papers required to be returned to, or

kept in the office, shall be endorsed with the character, date of filing, and number on file, numbering each kind, from one onward, and keeping all relating to the same matters together, under the same number, and shall be filed according to date and number, in appropriate boxes, with suitable labels, put up in packages, dated according to the year in which they may be filed; upon the envelope or card there shall be an endorsement of the description or kind of papers therein, and reference to number, under the following heads: Bonds in Attachment, Bonds of Constables, Certificates from Supreme Court, Appeals, Commissions, Inquests by Coroner, Reports, etc., *de Lunatico Inquirendo*, Naturalization, *Venire Facias*, Estrays, Dower, Partition, Escheats, Affidavits, Attachments for Contempt and Rules, Sessions papers disposed of, to be transferred after judgment, where the same may be authorized. The following endorsement shall be made upon the record where the proceedings warrant it, viz.: On the Judgment Roll, the date when filed, number on docket, date and amount of judgment in figures, amount of taxed costs, judgment when signed, execution, date of issuing, and at the top, at some conspicuous place, the number roll. On Bills of Indictment, date and character of filing by Grand Jury, number on docket, arraignment, verdict or other disposition, and date, amount of tax costs, execution, date of issuing, and kind. On all papers returned by Magistrates in the Sessions shall be endorsed their character, and date of filing. On every execution, before leaving the Clerk's office, shall be endorsed, near the top, the number roll, or, if in the Sessions, the term under which the case is filed, and in all instances, when an execution is returned for renewal, the fact and date of such renewal shall be endorsed on the execution so returned, and on the renewed execution shall be endorsed the date when first execution was lodged in Sheriff's office. All original papers in dower, partition of real estate, and inquisitions, shall be filed according to number roll, the papers pertaining to each case being placed together, and the number roll plainly endorsed on the envelope, or outside paper, and also the book and page of record.

Civ. '12, § 1308; Civ. '02, § 910; G. S. 731; R. S. 782; 1889, XI, 101, § 7.

(2130) § 10. Books to Be Used by the Clerks, and Their Contents.—

The books to be used by the several Clerks shall be well bound and of good materials, as follows:

Civ. '12, § 1309; Civ. '02, § 911; G. S. 732; R. S. 783.

1. "COURT OF COMMON PLEAS JOURNAL."—Which shall contain a full account of the proceedings of Court, from the opening to the adjournment, excluding motions refused. A short statement of each case called, and manner of disposition, and every order of reference, each under a general order, as far as may be; record of the names of jurors composing each jury; and all changes therein, and designating the jury who may try each cause under the title thereof, together with an exact copy of their verdict; and whether upon trial before Jury or Judge, or by default, and if in default, whether in proof or reference, and all assessments, each in words at length, and not in figures; awards confirmed; confessions of judgment

during Court; final judgment; copies of all orders passed, or motions granted, and other matters specially ordered by the Court to be entered.

1839, XI, 102, § 8.

2. "COURT OF GENERAL SESSIONS JOURNAL."—To be kept in a separate volume, after like manner, as far as may be, and including the finding of the Grand Juries on bills given out, with their other presentments, and sentences of the Court on parties convicted; orders of estreat; fines imposed, and other matters specially ordered for entry by the Court.

1839, XI, 102, § 8.

3. "INDEXES TO THE RESPECTIVE JOURNALS OF THE COMMON PLEAS AND GENERAL SESSIONS."—To be alphabetically arranged at the end of each volume, which Index shall always be brought up by the first day of each succeeding term.

1850, XII, 70.

4. "RULES."—In which shall be entered every case, on filing the complaint, showing, in separate columns, names of Parties, Plaintiff's Attorney, Defendant's Attorney, date of filing Complaint, date of Answer, Demurrer, etc., Republican, and date of order for Judgment.

1839, XI, 103, § 8.

5. "CALENDARS."—For Civil Causes, Sessions and Contingent, to be kept in separate volumes, for the use of the Court; and a Bar Calendar in a single volume, to be made on and before the meeting of the Court, and the Calendars to be kept up as the pleadings are made up, or cases occur during the term for both the Court and the Bar. No cause shall be entered on the Calendar, except by the Clerk, or his Deputy, nor by him, until the pleadings are made up. The Calendars for the Court shall be regularly preserved as a record of the Court, and shall show, in separate columns, the number of cause, number of term, names of parties, cause of action, Plaintiff's Attorney, Defendant's Attorney (and, in the Sessions, Prosecutor's name), Order of the last Court, and place for the event of suit, to be entered by the Judge.

The Sessions Calendar shall contain, separately arranged, cases of the previous term, under the title "Traverses," and cases under the present term, under the title "Calendar."

The Contingent Calendar shall contain, in the Sessions, all the Rules, Bills found in which Defendants have not been arrested, and cases struck off, but in which *vol. pros.* has not been entered, to be called on motion of the Solicitor.

1839, XI, 103, § 8.

6. "ABSTRACTS OF JUDGMENTS."—In which shall be entered each case wherein judgment may be signed, including each case in dower, partition, and escheat, after judgment or final order, with separate columns, showing number of Enrollment, names of parties, cause of Action, Attorney, date of Judgment, amount of Judgment, time of bearing interest, how Judgment obtained, Costs (separating Attorney, Clerk, Sheriff, Witnesses, and Total), kind of Execution, date of Issuing, Sheriff's Return, when Renewed,

and Satisfaction, together with an Index, by the names of Defendants, and a cross Index by the names of Plaintiffs, each alphabetically arranged, and kept in separate volumes with the number of enrollment of Judgment.

1839, XI, 103, § 8.

Ostendorff v. County Commissioners, 14 S. C. 403. The entry on this book is the judgment record. *Harrison v. Manufacturing Co.*, 10 S. C. 278; *Ex parte Graham, Plyler v. Robertson*, 54 S. C. 163; 32 S. E. 67.

7. "SESSIONS INDEX."—By names of Defendants, alphabetically arranged, together with the offense charged, disposition of the case, and the term when ended, and number on file.

Civ. '12, § 1309; 1839, XI, 104.

8. CLERK OF COURT TO KEEP RECORD OF ALL PERSONS TRIED FOR CRIME.—Each Clerk of the Court of General Sessions shall keep a record, and report annually to the Attorney General and the Solicitor of his Circuit, in duplicate, by the 10th day of December, on blank forms to be furnished by the Attorney General, the name, race, sex, age, alleged crime, of every person brought to trial in his Court for the year ending December 1st; and in case of his failure to make said report within the time herein limited, he shall forfeit to the county ten dollars as a penalty for each day's delay in making such report, to be recovered by the Solicitor of the Circuit by an action in any Court of competent jurisdiction.

Crim. Code, 1912, § 73; Crim. Code, 1902, § 46; 1900, XXII, 442.

9. RACE TO BE ENTERED UPON CALENDAR.—All the Clerks of the Court of General Sessions shall enter upon the Calendar of said Court the race to which each person indicted in said Court belongs.

1911, XXVII, 86.

JUDGES TO ENFORCE LAW.—It shall be the duty of the Circuit Judges to require the Clerks of Court to comply with the requirements of this Section.

1911, XXVII, 86.

10. "PLEADINGS AND JUDGMENTS."—In which shall be entered, at length, the Complaint, Answer and Judgment in each cause wherein judgment may have been signed, and also the proceedings in Dower, Partition and Escheat, when the final order and judgment of the Court shall have been had, with an Index to names of Plaintiffs.

1839, XI, 104.

Hall v. Moreman, 3 McC. 477; *Treasurers v. Ross*, 4 McC. 273; *Brown v. Coward*, 3 Hill 3.

11. "CONFESSIONS OF JUDGMENT BEFORE CLERK."—In which shall be entered such proceedings kept with reference to the number of enrollment in Book of Abstracts, instead of page, together with an Index to this particular volume, in the names of Defendants.

1839, XI, 104.

A confession of judgment is not void if not entered on this book. *Ex parte Graham v. Robertson*, 54 S. C. 163, 32 S. E. 67.

12. "FINES AND FORFEITURES."—In which shall be entered the names of all persons fined by the Court, or whose recognizance may be estreated, with separate columns, showing names, cause of fine, when fined, by whom fined, amount of fine, to whom due, when collected, by whom collected, why not collected, when paid over, and to whom.

1839, XI, 104.

13. "MAGISTRATES' AND CONSTABLES' ROLL."—In which shall be entered the name of each Magistrate and Constable, on taking the oaths of office, representing, in separate columns, the names, date of qualification, office, expiration of term, a genuine signature, and, in the case of a Constable, the names of the sureties to his bond, with an Index of each name, alphabetically arranged.

1839, XI, 104.

14. "ESTRAYS."—In which book shall be entered, in separate columns, date of entry, kind of entry, description by appraisers, and their names, name of the Magistrate, appraiser's valuation, by whom taken up, when sold, and disposition of proceeds.

1839, XI, 104.

15. "BOOK OF ORDERS APPOINTING RECEIVERS OF JUDGMENT DEBTORS." Code of Procedure, § 348.

16. "MISCELLANEOUS INDEX."—In which shall be entered, alphabetically, the names of all aliens who have taken any step towards naturalization; all persons concerning whom proceedings *de lunatico inquirendo* may be instituted; names of aliens naturalized; certificates and papers concerning corporations, and all matters required by law to be recorded and not otherwise provided for, referring to papers on file by number and label.

1839, XI, 104.

17. "A RECORD BOOK OF PARDONS."—In which he shall record the names of persons pardoned in his county, arranged alphabetically, the offenses for which they were convicted, the date of conviction and the date of pardon.

1896, XXII, 122.

(2131) § 11. **Size of Books Required to Be Kept.**—The preceding books, required to be furnished and kept by the Clerk, shall be of the following sizes, respectively:

1. Court of Common Pleas Journal, General Sessions Journal, Rules, Fines and Forfeitures, and Estrays, each of the size denominated "Demi;" the Journals containing not less than six quires each, and the other books not less than three quires each.

2. Calendars, Sessions Index, Confessions of Judgment before Clerk, Magistrates' and Constables' Roll, Book of Orders appointing Receivers of Judgment Debtors, and Miscellaneous Index, each of the size denominated "Board Cap," the first named containing not less than two quires, and the remaining books not less than four quires each.

3. Pleadings and Judgments, in a volume not less than the size denominated "Medium," containing not less than six quires.

4. Abstract of Judgments, of the size denominated "Super Royal," containing not less than four quires.

5. Indexes to preceding volumes, of the size denominated "Long Demi," containing not less than six quires.

Civ. '12, § 1310; Civ. '02, § 912; G. S. 733; R. S. 784; 1839, XI, 105, § 8.

(2132) § 12. To Read Minutes to Judge Before Adjournment Daily.—

To prevent false and erroneous entries in the Journals of the Courts of Common Pleas, it shall be the duty of the Clerks of the said Courts, respectively, on each day previous to the adjournment of the Court, to read over to the Judge who may preside the minutes or entries which shall have been made during the day in the said Journal.

Civ. '12, § 1311; Civ. '02, § 913; G. S. 734; R. S. 785; 1791, VII, 279, § 1.

Error in form of verdict corrected before recording. *Devore v. Geiger*, 41 S. C. 138, 19 S. E. 288.

(2133) § 13. Books and Records to Remain in Office—Inspection by Parties and Attorneys—Copies.—The Clerk shall not in any case permit either the books or records to be removed from his office, though it shall be his duty at all times to permit either party to a suit, or his agent or attorney, to inspect or copy, during the pendency of suit, any papers pertaining thereto, without charge, or to furnish on application certified copies thereof on payment of fees per copy sheet.

Civ. '12, § 1312; Civ. '02, § 914; G. S. 735; R. S. 786; 1839, XI, 105, § 9.

Steinberger v. McSween, 14 S. C. 35.

(2134) § 14. Administer Oaths, Etc., Sign Orders of Reference, Grant Orders in Partition and Dower.—Clerks may administer oaths, take depositions and affidavits, and also renunciations of dower. The Clerk of any county in which the office of Master does not exist may, by consent of parties, sign orders of reference in vacation; and shall also have power, upon proper proceedings filed, to grant orders for the partition of real or personal estate and for the admeasurement of dower, in cases where the right of partition or dower is not contested, or the same has been ascertained by a decree of the Court. All proceedings under such orders shall be filed at the next succeeding term of the Court for the adjudication of the Presiding Judge, until which adjudication all equities of the parties shall be reserved.

Civ. '12, § 1313; Civ. '02, § 915; G. S. 736; R. S. 787; 1839, XI, 112, § 32; 1884, XIX, 835.

(2135) § 15. May Act as Attorneys—Exception.—They shall have the privilege of acting as Attorneys and Solicitors in all the Courts in the State, except in the Courts of their respective counties, provided they shall have complied with the requirements of law regulating the admission of persons to practice as attorneys, solicitors and counsellors in the Courts of this State.

Civ. '12, § 1314; Civ. '02, § 916; G. S. 737; R. S. 788; 1871, XIV, 538.

(2136) § 16. Not to Act as Sheriff or Deputy Sheriff—Exception.—They shall not act as Sheriffs or Deputy Sheriffs, except as provided by Section 25.

Civ. '12, § 1315; Civ. '02, § 917; G. S. 738; R. S. 789; 1839, XI, 112, § 32.

(2137) § 17. To Enforce Jury Laws.—It shall be the duty of the Clerk, diligently and uprightly, to put in execution the laws of force directing the drawing, balloting, empanelling, and summoning of jurors, so far as his cooperation may be required.

Civ. '12, § 1316; Civ. '02, § 918; G. S. 739; R. S. 790; 1839, XI, 105, § 10; 1869, XIV, 236, § 7; 1871, XIV, 690.

(2138) § 18. Roll of Jurors and Constables in Attendance—Journal Entry — Commissioners' Copy — Certificates.—Immediately after the adjournment of any Court of Common Pleas and General Sessions, the Clerk thereof shall make out a roll of the Grand Jurors and Petit Jurors and Constables who shall have attended the same, exhibiting the name, time of service, and amount due each Juror and Constable, and the term at which the service was performed, and shall enter the same on the journals of the Court of the term when such service shall be performed, and shall forthwith transmit to the County Commissioners of the county a certified copy of such roll, and shall furnish each Juror and Constable with a certificate, in the following form:

“STATE OF SOUTH CAROLINA:

“I, A B, Clerk of the Court of Common Pleas and General Sessions for County, in the said State, do certify that attended as a juror (or actually served as a Constable, as the case may be) for said County..... days at Term, A. D., and is entitled to receive for the same dollars and cents;” which certificate shall be signed by the Clerk of the Court, who shall issue the same, and be countersigned by the presiding Judge; or, in any case where a Judge may not be present during the term, the certificate shall be countersigned by the Sheriff of the county; and, in addition to what is above described, shall set forth such absence of the Judge; and all certificates so issued and executed shall be valid.

Civ. '12, § 1317; Civ. '02, § 919; 1839, XI, 106, § 14; 1878, XVI, 412.

(2139) § 19. To Adjourn Court in the Absence of Judge.—Whenever it shall so happen that any Circuit Court in this State cannot be held at the time appointed, in consequence of the absence or indisposition of the Judge, it shall be the duty of the Clerk of such Court, or his Deputy, to open and adjourn the same from day to day, until the Court shall meet, or until he may receive due notice that the Judge will not be present, when he shall adjourn the same until the first day of the succeeding term.

Civ. '12, § 1318; Civ. '02, § 920; G. S. 741; R. S. 792; 1839, XI, 106, § 13.

Haughton v. Order of United Commercial Travelers of America, 108 S. C. 73, 93 S. E. 393.

(2140) § 20. Issue Executions, Bench Warrants, and Other Processes, and Sign Judgments Officially.—It shall be the duty of the said Clerk to issue every execution, bench warrant, or other process, issuable, or directed to be issued, by the Courts of Sessions, in the name of the Attorney General or Solicitor of the Circuit, and also to issue all rules and notices ordered in the Common Pleas, and test, in his own name, under the seal of the Court, all writs and processes issued either in the Common Pleas or Sessions, and to sign officially all judgments, and state the time when each is signed and entered.

Civ. '12, § 1319; Civ. '02, § 921; G. S. 743; R. S. 793; 1839, XI, 107, § 16.

As to testing writs. *Miller v. Hall*, 1 Speer 1; *Smith v. Affanassieff*, 2 Rich. 334; *State v. Thayer*, 4 Strob. 286.

(2141) § 21. To Witness and Approve Security of Costs—Form of.—Whenever security for costs may be ordered to be given, or may be tendered, by any plaintiff, in vacation or in term time, the Clerk shall witness

the signature of the surety, and shall, in the first instance, judge of the sufficiency of the security; the form of the undertaking to be according to law, or the rule of the Court on that subject if there be no law.

Civ. '12, § 1320; Civ. '02, § 922; G. S. 743; R. S. 794; 1839, XI, 110, § 22.

Money deposited, compliance with order. *Fenet v. Wilson*, 3 Hill 340. Note of plaintiff's attorney, not. *Bomar v. Asheville & S. R. R. Co.*, 30 S. C. 450, 9 S. E. 512. Clerk must witness and approve security. *Furman v. Harman*, 2 McC. 442; *Boyd v. Graham*, 2 Hill 558; *Cummings v. Wingo*, 31 S. C. 427, 10 S. E. 107; *McCarley v. Turner*, 33 S. C. 161, 11 S. E. 645. As to form and place of signature of the Clerk as witness, see *Garrett v. Niel*, 49 S. C. 560, 27 S. E. 512. Form of undertaking prescribed. *Boyd v. Graham*, 2 Hill 558; Rule of Practice Circuit Court, No. 10.

(2142) § 22. May Grant Writs of *Dedimus Potestatem*—For What Purposes.—The Clerk, as to lands within his county, and deeds to be recorded in his office or in the office of the Register of Mesne Conveyances of his county, is authorized to grant writs of *dedimus potestatem*, directed to two or more Commissioners for taking renunciations of dower, or taking probate of the execution of all deeds under seal, where the persons to make such renunciations, or prove such deeds, reside without the limits of this State.

Civ. '12, § 1321; Civ. '02, § 923; G. S. 744; R. S. 795; 1839, XI, 106, 110, § 33; 1878, XVI, 751.

(2143) § 23. Entry of Satisfaction of Judgments and Mortgages.—It shall be the duty of the Clerk, or of the Register of Mesne Conveyances, as the case may be, in whose office any judgment or mortgage may be of record, on the receipt of the fees, to permit any judgment creditor, or his or her attorney, or any mortgagee, as the case may be, to enter satisfaction thereof; or if any Judge shall order satisfaction to be entered thereof, to enter of record satisfaction accordingly.

Civ. '12, § 1322; Civ. '02, § 924; G. S. 745; R. S. 796; 1839, XI, 109, § 19.

Waring v. Miller Batting Co., 36 S. C. 310, 15 S. E. 132. For power of Clerk to appoint guardians *ad litem*, under Act of 1898, XXII, 688, see Code Civil Procedure, § (343).
Union National Bank of Columbia v. Cook et al, 110 S. C. 99, 96 S. E. 484.

(2144) § 24. To Act as Judge of Probate When the Office is Vacant.—In case of any vacancy in the office of Judge of Probate, the Clerk of the county shall take charge of said office, and all papers therein, and discharge the same duties, receive the same fees, and be subject to the same liabilities, as by law provided for a Judge of Probate, until a Judge of Probate shall be appointed by the Governor or elected and commissioned for such county.

Civ. '12, § 1323; Civ. '02, § 9 25; G. S. 746; R. S. 797; 1839, XI, 113, § 39.

(2145) § 25. To Act as Sheriff When That Office is Vacant.—In case of vacancy in the office of Sheriff, the Clerk of the county shall take possession of the jail of such county, and charge of the prisoners confined therein, and also possession of the Sheriff's office and the papers therein, until the Coroner of such county may take charge of the same or until a Sheriff shall be appointed by the Governor or elected and commissioned for such county.

Civ. '12, § 1324; Civ. '02, § 926; G. S. 747; R. S. 798; 1839, XI, 113, § 39; 1884, XVIII, 744; 1904, XXIV, 394.

(2146) § 26. To Enter Renewals and Satisfactions of Executions—Where.—Whenever any execution shall be returned for renewal, or as

satisfied, by any Sheriff, the Clerk shall enter such renewal or satisfaction in the appropriate column of the abstract book, and in case of satisfaction shall enter the same on the original record; and it shall not be lawful for the Clerk to affix the seal of the Court to any renewed execution unless the one previously issued shall have been delivered to him, or unless authorized by a Judge's order.

Civ. '12, § 1325; Civ. '02, § 927; G. S. 748; R. S. 799; 1839, XI, 109, § 19.

Clerk is not presumed to have violated the law in renewing execution from his omission to so enter renewal and in absence of proof of return of previous one to him; he is rather presumed to have done his duty. *Douglas v. Owens*, 5 Rich. 534.

(2147) § 27. To Administer Oaths to Magistrates and Transmit List to Secretary of State.—The Clerk shall administer the oaths of office required to be taken by Magistrates appointed within his county, on their application, within ninety days after such appointment; and on the first day of November, annually, he shall transmit a list of the names of Magistrates who have qualified during the preceding year to the office of the Secretary of State at Columbia.

Civ. '12, § 1326; Civ. '02, § 928; G. S. 749; R. S. 800; 1839, XI, 112, § 30.

(2148) § 28. Duties Respecting Oaths and Bond of Constable, Etc.—The Clerk shall administer the oaths of office required by law to be taken by a Constable, on his entering into bond, as prescribed, of the sufficiency of the surety to which the said Clerk shall judge, to be filed in the office of Clerk. The Constable shall furnish a genuine signature of his name in the book prescribed, whereupon the Clerk shall furnish an official certificate of such qualification. When any Constable summoned in writing by the Sheriff to attend Court shall fail to appear, according to the summons, such default shall be noted by the Clerk, and such other proceedings had as in cases of jurors in default, or as the Court may order.

Civ. '12, § 1327; Civ. '02, § 929; G. S. 750; R. S. 801; 1839, XI, 112, § 31.

(2149) § 29. Accounts Against County—How to Be Rendered.—In all cases the Clerk shall render his account against the county for fees in State cases under oath, to be taken and subscribed before the Judge, Magistrate or other officer authorized to administer an oath, in which the nature of the services shall be fully set forth, and, if in the Sessions, the name of the party, offense and termination thereof. He shall not be entitled to receive any fees from the county in any case where the defendant is convicted, unless he makes oath that the costs in such case have not been recovered out of the defendant and that he is unable to pay costs. And he must, in all cases, further make oath that all fines and penalties theretofore collected by him have been faithfully and fully paid over to the County Treasurer.

Civ. '12, § 1328; Civ. '02, § 930; G. S. 752; R. S. 802; 1839, XI, 113, § 35; 1869, XIV, 274, § 2; 1875, XV, 992; 1879, XVII, 175.

(2150) § 30. Official Certificates to Be Furnished Certain Officers by Clerk.—In all cases where any Sheriff, Coroner, Magistrate or Constable, shall be required to obtain the official certificate of any Clerk to his continuing account, specifying any matters required by law to be certified, the Clerk shall furnish such certificates, according to the facts, upon application and payment of fees.

Civ. '12, § 1329; Civ. '02, § 931; G. S. 753; R. S. 803; 1829, XI, 113, § 36.

(2151) § 31. To Furnish Certificates of Liens on Property of Sureties on Public Officers' Bonds.—It shall be the duty of the Clerk to furnish, free of charge, to the County Commissioners, when required, an official certificate of all liens that may be of record in his office, on the property of any individual who may be offered as surety to the bond of any public officer, whether by judgment, mortgage, or otherwise.

Civ. '12, § 1330; Civ. '02, § 932; G. S. 754; R. S. 804; 1839, XI, 113, § 37.

(2152) § 32. To Keep Weights and Measures—Same to Be Purchased by Governor.—The Clerk of the Court of Common Pleas and General Sessions of each county in this State shall furnish, and is required to keep in his office, the weights and measures established by law, which shall be the standards of all other weights and measures in said county, and to which any person shall have free access to test the same; and the Governor of the State is authorized and required to purchase such standard weights and measures out of the fines and forfeitures incurred in the respective counties where such weights and measures are to be kept.

Civ. '12, § 1331; Civ. '02, § 933; G. S. 755; R. S. 805; 1840, XI, 173; 1850, XII, 300, § 1.

(2153) § 33. Clerk to Render Annual Accounts to County Commissioners—Penalty for Neglect.—It shall be the duty of the Clerk to return to the County Commissioners, on or before the last day of October in every year, an account, upon oath, in duplicate, of all fines and forfeitures inflicted in their respective Courts during the preceding year, and of the amounts had and received by them, and of the manner in which said fines were disposed of, under penalty of two hundred dollars, to be recovered against any Clerk for default herein by action. And it shall be the duty of the County Commissioners to request the Attorney General or Solicitor, as the case may be, to sue for and recover the said sum of every Clerk that may fail to render such account.

Civ. '12, § 1332; Civ. '02, § 934; G. S. 756; R. S. 806; 1812, V, 710, § 27; 1819, VI, 139, § 14.

(2154) § 34. Liability for Books, Papers and Furniture of Office—Transmission to Successor—Damages.—Every Clerk shall be held responsible for the books, papers, and furniture in his office; and upon his retiring from office, or death, he or his representatives shall be bound to transfer all such books, papers and furniture to his successor, immediately after such successor shall have entered upon the duties of his office. Before surrendering such books, papers, and furniture, the Clerk so retiring from office, or his representative, shall be entitled to require from such successor (who, under like penalty, shall be bound to execute the same) a receipt in writing therefor, which shall specify the number, title, and condition of every book, the number of records, as appears by the enrollment, and such other classification as it may be convenient to adopt from the arrangement of the office, all the packages of papers in office, and the description and condition of each article of furniture; a duplicate of which receipt shall also be given, and shall, by the Clerk so retiring from office, or his representatives, be filed in the office of the County Commissioners for the county, and every Clerk, having retired from office, or his representatives, shall be

liable to an action, in the name of the county, for damages for any books, papers, and furniture, which shall be proven to have been in his possession, and shall not appear, by such receipt, to have been transferred to his successors, or, having been so transferred, shall appear to have been, through neglect, injured during his continuance in office.

Civ. '12, § 1333; Civ. '02, § 935; G. S. 757; R. S. 807; 1839, XI, 114, § 41.

(2155) § 35. Fines, Etc., Turned Over Forthwith—Taxes on Plays and Shows Monthly.—All fines and penalties imposed and collected by the Circuit Court of General Sessions in criminal causes shall be forthwith turned over by the Clerk of said Court to the County Treasurer of the county wherein the same are imposed: *Provided*, That when, by law, any person is entitled, as informer, to any portion of the fine or penalty imposed and collected, the same shall be immediately paid over to him. They shall also pay, monthly, to the County Treasurers of their respective counties, for the use of the State, all such moneys as may have come into their hands as taxes from persons representing, publicly, plays and shows within the limits of their said counties.

Civ. '12, § 1334; Civ. '02, § 936; G. S. 758; R. S. 808; 1871, XIV, 655, § 1; 1813, V, 711, § 35; 1843, XI, 246, § 3; 1875, XV, 845.

(2156) § 36. Monthly Report to Auditor and Treasurer.—Every Clerk of the Court is required on the first Wednesday in each month, or within ten days thereafter, to make, in writing, to the Auditor and Treasurer of his county, a full and accurate statement of all moneys collected on account of licenses, fines, penalties and forfeitures during the past month.

Civ. '12, § 1335; Civ. '02, § 937; G. S. 759; R. S. 809; 1878, XVI, 753.

(2157) § 37. Penalty for Not Paying Over Funds.—If any Clerk shall fail to pay over any moneys paid to him by order or permission of the Court, within five days after demand of the person entitled to receive the same, he shall forfeit and pay five per cent. per month until the same shall be paid over, to be recovered, together with such amount received, by action on his official bond, besides being subject to rule and attachment as for contempt.

Civ. '12, § 1336; Civ. '02, § 938; G. S. 760; R. S. 810; 1839, XI, 111, § 28.

Fort v. Assman, 38 S. C. 273, 16 S. E. 888. Rule not proper remedy. Smith v. Lake, 5 S. C. 341; Remedy. Fowke v. Thompson, 5 Rich. Eq. 491.

(2158) § 38. Penalty for Not Paying Over Fines and Forfeitures or Giving Notice to Commissioners.—If any Clerk fail to pay over fines and forfeitures received by him, within five days after demand of the person entitled to receive the same, he shall forfeit and pay five per cent. per month until the same shall be paid over, to be recovered, together with such amount received, by action on his official bond, besides being liable to rule and attachment as for contempt. If he shall fail to give to some member of the Board of County Commissioners the notice required by law to be given, he shall forfeit and pay double the amount so detained without notice.

Civ. '12, § 1337; Civ. '02, § 939; G. S. 761; R. S. 811; 1839, XI, 111, § 28.

(2159) § 39. **To Account for Moneys at Each Session.**—At each stated session of the Court of Common Pleas, the Clerk thereof shall present an account to said Court of all moneys remaining therein, or subject to the order thereof, stating particularly on account of what cause or causes said moneys are deposited, which account, and the vouchers thereof, shall be filed in Court.

Civ. '12, § 1338; Civ. '02, § 940; G. S. 762; R. S. 812; 1868, XVI, 17.

(2160) § 40. **Clerk of Court of Abbeville County to Pay Over Certain Funds.**—That the Clerk of Court of Abbeville County be, and he is, required to pay over to the County Treasurer of said county all fund or funds which may have heretofore come into his hands and which may hereafter come into his hands officially, the owner or claimant of which by him cannot be ascertained, or which shall have remained in his hands for a period of seven or more years, which shall be, by the said Treasurer, accredited to the general school fund and to be apportioned as other school funds are apportioned: *Provided*, That in the event any owner or claimant shall establish his right to any such fund or funds after the same has been so accredited by the County Treasurer they shall be paid to them by order of the Court from the general school fund of the county.

1918, XXX, 1033.

(2161) § 41. **Clerk of Court of Marlboro County to Pay Certain Funds to County Treasurer—School Funds—Provisos.**—That the Clerk of Court of Marlboro County be, and he is, required to pay over to the County Treasurer of said county all fund or funds which may have heretofore come into his hands and which may hereafter come into his hands officially, the owner or claimant of which by him cannot be ascertained, or which shall have remained in his hands for a period of seven or more years; which shall be by the said Treasurer accredited to the general school fund and to be apportioned as other school funds are apportioned: *Provided*, That in the event any owner or claimant shall establish his right to any such fund or funds after the same has been so accredited by the County Treasurer they shall be paid to them by order of the Court from the general school fund of the county: *Provided, further*, That said Clerk of Court shall be given a reasonable time to collect any of said funds which may be loaned upon security of real estate mortgages, said time not to exceed one year from the date of the approval of this Section.

1919, XXXI, 20.

(2162) § 42. **Audits.**—That upon any audit of the books and records of said Clerk of Court that a full and complete statement shall be made showing the amount and the origin of said funds.

1919, XXXI, 20.

(2163) § 43. **Bill of Costs to Be Attached to Executions.**—In every case in which a Clerk of the Court of Common Pleas shall issue an execution, he shall attach thereto a bill of each item of costs therein charged, and shall, on application of defendant in execution, tax all costs which accrue to the Sheriff for services on such execution.

Civ. '12, § 1339; Civ. '02, § 941; G. S. 763; R. S. 813; 1827, VI, 336, § 5.

(2164) § 44. **Marking Records of Mortgages on Lands Sold by Order of Court Satisfied.**—Upon the confirmation by the Circuit Court of the report of the Master or other officer making sale of lands pursuant to decree of foreclosure, it shall be the duty of the Clerk of the said Court to enter upon the record of the mortgage so foreclosed release of lien thereof in the form prescribed in Section 45: *Provided*, That nothing herein shall be construed to satisfy any unpaid portion of the debt secured by said mortgage.

Civ. '12, § 1340; Civ. '02, § 942; 1900, XXIII, 347.

(2165) § 45. **Form of Endorsement of Release of Lien to Be Made by Clerk.**—That the release of lien entered by the Clerk under Section 1340 shall be made in writing on the margin of the record book in which the mortgage to be satisfied is recorded, and opposite to said mortgage, and shall be in the following form: "Lien released by sale under foreclosure the . . . day of . . . , A. D. 19.. See Judgment Roll No. . . ;" and signed by the Clerk.

Civ. '12, § 1341; Civ. '02, § 943.

(2166) § 46. **Clerks of Court to Keep Record of All Persons Elected to Office.**—Each of the Clerks of Courts of the various counties in this State shall be required to keep a book in his office in which he shall record the name of each person heretofore or hereafter elected to any office, together with date of their election, whenever such facts are obtainable; said book to be furnished by the Board of County Commissioners of each county, without cost to said Clerk of Court.

Civ. '12, § 1342; 1905, XXIV, 964.

(2167) § 47. **Enrollment Books to Be Kept as Records by Clerk of Court.**—The township enrollment book, when by the Enrollment Committee of Veterans turned over to the Clerk of the Court of each county, shall be by him, together with the county enrollment book, safely kept as permanent record books of his office.

Civ. '12, § 1343; 1902, XXIII, 1033.

(2168) § 48. **County Enrollment Book Kept by Clerk.**—It shall be the duty of the Clerk of the Court of each county, from each township enrollment book, promptly and correctly, to record into the county enrollment book the name of each person enrolled, together with all details of his service, noting on the township enrollment book, opposite each entry, the page of the county enrollment book whereon the entry is recorded, and noting in the county enrollment book the township enrollment book whence each entry is recorded.

Civ. '12, § 1344; 1902, XXIII, 1033.

(2169) § 49. **Fee for Enrollment.**—The Clerk of Court shall be entitled to receive a fee of two cents for each name so recorded by him in the county enrollment book, in full compensation for recording the name with all details of service, and indexing the same, or arranging in alpha-

betical order; said fee to be paid by the County Commissioners, out of the county funds, upon an itemized bill for same being submitted, verified and approved by the Chairman of the County Confederate Veterans' Enrollment Committee, and by the County Commissioners.

Civ. '12, § 1345; 1902, XXIII, 1033.

(2170) § 50. Temporary Custody of Enrollment Books.—Upon the written request of the Governor, the Clerk of the Court shall permit any State official, charged with perfecting, editing or publishing the official Confederate rolls, to have temporary custody of said county township enrollment books, the Clerk of Court taking the receipt of said official for enrollment books loaned, and when returned receipting the said official for same.

Civ. '12, § 1346; 1902, XXIII, 1033.

(2171) § 51. Under Direction of Veterans' Enrollment Committee.—The Clerk of the Court, in making the record in the county enrollment book, shall act under the direction of the State and County Confederate Veterans' Enrollment Committee.

Civ. '12, § 1347; 1902, XXIII, 1033.

ARTICLE V.

The Register of Mesne Conveyances.

(2172) § 1. Register of Mesne Conveyance for Charleston, Greenville and Spartanburg Counties.—The Register of Mesne Conveyances for Charleston County shall be elected by the qualified voters of said county at the general election to be held in the year one thousand nine hundred and two, and at every alternate general election thereafter, and shall hold office for four years and until his successor is elected and qualified. The Register of Mesne Conveyances for Greenville County shall be elected by qualified voters of said county at the general election to be held in 1908, and at every alternate general election thereafter and shall hold office until his successor be elected, commissioned and enter upon the duties of his office. The Register of Mesne Conveyances for Spartanburg County shall be elected by the qualified voters of said county at the general election to be held in 1908, and at every alternate election thereafter, and shall hold office for four years and until his successor is elected and qualified.

Civ. '12, § 1348; Civ. '02, § 944; G. S. 764; R. S. 814; 1898, XXII, 690; 1812, V, 674; 1819, VI, 120, § 1; 1882, XVII, 682; 1883, XVIII, 453; 1908, XXV, 1020.

(2173) § 2. Clerk of Court in Other Counties to Perform Duties Here Imposed on Such Registers.—The office of Register of Mesne Conveyance shall exist only in the Counties of Charleston, Greenville and Spartanburg; and every other county in the State, the duties prescribed by this Code for such officer, shall be performed by the Clerk of Court, who shall have all the

powers and emoluments given the Register of Mesne Conveyance in Charleston, Greenville and Spartanburg Counties.

Civ. '12, § 1349; Civ. '02, § 945; 1839, XI, 115, § 44; 1779, VII, 296, § 18; 1882, XVII, 682; 1896, XXII, 122; 1908, XXV, 1020.

Prior to the Act of 1896 the offices were distinct in these Counties, though the duties were performed by the same officer. *Waring v. Miller, etc., Co.*, 36 S. C. 310, 15 S. E. 132.

(2174) § 3. Official Bond—Oath of Office.—The Register of Mesne Conveyances in the Counties of Charleston and Greenville, before entering on the duties of office, shall give bond, with three good sureties, to be approved by the County Board of Commissioners of said counties, respectively, and of the form required by law, the Register of Charleston County in the sum of five thousand dollars and the Register of Greenville County in the sum of one thousand dollars; and the Register of Mesne Conveyance for the County of Spartanburg shall give bond in the sum of five thousand dollars; said bonds to be lodged in the office of the State Treasurer; and shall take the oath of office required by the Constitution, and also the additional oath prescribed in Sections (734) and (735), indorsed and subscribed on his commission, and enter the same, with the endorsement, on the records of the office; the said office of the Register for Charleston County to be in the fireproof building in the City of Charleston, and to be kept open from 9 o'clock a. m. to 6 o'clock p. m. every day except Sunday and public holidays.

Civ. '12, § 1350; Civ. '02, § 946; 1839, XI, 116, § 48; 1877, XVI, 301; 1889, XX, 478; 1893, XXI, 481; 1908, XXV, 1020.

(2175) § 4. Register May Appoint Deputy.—In Charleston, Greenville and Spartanburg Counties the Register of Mesne Conveyances may appoint a Deputy in the same manner that Clerks of the Court are authorized to do.

Civ. '12, § 1351; Civ. '02, § 947; G. S. 767; R. S. 817; 1839, XI, 116, § 46.

(2176) § 5. Prerequisites for Recording Deeds, Etc.—Before any deed or other instrument in writing can be recorded in this State, the execution thereof shall be first proved by the affidavit of a subscribing witness to said instrument, taken before some officer within this State competent to administer an oath. If the affidavit be taken without the limits of this State, it may be before a commissioner or commissioners appointed by *dedimus* issued by the Clerk of the Court of Common Pleas of the county in which the instrument is to be recorded, or before a Commissioner of Deeds of this State, or before a Clerk of a Court of record, who shall make certificate thereof under his official seal, or before a Justice of the Peace, who must append to the certificate his official seal, or before a Notary Public, who shall affix thereto his official seal within the State of his appointment, which seal shall be a sufficient authentication of his or her signature, residence and official character, or before a Minister, Ambassador, Consul General, Consul or a Vice Consul or Consular Agent of the United States of America. Where the affidavit of a subscribing witness cannot be had by reason of the death, insanity or absence from the State of such witness, then the instrument may be recorded upon proof of such fact and of the handwriting of the parties who signed the instrument, and of the subscribing wit-

nesses by proper affidavit; the proof in every case to be recorded with the instrument.

This Section shall regulate the probate of all deeds or other instruments in writing hereafter executed, and the probate of any and all deeds or other instruments in writing bearing date prior to the first day of March, A. D. 1909, whether recorded or not on that day, which are in compliance with the requirements of this Section are validated and their probate confirmed.

Civ. '12, § 1352; Civ. '02, § 948; G. S. 768; R. S. 818; 1880, XVII, 319; 1889, XX, 367; 1908, XXV, 104; 1909, XXVI, 84; 1910, XXVI, 621.

J. W. Dillon & Son Co. v. Oliver et al, 106 S. C. 410, 91 S. E. 304; Farmers Bank & Trust Co. v. Fudge et al, 113 S. C. 25, 100 S. E. 628.

(2177) § 6. Probate of Certain Deeds Validated.—Any and all deeds or other instruments in writing which may have prior to the 24th day of February, A. D. 1908, been probated by either a Minister, Ambassador or Consul General or Notary Public be, and the same are hereby, validated and their probate confirmed.

Civ. '12, § 1353; 1908, XXV, 1041.

Registering is not to perfect deed, but to *publish* it. Dawson v. Dawson, Rice's Eq. 243. Probate of deed executed in the State, before Magistrate in Georgia, not valid. Woolfolk v. Graniteville Man. Co., 22 S. C. 332. Probate need not be endorsed on deed nor appear in registry before Act 1839. Hillegas v. Hartley, 1 Hill Ch. 106. Registry without probate no notice. Woolfolk v. Graniteville Man. Co., 22 S. C. 337. But witness need not sign the affidavit. Fuller v. Missroon, 35 S. C. 314, 14 S. E. 714. Mechanic's lien need not be probated. Murphy v. Valk, 30 S. C. 262, 9 S. E. 101. Chattel mortgage must have at least one witness, and probate, to entitle it to record. McGowan v. Reid, 27 S. C. 262, 3 S. E. 337. Where chattel mortgage is under \$100 probating is not a prerequisite to indexing. Milford v. Aiken, 61 S. C. 110, 39 S. E. 233.

The omission of the official title of officer taking the probate does not affect its validity. McCreary v. Coggeshall, 74 S. C. 42, 53 S. E. 978, 7 Am. & Eng. Ann. Cas. 693, 7 L. R. A., N. S., 433n. A notary who is a party to, or interested in deed, cannot take the probate. Watts v. Whetstone, 79 S. C. 357, 362, 60 S. E. 703.

(2178) § 7. Auditor's Endorsement Required as to Record in His Office Before Recordation.—Before any deed of conveyance of real property can be placed on record in the office of the Register of Mesne Conveyance or Clerk of Court it must have thereon the endorsement of the County Auditor that it has been entered of record in his office.

Civ. '12, § 1354; Civ. '02, § 949; R. S. 918; 1882, XVII, 1015, § 232.

(2179) § 8. Recordation of Marriage Settlements, Conveyances, Mortgages, Renunciations of Dower, Etc.—The Register of Mesne Conveyances is required to record, in well bound books, of the size not less than those denominated "Medium," kept for that purpose, in the order of the times at which they may be brought to his office, all marriage settlements, and all conveyances and mortgages, renunciations of dower, and other writings concerning the titles to lands situate in his county, which may be lodged with him to be recorded: *Provided*, That the execution of every such writing shall be proved by affidavit of a subscribing witness, or otherwise, as hereinbefore provided. Every such writing shall be recorded within one month after its lodgment, and the recording shall bear even date with the lodgment; on every such writing shall be endorsed a certificate, to be signed by the Register or his Deputy, specifying the time when, and book and page where, it was recorded; in the book, the names of the parties and nature of the writing shall precede the registry, and after it shall follow the date of the registry and a memorandum of the person to whom the original writing has been delivered. To the books of the registry, refer-

ence shall be had by means of two indexes, each of which shall be in a separate book of the size denominated "Long Cap," both containing the year of registry, names of parties, book and page; the alphabetical arrangement of one being according to the names of the parties who executed the writings, and of the other, according to the names of the parties to whom they were executed; each index embracing a number of the volumes of registry, not less than ten.

Cox v. Enterprise Bank et al, 115 S. C. 191, 104 S. E. 693.

DIFFERENT BOOKS FOR CHATTEL MORTGAGES AND MORTGAGES ON REAL ESTATE.—Different sets of books shall be provided by the Clerks and Registers of Mesne Conveyances of the several counties for the recording of chattel mortgages and mortgages on real estate, in one of which sets all chattel mortgages shall be recorded, and in the other set all mortgages on real estate shall be recorded.

1882, XVII, 1053.

SEPARATE INDEXES FOR DIFFERENT BOOKS.—The Clerks and Registers of Mesne Conveyances of the several counties shall provide separate indexes for the different sets of books provided for him.

RECORDATION OF CHATTEL MORTGAGES.—It shall be a sufficient record of any chattel mortgage, where the amount secured is not more than one hundred dollars, to enter upon an index to be kept for that purpose by Register of Mesne Conveyances, the names of mortgagor and mortgagee, the amount and character of the debt secured, a brief description of chattels pledged, the date of said mortgage and of the maturity of said debt, and the date of presentation of such mortgage for record; and the fee to be charged by the Register of Mesne Conveyances shall be the same as now provided by law for the indexing of liens on crops for advances for agricultural purposes.

Civ. '12, § 1355; Civ. '02, § 950; G. S. 769; R. S. 820; 1889, XI, 115, § 45.

Chattel mortgages for less than \$100 need not be probated before being indexed. *Milford v. Aiken*, 61 S. C. 110, 39 S. E. 233.

Imperfect indexing of a deed does not impair the rights of those claiming under it. *Mitchell v. Cleveland*, 76 S. C. 433, 57 S. E. 33; *Association v. Childs*, 67 S. C. 251, 45 S. E. 167. What is sufficient indexing. *Bryant v. Thigpen*, 73 S. C. 224, 51 S. E. 535, 53 S. E. 368. Presumption that record was in proper County. *Charleston Live Stock Co. v. Collins*, 79 S. C. 386, 60 S. E. 944.

(2180) § 9. Sufficient Registry Record of Chattel Mortgage of Crops.—That it shall be a sufficient registry and record of any chattel mortgage covering crop or crops without reference to the amount thereof, to enter upon an index book to be kept for that purpose by Register of Mesne Conveyances, the names of mortgagor and mortgagee, the amount and character of the debt secured and brief description of the lands on which such crops are cultivated, the date of the maturing of the debt and the date of filing such mortgage for record: *Provided, however*, If other chattels are included in a mortgage with crops and such mortgage is recorded in the regular way, such recording shall be sufficient notice of the crop mortgage without indexing same: *Provided*, That this Section shall not apply to the Counties of Sumter, Clarendon, Berkeley, Georgetown, Abbeville, Richland, Greenville, Beaufort and Saluda.

Civ. '12, § 1356; 1911, XXVII, 154; 1912, XXVII, 552.

(2181) § 10. **Fee for Indexing and Registering.**—That the Register of Mesne Conveyances shall be entitled to charge for the indexing and registering any such mortgage a fee of fifteen cents.

Civ. '12, § 1357; 1911, XXVII, 154.

(2182) § 11. **Copies of Records—Damages for Incorrect Transcripts or Certificates.**—The Register of Mesne Conveyances, or his Deputy, shall be required, on application, to give a certified copy of any writing recorded in his office, the fees for the same being first paid in advance, if required or tendered, as the case may be; or a certificate that no deed, conveyance, or mortgage, or other transfer of any particular parcel of lands or tenements, by any particular person, is registered in his office; and if the Register or his Deputy shall furnish an incorrect transcript of any deed recorded, or an incorrect certificate, he shall forfeit and pay to the party the damages that may accrue in consequence thereof.

Civ. '12, § 1358; Civ. '02, § 951; G. S. 720; R. S. 821; 1839, XI, 116, § 47; 1698, II, 138, § 5; 1843, XI, 255.

(2183) § 12. **Auditor to Take Charge in Case of Vacancy—Duties, Pay, Etc.—Period.**—In case of any vacancy in the office of Register of Mesne Conveyances in Charleston, Greenville and Spartanburg Counties, the Auditor of the county in which such vacancy shall occur shall take charge of said office and all papers therein, and discharge the same duties, receive the same fees or salaries and shall be subject to the same liability as is by law provided for a Register of Mesne Conveyances, until a Register of Mesne Conveyances shall be elected and commissioned for such county: *Provided*, In Spartanburg County a vacancy shall be filled by the Governor until a Register of Mesne Conveyances shall be elected and commissioned, which shall be done at the next general election.

Civ. '12, § 1359; Civ. '02, § 952; 1893, XXI, 400; 1908, XXV, 1021; 1914, XXVIII, 483.

ARTICLE VI.

The Judge of Probate.

(2184) § 1. **Elections and Term of Office.**—The Judges of the Probate Court shall be elected by the qualified electors of the respective counties for the term of four years. The election for said office shall be held at each alternate general election, reckoning from the year 1890.

Civ. '12, § 1360; Civ. '02, § 953; G. S. 771; R. S. 823; Con., Art. V, § 19; 1899, XX, 281; 1871, XIV, 338.

(2185) § 2. **Vacancies—How Filled.**—All vacancies in the office of Judge of Probate shall be filled in the manner prescribed by Article V, Section 11, of the Constitution of the State.

Civ. '12, § 1361; Civ. '02, § 954; G. S. 772; R. S. 824; Con., Art. V, § 11; 1882, XVII, 1126.

If unexpired term exceed one year, the Governor cannot fill vacancy. *Whitmire v. Langston*, 11 S. C. 381.

(2186) § 3. **Clerk of Court to Act Until Vacancy Filled.**—In case of such vacancy the Clerk of the Circuit Court of the county shall take charge of the said office and all papers therein, and discharge the same duties, receive the same fees, and be subject to the same liabilities as by law provided for a Judge of Probate, until such vacancy shall be filled by appointment of the Governor, or by an election, as the case may be.

Civ. '12, § 1362; Civ. '02, § 955; G. S. 746; R. S. 825; 1884, XVIII, 744.

(2187) § 4. **When Office of Clerk Vacant, Judge of Probate to Act Until Vacancy Filled.**—In case of any vacancy in the office of the Clerk of Court of General Sessions and Common Pleas, the Judge of Probate of the county shall take charge of said office and all the papers therein, and discharge the same duties, receive the same fees, and be subject to the same liabilities, as by law provided for such Clerk, until such vacancy be filled by appointment of the Governor or by election.

Civ. '12, § 1363; Civ. '02, § 956; R. S. 826; 1884, XVIII, 744.

(2188) § 5. **Bond and Oaths of Office.**—Judges of Probate before receiving their commissions shall take the Constitutional oath of office and the several additional oaths required of such officers by Sections (734) and (735), and shall enter into bond, conditioned for the faithful discharge of the duties of the office, which shall be duly executed, approved, certified, recorded and filed, as prescribed in Chapter XVIII, Article 1. The bonds of the Judges of Probate for Charleston, Spartanburg and York Counties, respectively, shall be in the sum of ten thousand dollars; for Williamsburg County in the sum of two thousand dollars; for Horry County, two thousand five hundred dollars; for Edgefield County, three thousand dollars, for Greenwood County and McCormick County five thousand dollars, and for all the other counties, respectively, five thousand dollars. They shall qualify within thirty days after the election is declared.

Civ. '12, § 1364; Civ. '02, § 957; 1868, IV, 19, § 1; 1880, XVII, 502; 1875, XVI, 16; 1886, XIX, 711; 1887, XIX, 1127; 1890, XX, 720; 1896, XXII, 15; 1898, XXII, 695; 1905, XXIV, 902; 1919, XXXI, 75.

(2189) § 6. **To Make Search, Furnish Copies of Records, Etc.—Fees Allowed.**—It shall be the duty of the Judge of Probate, when applied to, to search for and examine any book, record or paper belonging to his office, and to furnish any person wanting the same with a copy or copies of any part thereof, or of the whole or any part of any proceedings touching any estate or estates in his care or custody as Judge of Probate aforesaid, and to certify the same; for which respective services he shall be allowed at the rate of nine cents for each copy sheet of ninety words the same may contain, and fifty cents for every certificate he shall so give.

Civ. '12, § 1365; Civ. '02, § 958; G. S. 774; R. S. 828; 1839, XI, 63, § 23.

(2190) § 7. **To Keep a Seal—Description.**—Every Judge of Probate shall keep in his office a die, in a circular form, upon the center of which shall be engraved, in capital letters, the word "Seal," and on the circumference, the words, "Judge of Probate's office of County," which

shall be regarded as the seal of his office, and which he shall impress upon all papers issued from his office and affix his name to such papers.

Civ. '12, § 1366; Civ. '02, § 959; G. S. 775; R. S. 839; 1839, XI, 69, § 35.

(2191) § 8. Books to Be Kept and Contents.—Every Judge of Probate shall keep the following books (to be furnished by the County Commissioners), each to be designated by its label, as follows, that is to say:

1. "WILLS," in which he shall enter a copy of all wills admitted to probate, together with the probate and certificate thereof.

2. "INVENTORIES, APPRAISEMENTS, AND SALES," in which he shall enter all such matters as are designated by the title.

3. "RETURNS," in which he shall enter all of the accounts of the receipts and expenditures by executors, administrators and guardians, including the final settlement.

4. "REAL ESTATE," in which he shall enter all proceedings and orders in relation to the sale or division of real estates, from the petition to the bond of the purchaser, both inclusive.

5. "LETTERS," in which he shall enter all letters granted, whether testamentary, of administration, or of guardianship.

6. "BONDS," in which he shall enter bonds of administrators and guardians.

7. **CASH BOOK TO BE PUBLIC RECORD AND OPEN TO PUBLIC INSPECTION.**—"Cash Book," in which he shall open and keep a regular account with every individual or estate on whose account he has received any moneys, bonds, notes, stocks, choses in action, or other property of any description whatsoever by virtue of his office, exhibiting fully everything so received by him, as well as all costs and charges against such estate, and disbursements in favor of the parties interested therein, or other disposition thereof, which book shall remain in his office as a public record, and be subject to public inspection.

8. "JOURNAL," in which he shall enter every judgment, sentence, decree, determination, denial and every other act done or ordered made by him, in his official capacity, so as to constitute a complete journal of the current proceedings of his office.

INDEX TO BOOKS.—Each of said books shall be furnished with a full and complete alphabetical index, in the surnames of the parties, to the several matters therein contained.

9. "INDEX TO LANDS DEVISED," in which he shall, immediately after wills shall have been duly proved, enter the names of the devisors and devisees and a short description of lands devised under the wills filed in his office, together with convenient references to said wills.

OMISSION OF DESCRIPTION OF LANDS—FEES OF PROBATE JUDGE.—Whenever a will omits to set forth a description of the lands thereby devised, the person offering such will for probate shall be required to furnish to the Judge of Probate a sufficient description of said lands, to be entered by

him in said book. The Judge of Probate, in addition to his charges for probate of wills allowed by law, shall be entitled to charge one dollar for each index of devises of real estate made by him, to be paid by the executor or party probating the will.

XVIII, 131.

10. "INDEX OF MONEY DECREES," in which every enrolled order or decree for the payment of money shall be entered, with the names of every party or estate bound thereby, alphabetically arranged, together with the names of the parties plaintiff, and (besides the title of the package in which the order or decree is contained and the number in the package) shall exhibit the amount ordered to be paid, the costs (if any), date of enrollment, date of execution, and date of satisfaction where satisfaction has been entered.

Civ. '12, § 1367; Civ. '02, § 960; G. S. 776; R. S. 830; 1839, XI, 63, § 34.

(2192) § 9. **Manner of Filing Papers—Index to Be Kept.**—The manner of filing papers in the Judge of Probate's office shall be as follows, to wit:

The case shall be divided into convenient apartments, which shall be numbered from one forward. The papers relating to the same estate shall be wrapped in an envelope as a package, and shall bear a number, and be endorsed in the name of the estate. A convenient number of packages shall be embraced in a strong envelope, and constitute a bundle, bearing the number of the apartment of the case containing it. A complete alphabetical index shall be constructed with reference to the surname of deceased persons to whose estate the papers relate, and of the executors and administrators; and opposite each name in such index shall be two columns, the one expressing the number of the apartment where the bundle is to be found, and the other expressing the number of the package in such bundle which contains the papers relating to the estate named in the index.

Civ. '12, § 1368; Civ. '02, § 961; G. S. 777; R. S. 831; 1839, XI, 69, § 36.

(2193) § 10. **Probate Judge of Abbeville County to Pay Over Certain Funds.**—That the Probate Judge of Abbeville County be, and he is, required to pay over to the County Treasurer of said county all fund or funds which may have heretofore come into his hands and which may hereafter come into his hands officially, the owner or claimant of which by them cannot be ascertained, or which shall have remained in his hands for a period of seven or more years; which shall be by the said Treasurer accredited to the general school fund and to be apportioned as other school funds are apportioned: *Provided*, That in the event any owner or claimant shall establish his right to any such fund or funds after the same has been so accredited by the County Treasurer they shall be paid to them by order of the Court from the general school fund of the county.

1918, XXX, 1033.

(2194) § 11. **Probate Judge of Marlboro County to Pay Certain Funds to County Treasurer—School Funds—Provisos.**—That the Probate Judge of Marlboro County be, and he is, required to pay over to the County Treasurer of said county all fund or funds which may have heretofore come into his hands and which may hereafter come into his hands officially, the

owner or claimant of which by them cannot be ascertained, or which shall have remained in their hands for a period of seven or more years; which shall be by the said Treasurer accredited to the general school fund and to be apportioned as other school funds are apportioned: *Provided*, That in the event any owner or claimant shall establish his right to any such fund or funds after the same has been so accredited by the County Treasurer they shall be paid to them by order of the Court from the general school fund of the county: *Provided, further*, That said Judge of Probate shall be given a reasonable time to collect any of said funds which may be loaned upon security of real estate mortgages, said time not to exceed one year from the date of the approval of this Section.

1919, XXXI, 20.

(2195) § 12. Audits.—That upon any audit of the books and records of said Probate Judge that a full and complete statement shall be made showing the amount and the origin of said funds.

1919, XXXI, 20.

(2196) § 13. Clerk to File Account of Money Remaining in Court.—At each stated session of the Probate Court, the Clerk thereof shall present an account to said Court of all moneys remaining therein, or subject to the order thereof, stating particularly on account of what cause or causes said moneys are deposited, which account, and the vouchers thereof, shall be filed in Court.

Civ. '12, § 1369; Civ. '02, § 962; G. S. 778; R. S. 832; 1868, XIV, 17, § 13.

(2197) § 14. May Administer Oaths, Etc.—The Judge of Probate, while in office, is authorized to administer oaths and take depositions, affidavits, and probate of deeds and other instruments, as fully and effectually as is done by Clerks of Courts and Notaries Public, and his fees therefor shall be the same allowed by law to other officers for similar services.

Civ. '12, § 1370; Civ. '02, § 963; R. S. 833; 1884, XVIII, 730.

(2198) § 15. Responsible for Property of Office—To Transfer to Successor and Take Receipt.—Every Judge of Probate shall be responsible for the books and papers, and also for the furniture in his office; and upon his retiring from office, or upon his death, he or his representatives shall be bound to transfer the same to his successor immediately after such successor shall have entered upon the duties of the office. Before surrendering such books, papers, and furniture, the retiring Judge of Probate, or his representatives, shall be entitled to require a receipt therefor from such successor. Such receipt shall specify the number and title of every book, and the number and description of every article of furniture, together with the order and condition of the books, papers and furniture; a duplicate of which receipt shall also be given, and shall, by the retiring Judge of Probate, or his representatives, be filed in the office of the Clerk of the Court of the county. And every Judge of Probate retiring from office, or his representatives, shall be liable to an action, in the name of his successor, for damages for any books, papers or furniture proved to have been in his possession, but not appearing by such receipt to have been transferred to

his successor; which damages, when recovered, shall be appropriated to the replacing of such books, papers or furniture, or to the benefit of the parties who may have been injured by the loss thereof; and an order for appropriating such damages shall be made by the Court before which such action may be tried.

Civ. '12, § 1371; Civ. '02, § 964; G. S. 779; R. S. 834; 1839, XI, 70, § 37.

(2199) § 16. Discharges Duties of Master in Anderson and Orangeburg Counties—Additional Fees for Probate Judge.—In the Counties of Anderson and Orangeburg all the duties appertaining to the office of Master are devolved upon, and shall be discharged by, the Probate Judge, who in Anderson shall receive the same fees as allowed Masters in other counties for the discharge of such duties; and who in Orangeburg shall, in addition to his fees as Probate Judge, receive the following fees: For every day spent in the business of a reference, one and one-half dollars; for making and filing each report in a cause, one and one-half dollars; for moneys passing through his hands, by sale or otherwise, he shall be allowed the same commissions as are now allowed to Sheriffs for said county; for each appointment of guardian *ad litem*, one dollar; for making and certifying, upon proper application to him, any order which the Master is authorized to grant, one dollar; for taking, transcribing and filing any bond of guardian, receiver or trustee, or any other injunction or *ne exeat* bonds, one and one-half dollars; for examining and auditing accounts of guardians, receivers or trustees, fifty cents; for granting commissions to take testimony of witnesses or answers of absent defendants, fifty cents; for every deed or mortgage prepared or executed by him, one and one-half dollars.

ADDITIONAL BOND OF PROBATE JUDGE.—The Probate Judge in Orangeburg County shall also execute an additional bond, in the sum of ten thousand dollars, for the faithful discharge of his duties under this Section, to be approved in the same manner as now provided by law for the approval of official bonds.

PROBATE JUDGE SPECIAL REFEREE.—The Circuit Judge when presiding in Anderson and Orangeburg, before whom any cause may come in which a reference is necessary, shall appoint the Probate Judge Special Referee, with the powers and duties appertaining to Special Referees in counties where there is no Master.

Civ. '12, § 1372; Civ. '02, § 965; 1893, XXI, 649; 1894, XXI, 977.

(2200) § 17. Probate Judge to Perform Duties of Master in Bamberg County.—That in the County of Bamberg all the duties appertaining to the office of Master are devolved upon, and shall be discharged by, the Probate Judge of said county, who shall receive, in addition to his fees as Probate Judge, the same fees heretofore allowed the Master of said county.

1916, XXIX, 796.

(2201) § 18. Office of Master of Colleton County Abolished — Duties Devolved on Probate Judge—When Effective.—The office of Master of Colleton County be, and the same is, abolished, and all the duties, powers and emoluments of the office of Master in said county be, and the same

are hereby, imposed upon, vested in and attached to the office of Judge of Probate of said county. All equity causes arising in said county shall be within the jurisdiction of the Probate Judge as referee and the practice of referring cases to the referee as provided in the Code of Procedure shall not exist to be used in said county, but all such duties shall be performed by the Judge of Probate, who is hereby required to enter into official bond for the faithful performance of his duties in the sum of fifteen hundred (\$1,500.00) dollars, the premium of which shall be paid by the County Supervisor out of the ordinary county funds. The Probate Judge of said county is hereby forbidden to practice either alone or in partnership with another, in the Probate Court or the Court of Common Pleas on the equity side of the Court of said county, except in such matters as are pending in said Court in which he is already engaged when he assumes the duties imposed upon him hereby, or in the Supreme Court in any equity cases arising in said county: *Provided*, That the terms of this Act in so far as it relates to Colleton County shall become effective January 1st, 1919.

1918, XXX, 833.

(2202) § 19. Office of Master in Darlington County Abolished.—That the office of Master in and for the County of Darlington be, and the same is hereby, abolished.

1912, XXVII, 636.

(2203) § 20. Duties of Said Office Vested in Probate Judge.—That all the duties, powers and emoluments of the office of Master in said county be, and the same are hereby, imposed upon, vested in and attached to the office of Judge of Probate in and for the said county.

1912, XXVII, 636.

(2204) § 21. Bond of That Officer.—That the bond of said Judge of Probate shall be seven thousand five hundred dollars.

1912, XXVII, 636.

(2205) § 22. May Not Practice Law.—That the said Judge of Probate shall not practice either alone or in partnership with another in the Probate Court, or Court of Common Pleas of said county, except in such matters as are pending in Court in which he is already engaged when he assumes the duties imposed upon him, or in the Supreme Court, in any civil case arising in said county.

1912, XXVII, 636.

(2206) § 23. Office of Master for Marion County Abolished.—That the office of Master in and for the County of Marion be, and the same is hereby, abolished.

1913, XXVIII, 128.

(2207) § 24. Judge of Probate to Perform Duties of Master.—That all the duties, powers and emoluments of the office of Master in said county be, and the same are hereby, imposed upon, vested in and attached to the office of Probate in and for said county.

1913, XXVIII, 128.

(2208) § 25. **Bond.**—That the bond of the said Judge of Probate shall be in the full and just sum of fifteen thousand dollars.

1913, XXVIII, 128.

(2209) § 26. **Judge of Probate Not to Practice in Certain Courts.**—That the said Judge of Probate shall not practice, either alone or in partnership, or in connection with another, in the Probate Court, or Court of Common Pleas of said county, or the Supreme Court, except in such matters as are pending in Court in which he is already engaged when he assumes the duties imposed upon him.

1913, XXVIII, 128.

(2210) § 27. **Duties, Etc., of Master Imposed on Probate Judge.**—That all the duties, powers and emoluments of the office of Master in McCormick County be, and the same are hereby, imposed upon, vested in and attached to the office of Probate Judge for said county.

1918, XXX, 710.

(2211) § 28. **Compensation.**—That the said Probate Judge shall only receive as compensation for his services as Master the fees now provided by law.

1918, XXX, 710.

(2212) § 29. **When Clerk to Act as Special Master.**—That all cases in which the said Probate Judge may be directly or indirectly interested, or otherwise disqualified, shall be referred to the Clerk of Court for McCormick County to act as special Master, who shall receive the commission and compensation as now provided by law.

1918, XXX, 710.

(2213) § 30. **Office of Master for Union County Abolished.**—That the office of Master in and for the County of Union be, and the same is hereby, abolished.

1917, XXX, 127; 1921, XXXII, 5.

(2214) § 31. **Duties and Powers Devolved on Judge of Probate.**—That all the duties, powers and emoluments of the Master in said county be, and the same are hereby, imposed upon, vested in and attached to the office of Judge of Probate in and for said county.

1917, XXX, 127; 1921, XXXII, 5.

(2215) § 32. **Bond.**—That the bond of the said Judge of Probate be fifteen thousand dollars.

1917, XXX, 127.

(2216) § 33. **Judge of Probate Not to Practice in Courts.**—That the said Judge of Probate shall not practice either alone or in partnership with another in any of the Civil or Criminal Courts of this State, except in such matters as are now pending in Courts in which he is already engaged when he assumes the duties imposed upon him.

1917, XXX, 127.

(2217) § 34. **Compensation.**—That the said Probate Judge shall only receive as compensation the fees and commissions as are now provided by law for the Master for services rendered.

1917, XXX, 127.

(2218) § 35. **Disposition of Cases in Which Probate Judge is Interested.**—That all cases in which the said Probate Judge may be directly or indirectly interested or otherwise disqualified shall be referred to the Clerk of Court for Union County to act as special Master, who shall receive the compensation and commissions of said case as now provided for by law.

1917, XXX, 127.

ARTICLE VII.

The Master.

(2219) § 1. **Office of Referee Abolished in Certain Counties.**—The office of Referee, and the practice of referring cases to Referees, as provided in the Code of Procedure, shall not exist or be used in the Counties of Abbeville, Aiken, Barnwell, Berkeley, Charleston, Chesterfield, Darlington, Dillon, Dorchester, Edgefield, Florence, Greenville, Greenwood, McCormick, Newberry, Oconee, Orangeburg, Richland, Saluda, Spartanburg, Sumter and Kershaw.

Civ. '02, § 966; G. S. 781; R. S. 835; 1897, XXII, 413; 1899, XXIII, 85; 1904, XXIII, 383; 1908, XXV, 1113; 1910, XXVI, 641; 1912, XXVII, 636; 1913, XXVIII, 128; 1915, XXIX, 460; 1917, XXX, 127; 1918, XXX, 833.

OFFICE OF MASTER ESTABLISHED THEREIN—HOW APPOINTED AND TERM OF.—In these counties the office of Master is established.

In the County of Charleston there shall be two Masters, and in each of the other counties one Master, except Florence County, in which county the duties of such office are devolved on the Probate Judge. The Master shall hold his office under the appointment of the Governor, by and with the advice and consent of the Senate. He shall hold his office for four years, and until his successor shall be appointed and shall qualify: *Provided*, The Master of Dorchester County shall be appointed on the recommendation of the Senator from said county: *Provided, further*, That should a vacancy occur in the office of Probate Judge in Orangeburg County the Master shall perform the duties of such office until the vacancy can be filled at the next ensuing general election.

In the Counties of Berkeley and Dorchester the Masters shall attend at their respective Court Houses at least twice in each week for the transaction of business.

Civ. '12, § 1373; Civ. '02, § 966; G. S. 782; 1910, XVI, 609; 1914, Sp. Ses., XXIX, 26; 1916, XXIX, 805; 1920, XXXI, 764; 1921, XXXII, 139.

The Master's term runs from date of appointment. *Verner v. Seibels*, 60 S. C. 572, 39 S. E. 274. See ante, § (2199), as to discharge of the duties appertaining to the Master's office in the Counties of Anderson and Orangeburg by the Probate Judge.

(2220) § 2. **Duties of Master in Greenwood County Devolved on Judge of County Court—Fees.**—That in the County of Greenwood all the duties pertaining to the office of Master are hereby devolved upon and shall be discharged by the Judge of the County Court for said county, who shall receive the same costs and fees as are now allowed masters in other counties for the discharge of such duties.

1921, XXXII, 139.

(2221) § 3. **To Act as Special Referee of Court of Common Pleas.**—The Judge of Circuit Court when presiding in Greenwood County, before whom any cause may come in which a referee is necessary, shall appoint the Judge of said County Court special referee with all the powers and duties appertaining to special referees in counties where there is no Master.

1921, XXXII, 139.

(2222) § 4. **Bond.**—That the said Judge of the said County Court shall give bond for the faithful discharge of the duties devolving upon him appertaining to the office of Master, to wit: In the sum of five thousand (\$5,000.00) dollars.

1921, XXXII, 139.

(2223) § 5. **Bonds of Masters.**—Before entering on the duties of his office, the Master shall enter into bond, conditioned for the faithful discharge of the duties of the office, in the penal sums following, that is to say: Each Master in the County of Charleston, thirty thousand dollars; each Master in the Counties of Aiken, Berkeley, Dorchester, Kershaw, Edgefield, and Saluda, five thousand dollars; and each Master in the other counties above named, ten thousand dollars; such bonds to be subject to the same provisions as to the number and liabilities of sureties, the approval of the form and sufficiency thereof, and to be filed and recorded in the same office as the bonds of the county officers, as prescribed in Chapter XVIII, Article 1.

Civ. '12, § 1374; Civ. '02, § 967; G. S. 783; R. S. 837; 1898, XXII, 694; 1899, XXIII, 85; 1901, XXIII, 675; 1904, XXIV, 384; 1905, XXIV, 902; 1915, XXIX, 460.

(2224) § 6. **Oath.**—Before entering upon the duties of his office he shall take in writing, endorsed on his bond, the oath of office prescribed by the Constitution, and also the oaths prescribed in Sections (734) and (735).

Civ. '12, § 1375; Civ. '02, § 968; G. S. 784; R. S. 838; 1898, XXII, 694; 1899, XXIII, 85; 1901, XXIV, 675.

(2225) § 7. **Within What Time Bond Must Be Completed and Filed.**—The bond of the Master must be furnished, executed, approved and filed within thirty days after notice of his appointment; and if the said bond be not executed, approved and filed within this period, the appointment shall be deemed revoked.

Civ. '12, § 1376; Civ. '02, § 969; G. S. 785; R. S. 839; 1898, XXII, 694; 1899, XXIII, 85; 1901, XXIV, 675.

(2226) § 8. **Governor to Fill Vacancies.**—All vacancies in the office of Master, from death, resignation, removal from State, or from any cause

whatsoever, shall be filled by the appointment of the Governor, by and with the advice and consent of the Senate; and the person appointed to such vacancy, if his appointment be approved by the Senate, shall hold his office for four years, and until his successor is appointed and shall qualify.

Civ. '12, § 1377; Civ. '02, § 970; G. S. 786; R. S. 840; 1840, XI, 154, § 2; 1878, XVI, 609, § 7; 1882, XVII, 1126; 1911, XXVII, 85.

(2227) § 9. Not to Practice Law in Civil Cases—Exceptions.—No person whilst he holds the office of Master shall practice or be a partner with any one engaged in the practice of law in the Probate Court, or the Court of Common Pleas of his county, or in the Supreme Court, in any civil case arising in the county in which he holds his office: *Provided*, That the provisions of this Section shall not apply to the Masters for Barnwell, Richland and Sumter County: *Provided, also*, That the Masters for Edgefield County and Chesterfield County shall be allowed to practice in the Court of Common Pleas on the law side of the Court.

Civ. '12, § 1378; Civ. '02, § 971; G. S. 788; R. S. 842; 1878, XVI, 609, § 5; 1840, XI, 171, § 80; 1909, XXVI, 179; 1910, XXVI, 642; 1911, XXVII, 84; 1912, XXVII, 554; 1914, XXVIII, 510; 1916, XXIX, 796, 798; 1920, XXXI, 964.

(2228) § 10. Special Master—When and How Appointed.—In case of a vacancy in the office of Master, or in case of the disability of the Master from interest or any other reason, the Court or a Judge thereof may appoint a special Master in any case, who shall as to such case be clothed with all the powers of Master.

Civ. '12, § 1379; Civ. '02, § 972; G. S. 789; R. S. 843; 1840, XI, 154, § 2; 1885, XIX, 89. *Barrett & Co. v. Still et al*, 106 S. C. 449, 91 S. E. 735.

(2229) § 11. General Duties.—The Master shall attend the sitting of the Court of Common Pleas in the hearing of any cause in which he may have acted officially, shall make all such sales as the Court may order him to make in granting equitable relief, and shall execute all proper conveyances thereof. He shall execute and perform all orders of the Court upon references to him conformably to the practice of the Court.

Civ. '12, § 1380; Civ. '02, § 973; G. S. 790; R. S. 844; 1840, XI, 156.

As to sales. *Tunno v. Flood*, 1 McC. 121; *Baily v. Baily*, 9 Rich. Eq. 392; *Miller v. Law*, 10 Rich. Eq. 320; *Meng v. Houser*, 13 Rich. Eq. 210; *Bulow v. Witte*, 3 S. C. 308; *Dupont v. Collins*, 3 S. C. 329; *Ostendorff v. Brown*, 15 S. C. 616; *Paulk v. Paulk*, 28 S. C. 481, 6 S. E. 330; *Alexander v. Messervey*, 35 S. C. 409, 14 S. E. 854. Liability for neglect of duty. *Fenwicke v. Gibbs*, 2 Dess. 629; *Thompson v. Wagner*, 3 Dess. 94; *Somerall v. Gibbs*, 4 McC. 547; *Ex parte Perry*, Harp. Eq. 50; *Houseal v. Gibbs*, Bail. Eq. 482; *Spencer v. Gibbs*, Dud. Eq. 174; *McCall v. Elliott*, Dud. 250; *Lowndes v. Pinckney*, 1 Rich. Eq. 155; *Street v. Laurens*, 5 Rich. Eq. 227; *Ex parte Boyd*, 8 Rich. Eq. 166; *Wightman v. Gray*, 10 Rich. Eq. 518; *McPherson v. Lynah*, 14 Rich. Eq. 121; *Pickens v. Dwight*, 4 S. C. 360.

Provision that Master shall "execute and perform all orders of the Court, etc.," and terms of order, referring issues under pleadings to Master, does not in any wise abridge power of amendment conferred upon him by § (2233). *Beall Co. v. Weston*, 83 S. C. 491, 495, 65 S. E. 823.

Barrett & Co. v. Still et al, 106 S. C. 449, 91 S. E. 735.

(2230) § 12. When to Sell Lands in the County Where Situate.—Whenever the Court of Common Pleas in any county shall have acquired jurisdiction over real estate lying in another county, it shall be lawful for the Master for the county in which the action is brought to sell such real estate in the county in which the land is situated, and all such sales heretofore made, otherwise valid and not appealed from, are hereby confirmed.

Civ. '12, § 1381; Civ. '02, § 974; R. S. 845; 1884, XVIII, 708.

(2231) § 13. **May Sell in Any County Under Order by Consent.**—Whenever real estate is adjudged to be sold by a Master, such sale may take place by consent of the parties to the cause or their attorneys, or when infants are parties by the consent of the guardians *ad litem* of such infants or their attorneys, in any county which the Court may direct; and all such sales heretofore made, and otherwise valid, are hereby confirmed.

Civ. '12, § 1382; Civ. '02, § 975; R. S. 846; 1885, XIX, 7.

(2232) § 14. **Master's Sales in Charleston County.**—It shall be lawful for the Master's sales in Charleston County to be conducted at the Charleston Real Estate Exchange, or such other place in said county as the Court may direct, any law or custom to the contrary notwithstanding.

Civ. '12, § 1383; 1908, XXV, 1211.

Connor v. McCoy, 83 S. C. 165, 173, 65 S. E. 257.

(2233) § 15. **General Powers of Master.**—Each Master, within his county in all causes praying equitable relief, shall have power to hear all motions, of course, and to make orders thereon; to extend the time to answer or demur; to grant leave to amend pleadings and to make new parties; to appoint guardians *ad litem* for infants, and to make all orders necessary for the service by publication of absent defendants. He shall also have power to make orders of reference of matters of account, reserving all the equities of the parties, and may grant all such orders of an interlocutory character as may be necessary to prepare such causes for a hearing on the merits. But all such orders shall be subject to the revision of the presiding Judge at the next succeeding sitting of the Court, or of the resident Circuit Judge at chambers.

Civ. '12, § 1384; Civ. '02, § 976; G. S. 791; R. S. 847; 1840, XI, 156; 1878, XVI, 609.

Where case has been referred to Master to take testimony he cannot order amendment as to parties. *Dixon v. Roessler*, 76 S. C. 415, 57 S. E. 203; *Beall Co. v. Weston*, 83 S. C. 491, 495, 65 S. E. 823.

When issues of law and fact are referred to Master, this gives him judicial power to hear and determine cause, and with it goes incidental and statutory power of amendment. *Beall Co. v. Weston*, 83, S. C. 491, 495, 65 S. E. 823.

(2234) § 16. **Master May Administer Oaths, Take Depositions, Renunciations of Dower, Affidavits, Etc.**—The Masters in this State, while in office, are authorized to administer oaths, and take depositions, affidavits, renunciation of dower, probate deeds, and other instruments, and take testimony by commission as fully and effectually as if done by Clerks of Courts and Notaries Public, and his fees therefor shall be the same as allowed by law to other officers for similar services.

Civ. '12, § 1385; 1909, XXVI, 90.

As to amendments. *S. C. R. Co. v. Barrett*, 12 S. C. 174; *Mason v. Johnson*, 13 S. C. 23. Power to sue. *Douthit v. Westfield*, 22 S. C. 588. Limitation of power. *Kilgore v. Hair*, 19 S. C. 488; *Carter v. Spence*, 24 S. C. 558; *Sartor v. Beatty*, 25 S. C. 294.

(2235) § 17. **May Grant Orders in Partition and Dower—When.**—He shall in his county have power, upon proper proceedings filed, to grant orders for the partition of real or personal estate, and for the admeasurement of dower in cases where the right of partition or dower is not contested, or the same has been ascertained by a decree of the Court. All proceedings under such orders shall be filed at the next succeeding term of the Court for the adjudication of the presiding Judge, until which adjudication all equities of the parties shall be reserved.

Civ. '12, § 1386; Civ. '02, § 977; G. S. 792; R. S. 848; 1840, XI, 156; 1878, XVI, 609.

(2236) § 18. **Taking Testimony on Application of Party—Notice—Examination of Witnesses—Exceptions.**—He shall, upon the application of either party to any cause or proceedings in which equitable relief is demanded, pending and at issue in his county, take in writing the testimony of any witness who may be produced before him by any party to the cause, ten days' notice of such application having been given to the opposite party, such witness being subject to the same rights of examination, cross-examination and reply, and the same exceptions as to the admissibility of testimony, as are allowed by law upon examination before the Court; except that in case any testimony be objected to, the Master shall receive the same subject to exceptions, reporting the exceptions and his ruling thereon.

ADMISSION OF DEPOSITION IN EVIDENCE.—The deposition so taken may be read in evidence at the hearing, subject to the right of either party, upon good cause shown, to require the personal attendance and *viva voce* examination of the witness at the hearing.

ATTENDANCE OF WITNESS—ADMINISTRATION OF OATH—PUNISHMENT FOR CONTEMPT.—He shall have full power to compel the attendance of witnesses before him, to administer all necessary oaths, to take affidavits, and to punish for any contempt.

Civ. '12, § 1387; Civ. '02, § 978; G. S. 793; R. S. 849; 1878, XVI, 609; 1840, XI, 157, 158, §§ 10, 11, 12.

Power to take testimony in actions for foreclosure. *Bank v. Thompson*, 46 S. C. 499, 24 S. E. 332.

(2237) § 19. **Deposit of Funds.**—He shall deposit all funds in his hands in some bank located at the county seat of his county; and if there be none, then in the bank most convenient to him: *Provided*, This Section shall not apply to Berkeley County. *O'Connor* —

Civ. '12, § 1388; Civ. '02, § 979; G. S. 794; R. S. 850; 1840, XI, 161, § 16; 1868, XIV, 16, § 10; 1909, XXVI, 48.

(2238) § 20. **Annual Report to Court on Estates, Etc.**—He shall annually report to the Court of Common Pleas of his county, on the first day of the Fall term thereof, the different estates in his hands, possession, or management, by virtue of his office or any order or decree of the Court, setting forth in such return the particulars and value of each estate, together with a full account of all moneys received or paid out by him relating to said estate respectively; and he shall at the same time produce to the Court the vouchers of his said account, and all bonds, certificates of stock, and other investments, specified in his returns, producing his bank book showing moneys in his hands.

Civ. '12, § 1389; Civ. '02, § 980; G. S. 795; R. S. 851; 1840, XI, 161, § 15.

(2239) § 21. **Books of Office.**—He shall keep a reference book in which he shall record all references held by him, and the proceedings therein, and a ledger, in which shall be kept the account of all cases in his hands to whose credit he may receive funds; and when he shall cease to be Master, these books shall be deposited in the office of the Clerk of the Court of Common Pleas of his county.

Civ. '12, § 1390; Civ. '02, § 981; G. S. 796; R. S. 852.

(2240) § 22. Master of Abbeville County to Pay Over Certain Funds.—

That the Master of Abbeville County be, and he is, required to pay over to the County Treasurer of said county all fund or funds which may have heretofore come into his hands and which may hereafter come into his hands officially, the owner or claimant of which by them can not be ascertained, or which shall have remained in his hands for a period of seven or more years; which shall be by the said Treasurer accredited to the general school fund and to be apportioned as other school funds are apportioned: *Provided*, That in the event any owner or claimant shall establish his right to any such fund or funds after the same has been so accredited by the County Treasurer they shall be paid to them by order of the Court from the general school fund of the county.

1918, XXX, 1033.

ARTICLE VIII.
Magistrates—Their Courts, Powers and Duties.
(2241) § 1. Appointment of Magistrates by Governor—Term of Office—Jurisdiction—Removal—Vacancies.—

The Governor shall have authority, by and with the advice and consent of the Senate, to appoint Magistrates in each county of the State, who shall hold their office for the term of two years, and until their successors are appointed and qualified. The number of Magistrates to be appointed for each county and their territorial jurisdiction shall be the same as heretofore prescribed by law for Magistrates in the respective counties of the State, except as hereinafter otherwise provided. Such Magistrates may be suspended by the Governor for incapacity, misconduct or neglect of duty; and the Governor shall report any suspension, with the cause thereof, to the Senate at its next session, for its approval or disapproval.

Civ. '02, 982; 1897, XXII, 472.

The Governor shall have authority, by and with the advice and consent of the Senate, to fill any vacancy caused by death, removal or otherwise of any Magistrate for the unexpired term.

Civ. '12, § 1391; Civ. '02, § 983; 1897, XXII, 472.

Under the Constitution, Article V, Section 23, a Magistrate's jurisdiction is confined to the County for which he is appointed. *Dill v. Durham*, 56 S. C. 423, 35 S. E. 3.

(2242) § 2. Oath of Office.—Before entering upon the discharge of the duties of his office, each Magistrate must take, in writing, the oath of office prescribed in the Constitution, and also the oaths prescribed in Sections (734) and (735) before the Clerk of the Court of Common Pleas of the county, or, in case there be no such Clerk, before any one authorized to administer an oath, and must file the same with the Secretary of State.

Civ. '12, § 1392; Civ. '02, § 984; 1897, XXII, 472.

(2243) § 3. Jurisdiction.—The civil jurisdiction of a Magistrate shall be the same as that heretofore exercised by Trial Justices. They shall have exclusive jurisdiction in all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days,

except in cases of riot, assault and battery, and larceny, and the carrying of concealed weapons coupled with an offense in which such weapon is used. In criminal matters beyond their jurisdiction to try, they shall sit as examining Courts, and commit, discharge and (except in capital cases) recognize persons charged with such offenses. Magistrates shall have concurrent jurisdiction only with the Court of General Sessions in cases of riot, assault and battery and larceny. In counties where they are given separate and exclusive territorial jurisdiction, criminal cases shall be tried in the district where the offense was committed, unless the place of trial be changed to another district in the same county in the manner prescribed by law.

Civ. '12, § 1393; Civ. '02, § 985; 1897, XXII, 472.

(2244) § 4. Parties Entitled to Trial by Jury.—Either party to suit before a Magistrate shall be entitled to a trial by jury.

Civ. '12, § 1394; Civ. '02, § 986; G. S. 841; R. S. 884; 1868, XIV, 100, § 5.

Jury may be empanelled on demand of prosecutrix against the protest of defendant. *State v. Nash*, 51 S. C. 319, 28 S. E. 946.
Defendants in Magistrate Court in Charleston County is entitled to trial by jury on demand, and his refusal to pay costs of summoning and per diem of jurors in advance is not waiver of right. *Pinckney v. Green*, 67 S. C. 309, 311, 45 S. E. 202.

(2245) § 5. Parties May Agree Upon a Jury in Civil Cases—How Juries Are Drawn.—In civil cases the parties may agree on a jury; but when they do not agree, and also in criminal causes, a jury shall be selected in the following manner: The Sheriff, Constable or other officers appointed by the Magistrate, shall write and fold up eighteen ballots, each containing the name of a respectable voter of the vicinity; he shall deliver the ballots to the Magistrate, who shall put them into a box, and shake them together, and the officer shall draw out one, and the person so drawn shall be one of the jury, unless challenged by either party; and the officer shall thus proceed until he shall have drawn six who shall not have been challenged; neither party being allowed more than six challenges; but if the first twelve drawn shall be challenged, and the parties do not agree to a choice, the last six shall be the jury; and when any of the six jurors so drawn cannot be had, or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the officer shall proceed to prepare, in the manner before directed, ballots for three times the number thus deficient, which shall be disposed of and drawn as above provided: *Provided*, In the trial of all civil cases in the Magistrate's Court, it shall be the duty of the Sheriff, Constable or other officer appointed by the Magistrate to furnish the parties or their attorneys with a list of eighteen of the jurors to be drawn and selected by ballot from the whole number of jurors who are drawn, the names on said lists to be numbered from one to eighteen, from which said list the parties or their attorneys shall alternately strike, until there shall be but six left, which shall constitute the jury to try the case.

Civ. '12, § 1395; Civ. '02, § 987; G. S. 842; R. S. 885; 1868, XIV, 100, § 6; 1914 XXVIII, 484.

Juror verbally summoned by constable to appear and sit in a case to be tried may be approached by another with view to corrupt him or bias his judgment. *State v. Maddox*, 80 S. C. 452, 454, 61 S. E. 964.
City of Columbia v. Smith, 105 S. C. 348, 89 S. E. 1028.

(2246) § 6. Penalty for Failure to Perform Jury Duty — Service Limited.—If any juror duly summoned shall neglect or refuse to appear

in obedience to any *venire* issued by any Police or Municipal or Magistrate Court, and shall not within forty-eight hours render to the Recorder or Magistrate holding such Police or Magistrate Court, and issuing the *venire*, a sufficient reason for his delinquency, he shall forfeit and pay a fine of ten dollars (\$10.00) to the treasury of the municipality or county where the cause is tried, to be assessed by such Recorder or such Magistrate so holding the Police or Magistrate Court and collected on his warrant without other process; and a failure to pay forthwith such fine so assessed shall constitute a contempt of Court and be punished accordingly: *Provided*, No person shall be required to serve on a jury in said Courts oftener than once in each month of the year.

Civ. '12, § 1396; Civ. '02, § 988; G. S. 843; R. S. 886; 1868, XIV, 101, § 7; 1908, XXV, 1087.

(2247) § 7. Power to Punish for Contempt.—Every Magistrate shall have power to enforce the observance of decorum in his Court while holding the same; and for that purpose he is authorized to punish any person who shall, in the presence of the Court, offer an insult to himself or a juror, or who shall be wilfully guilty of an undue disturbance of his proceedings while sitting officially, as for a contempt, by fine and imprisonment, either or both, not exceeding twenty dollars fine and twelve hours imprisonment.

Civ. '12, § 1397; Civ. '02, § 989; G. S. 844; R. S. 887; 1839, XI, 27, § 16.

State v. Barnett, 98 S. C. 422, 82 S. E. 795.

(2248) § 8. May Administer Oaths and Take Renunciations of Dower.—Every Magistrate shall have power to administer any oath authorized or required by law to be taken and not directed to be administered by another authority; and any oath so administered shall, to all intents and purposes, be binding and effectual in law. He may also take renunciation of dower.

Civ. '12, § 1398; Civ. '02, § 990; G. S. 847; R. S. 889; 1839, XI, 30, § 20.

State v. Byrd, 28 S. C. 18, 4 S. E. 793.

(2249) § 9. May Take Testimony on Application of Party—Attendance of Witnesses.—Any Magistrate, on the application of any party to a cause depending before him, shall have power, and is required, to issue a summons citing any person whose testimony may be required in such cause to appear before him at a certain time and place, not more than twenty miles from the residence of such witness, to give evidence, which summons shall be served personally at least one day before such attendance is required. If such person shall neglect or refuse to attend, the Magistrate shall have power to issue a rule commanding such witness to be brought before him; or if any witness attending shall refuse to give evidence, without good cause shown, the Magistrate may commit him to the jail of the county, as for a contempt, not longer than one day, as well as fine him in an amount not exceeding ten dollars; the cost of such rule, commitment, and detention in custody, as well as the fine so imposed, may be levied of the goods and chattels of such recalcitrant witness, on the order of such Magistrate, directed to any Constable of the county, as in cases of execution.

Civ. '12, § 1399; Civ. '02, § 991; G. S. 844; R. S. 887; 1839, XI, § 16.

(2250) § 10. May Take Testimony De Bene Esse.—In case it shall appear, to the satisfaction of any Magistrate, that the attendance of any witness, whose testimony may be required in any case before him, cannot be had by reason of extreme age, sickness or infirmity, or of indispensable absence on public official duty, or in consequence of intended removal from the State before the cause can be otherwise ready for trial, or where such witness may be resident in another county, or without the limits of the State, it shall be lawful for him to take the examination of such witness in writing, or cause the same to be done by another Magistrate, or other officer authorized by law to administer oaths, to be used in evidence on the trial of the case: *Provided*, That the parties to such cause shall have notice thereof in time to be present if they or either should choose to be present, or notice by either party to the other of interrogatories to be propounded to such witness, with four days' time given the party notified to prepare cross-interrogatories, upon which said interrogatories and cross-interrogatories, when preferred by the parties, or either of them, the deposition shall be had. When such examination is so made by another, it shall be sealed up, with the title of the case endorsed, and conveyed by a disinterested person to the Magistrate authorizing the same, or mailed and the postage prepaid.

Civ. '12, § 1400; Civ. '02, § 992; G. S. 849; R. S. 891; 1883; XVIII, 313.

May authorize testimony taken before a foreign Notary Public and certified under his official seal. *Greene v. Talley*, 39 S. C. 338, 17 S. E. 779.

Under provision that when examination is made by another Magistrate it shall be "sealed up," deposition to be used in Magistrate's Court need not be fastened with seal across back of envelope having outward imprint, but is sufficient if it be sealed with mucilage. That title of case is not endorsed across back is mere irregularity which does not affect its validity. *Jenkins v. Atlantic Coast Line R. Co.*, 83 S. C. 473, 475, 65 S. E. 636.

(2251) § 11. Books Required of Magistrates, and Disposition Thereof in Case of Death.—Each Magistrate shall keep two books, one for civil, the other for criminal cases, wherein he shall insert all his proceedings in each case by its title, showing the commencement, progress and termination thereof, as well as all fees charged or received by him; he shall also enter upon his book of criminal cases all warrants issued by him, and what disposition he has made of the same, what moneys have been collected from fines, costs and otherwise thereunder, and what disposition he has made of the same, and shall produce the same when required, for the inspection of the Solicitor of the Circuit. Whenever any Magistrate shall die, resign, be removed, or go out of office, his books of office, with all records relating thereto in civil cases, which have not been settled, shall be turned over to his successors or to some Magistrate in the same county, who shall be authorized and required to proceed thereon the same as if he had tried such cases and issued the papers thereon himself.

Civ. '12, § 1401; Civ. '02, § 993; G. S. 853; R. S. 892; 1839, XI, 22, § 5; 1879, XVII, 49; 1905, XXIV, 691.

Etters v. Etters, 11 Rich. 413; *Cherry v. McCants*, 7 S. C. 224; *Barron v. Dent*, 17 S. C. 79; *Caulfield v. Charleston*, 19 S. C. 601. His books the best evidence of proceedings before him. *State v. Rice*, 49 S. C. 418, 27 S. E. 452.

(2252) § 12. Salaries in Lieu of Fees in Criminal Cases.—The Magistrates now in office, or hereafter to be appointed, shall receive annual salaries in lieu of all fees and costs in criminal cases or proceedings, payable

quarterly by the County Treasurer upon the warrant of the County Supervisors against any county funds available for that purpose.

Civ. '12, § 1402; Civ. '02, § 994; 1897, XXII, 473.

Magistrate holding inquest more than fifteen miles from Court House cannot collect of county fees therefor, as inquest is criminal proceeding within meaning of this section. *Acker v. Anderson County*, 77 S. C. 478, 480, 58 S. E. 337.

(2253) § 13. Accounts to Be Audited by County Commissioners.—The County Commissioners of the several counties of this State, in auditing the accounts of Magistrates, shall require them to exhibit with the bill of costs all the original papers in each case in which said costs have accrued, and no bill of costs against any county in this State shall be allowed by any Board of County Commissioners unless accompanied by the original papers in each case mentioned in the bill or account. The County Commissioners after examining the original papers of any Magistrate, shall return them to him without delay.

Civ. '12, § 1403; Civ. '02, § 995; G. S. 853; R. S. 893; 1875, XV, 863.

(2254) § 14. Party Charged With Costs May Demand Items.—It shall be the right of any person, before paying any costs in any Magistrate's Court, to demand from said Magistrate an itemized account of such costs; said account shall be receipted by the said Magistrate at the time said costs are paid, and no person shall be compelled to pay any costs in any Magistrate Court unless the Magistrate shall furnish to such person an itemized account.

Civ. '12, § 1404; Civ. '02, § 996; G. S. 854; R. S. 894; 1875, XV, 864.

(2255) § 15. Must Return Papers for Courts of Sessions Ten Days Before the Term.—All papers pertaining to the Court of Sessions shall be returned by each Magistrate to the Clerk at least ten days before the ensuing term of said Court, except such as may have been issued or received by him subsequent to that time, which shall be returned on the first day of the term, under the penalties in the following Section prescribed; and every such paper shall be of a size not less than half a sheet of foolscap, folded in the manner that writs are when issued, and shall be endorsed legibly with the title of the case, nature of the offense, kind of proceeding, and the Magistrate's name.

Civ. '12, § 1405; Civ. '02, § 997; 1839, XI, 23, § 11.

(2256) § 16. Not to Appear as Attorney in Cases Once Before Him.—It shall be unlawful for any Magistrate to appear as attorney at law in any of the Courts of this State in any action which may have been before him in his official capacity as such Magistrate. Any Magistrate who violates the provisions of this Section shall forfeit his office.

Civ. '12, § 1406; Civ. '02, § 998; R. S. 895; 1883, XVIII, 473; 1900, XX, 698.

(2257) § 17. Disposition of Fines and Penalties.—All fines and penalties imposed and collected by Magistrates in criminal cases must be forthwith turned over by them to the County Treasurers of their respective counties for county purposes. But when, by law, any person is entitled, as informer, to any portion of such fine or penalty, the same shall be immediately paid over to him.

Civ. '12, § 1407; Civ. '02, § 999; G. S. 857; R. S. 896; 1871, XIV, 635, § 1.

(2258) § 18. Reports of Cases by Magistrates in Certain Cities—Publication.—That each Magistrate within counties containing cities of fifty thousand (50,000) inhabitants, or more, in the State of South Carolina, shall make and file with the County Supervisor each month a verified report of criminal cases begun before him and their status and disposition, together with a list of all fines collected. A list of the Magistrates, with a list of the fines collected by each Magistrate, shall be published quarterly by the County Supervisor, and the costs of said publication shall be disbursed out of the funds for ordinary county purposes.

1917, XXX, 111.

(2259) § 19. Reports Condition Precedent to Payment of Salaries—Penalty.—That said County Supervisor shall not pay any salaries to any Magistrate until he has made and filed the verified report herein required, and further, in default thereof, the Magistrate violating the provisions of this Bill shall, on conviction, be liable to a fine not exceeding one hundred (\$100.00) dollars or imprisonment in the county jail not exceeding two (2) months, at the discretion of the Court.

1917, XXX, 111.

(2260) § 20. Magistrates to Issue Receipts for Moneys Collected.—That it shall be the duty of all Magistrates in this State to issue a receipt for all moneys paid to or collected by them, such receipt shall state the amount paid to or collected by them, and for what purpose, and the title of the cause.

1912, XXVII, 698.

(2261) § 21. County Treasurers of Certain Counties to Publish Quarterly Statements of Fines Paid by Magistrates.—That the County Treasurers of Orangeburg, Spartanburg, Sumter, Cherokee, Colleton, Clarendon, Edgefield, Richland, Berkeley, Marlboro, Barnwell, Abbeville and Lee Counties, shall publish quarterly in one or more newspapers published at the Court House an itemized statement of all fines paid to him by the various Magistrates, giving the name of the Magistrate, the name of the defendant for whom the fine is paid and the amount thereof.

1912, XXVII, 638.

(2262) § 22. Dates of Publication.—That said publication shall be made quarterly from the Treasurer's books on the first days of January, April, July and October, for which the county shall pay the usual advertising fees.

1912, XXVII, 638.

(2263) § 23. Monthly Reports of the Moneys Collected — To Whom Made, Etc.—Every Magistrate shall, on the first Wednesday in each month, or within ten days thereafter, make, in writing, to the Auditor and Treasurer of his county, a full and accurate statement of all moneys collected by him on account of fines, penalties or forfeitures during the past month, together with the title of each case where a fine has been paid, and the County Treasurers are required to keep a record of the title of each case

in which the fine has been paid, the nature of the offense for which the fine was imposed and the amount thereof.

Civ. '12, § 1408; Civ. '02, § 1000; G. S. 802; R. S. 897; 1878, XVI, 753; 1901, XXIII, 742.

(2264) 24. Magistrates to Submit Their Dockets to the County Board of Commissioners.—All Magistrates are hereby required to submit their dockets quarterly to the County Board of Commissioners at their regular quarterly meetings, and said Boards, respectively, shall make reports annually, prior to the Fall term of Court, to the Foreman of the Grand Jury as to said dockets, and any irregularities shown thereby.

· **NOT REQUIRED TO MAKE ANY OTHER REPORTS.**—Magistrates shall not hereafter be required to make reports or file transcripts of their dockets in any manner and at any other time herein prescribed, any law to the contrary notwithstanding.

Civ. '12, § 1409; Civ. '02, § 1001; 1898, XXII, 750.

(2265) § 25. Fees of, for Rules Against Constables.—Magistrates shall be entitled to the same fees for issuing rules against Constables, and hearing the return thereto, as they are allowed by law for issuing a summons in civil cases.

Civ. '12, § 1410; Civ. '02, § 1002; G. S. 860; R. S. 898; 1846, XI, 361, § 3.

(2266) § 26. Regulation as to Books Distributed Among Magistrates.—The Clerks of the Courts of the respective counties shall each keep a book in which shall be entered all books sent them for distribution among the Magistrates of their respective counties, in which book shall also be written the receipt of Magistrate to whom delivered, to be cancelled upon return of such books, by writing across the same "books returned;" and upon the expiration of the term of office of any Magistrate, it shall be his duty to return to the Clerk of the Court of his county, within thirty days, all books received by him from said Clerk, in good condition, and have his receipt cancelled, as above provided.

Civ. '12, § 1411; Civ. '02, § 1003; G. S. 862; R. S. 899; 1882, XVII, 872, § 1.

ARTICLE IX.

Constables*

(2267) § 1. How Chosen or Appointed — Term — Residence. — Constables shall be chosen in each county, in such manner as the General Assembly shall direct, for the term of two years. They shall reside in the county, city or township for which they are elected or appointed.

Except as otherwise provided in this Chapter, each Magistrate of the State may appoint one person to discharge the duties of Constable within the jurisdiction of such Magistrate, and the Constable so appointed shall receive the compensation provided by law. He shall hold his office for the term of two years, subject to removal by the Magistrate appointing him.†

Civ. '12, § 1471; Civ. '02, § 1046; G. S. 863; R. S. 900; Con., Art. V, § 20; 1878, XVI, 715; 1879, XVII, 51.

* There can be no *regularly commissioned Constable in the State*, under Const., Art. IV, the Legislature not having directed how he shall be elected. . *Tinsley v. Kirby*, 17 S. C. 1.
† *State v. Messervy*, 86 S. C. 503, 507, 68 S. E. 766.

(2268) § 2. How to Qualify.—When any person shall be elected or appointed to the office of Constable, he shall repair to the Clerk's office of the county, and, together with the evidence of his election or appointment, he shall lodge his bond, in the form prescribed by law, in the penalty of five hundred dollars, with good sureties, not less than two, nor more than five, to be approved in writing by the Clerk; and, upon taking the oaths herein prescribed, such person shall be entitled to a certificate from the Clerk that he has filed his bond and taken the requisite oaths, and shall thenceforth be regarded as a regularly qualified Constable; nor shall any person not so qualified exercise the powers of a Constable: *Provided*, That nothing herein contained shall prevent a presiding Judge, or a Magistrate, or a Coroner, from appointing a Constable to act by virtue of such appointment only on a particular occasion, to be specified in writing; but no Magistrate shall depute the person swearing out a warrant in any case to serve the same.

Civ. '12, § 1472; Civ. '02, § 1047; G. S. 864; R. S. 901; 1839, XI, 80, §§ 2, 3; XV, 512; XIX, 532.

Appointment should be in writing. *State v. Cohen*, 13 S. C. 198. Minor may be appointed to act as special constable. *Tinsley v. Kirby*, 17 S. C. 1; *McConnell v. Kennedy*, 29 S. C. 180, 7 S. E. 76. But a minor cannot hold the office, as he cannot give bond. *Ib.*

The provision that constable shall file bond with Clerk of the Court and take certain oaths, does not apply to constables appointed by Governor under Dispensary Act of 1907. *State v. Messervy*, 86 S. C. 503, 68 S. E. 766.

(2269) § 3. Oaths.—Every Constable shall, before receiving the certificate provided for in the last Section, take the following oaths: The oath prescribed by the Constitution for civil officers, and also several additional oaths prescribed by Section (734).

Civ. '12, § 1473; Civ. '02, § 1048; G. S. 865; R. S. 902; 1839, XI, 80, §§ 2, 3; 1829, VI, 384, § 4.

(2270) § 4. To Act Throughout County.—When not otherwise specially provided by law every qualified Constable shall be entitled to exercise his office throughout the county in which he may be elected or appointed.

Civ. '12, § 1474; Civ. '02, § 1049; G. S. 866; R. S. 903; 1839, XI, 80, § 4.

(2271) § 5. Execution of Process — Return — Schedule on Execution and Attachment — Sale — Advertisement — Penalties.—A Constable is authorized, and he shall be bound, faithfully and promptly:

1. To execute all processes lawfully directed to him by competent authority.

2. To make return, on oath, to the person issuing the process, to be endorsed in writing on the same, of his proceedings by virtue of it.

3. In every case where he may levy an execution, or serve an attachment on personalty, he shall specify, by endorsement on the execution or attachment, or by schedule thereunto annexed, a list of every article so levied on or attached, and forthwith lodge a copy of such list with the person issuing the process under which he acts. In all cases of sale by a Constable, he shall give fifteen days' notice, by advertisement at two of the most public places in the neighborhood, of the time and place of sale. And in default of paying over the amount of any debt collected to the party entitled or his lawful agent, or to the Magistrate, upon demand, or in default of return-

ing to the defendant, upon demand, any overplus which may be in the hands of the Constable, he shall be liable to pay, in either case, to the party in interest and entitled to receive, the original sum, and interest thereon at the rate of ten per centum per month, recoverable before a Magistrate, if not more than one hundred dollars in amount; if greater, before the Court of Common Pleas.*

MUST EXECUTE ORDERS, ETC., OF MAGISTRATE APPOINTING HIM.—Every Constable appointed by a Magistrate shall be bound to execute, when required, every lawful order, judgment and determination of said Magistrate or his Court.†

Civ. '12, § 1475; Civ. '02, § 1050; G. S. 867; R. S. 904-907; 1839, XI, 80, § 5.

*Property sold by the Constable is still subject to the lien of a senior judgment in the Court of Common Pleas. *Carrier v. Thompson*, 11 S. C. 79; *Kerr v. Montgomery*, 1 Hill 277; *Robinson v. Casper*, 1 Hill 286; *Lemmond v. Short*, 3 Strob. 313. As to recovery of the excess, see *Treasurers v. Temples*, 2 Speer 48; *Etters v. Wilson*, 12 Rich. 145.

†State v. Greenwood, 1 Mill 420; *Foster v. Gault*, 2 McM. 335.

McLendon v. City of Columbia, 101 S. C. 48, 85 S. E. 234.

(2272) § 6. Service of Process—How Made.—The service by a Constable of all process in the nature of a notice for personal appearance shall be by delivering to the party a copy of the same, or by leaving the same at his most notorious place of residence.

Civ. '12, § 1476; Civ. '02, § 1051; G. S. 873; R. S. 908; 1839, XI, 80, § 6.

Leaving at residence sufficient. *Henneman v. Thompson*, 8 S. C. 117. Must be proved by affidavit. *State v. Cohen*, 13 S. C. 198. Or by acceptance. *Benson v. Carrier*, 28 S. C. 119, 5 S. E. 272; *Bradley v. Bell*, 34 S. C. 107, 12 S. E. 1071.

(2273) § 7. Execution—When and How Returned.—It shall be the duty of every Constable with whom an execution is lodged for collection to proceed forthwith to execute the same, according to its exigency, unless ordered by the party in whose favor the same was issued to wait; and every execution shall be returned to the Magistrate by whom it was issued within sixty days from the date, and the Constable making such return shall set forth the full execution thereof, or the reasons for his failure.

Civ. '12, § 1477; Civ. '02, § 1052; G. S. 874; R. S. 910; 1846, XI, 360, § 1.

Protection in executing. *Hunter v. McElhanev*, 2 Brev. 103; *Brown v. Wood*, 1 Bail. 457; *Foster v. Gault*, 2 McM. 335; *Taylor v. McKeown*, 12 Rich. 251; *Bragg v. Thompson*, 19 S. C. 572; *Goodgion v. Gilreath*, 32 S. C. 388, 11 S. E. 207.

(2274) § 8. Liability for Neglect to Enforce or Return Executions.—Breach of Bond.—When any Constable fails to do his duty in the enforcement or return of an execution, the party in whose favor the same may have been issued may apply to any Magistrate for a rule against such defaulting Constable, requiring him to show cause, after the expiration of two days from the service of such rule, why the execution has not been enforced or returned, and on his failing to show cause sufficient the said Magistrate may order same to be made absolute, and the Constable shall be liable for the debt, interest and costs, and if he be unable to pay the same such liability shall be construed a breach of his official bond, and the same shall be recoverable in an action thereon against his sureties.

Civ. '12, § 1478; Civ. '02, § 1053; G. S. 875; R. S. 911; 1846, XI, 360, § 2.

Davenport v. Corley, 1 Bail. 594; *Foster v. Gault*, 2 McM. 335; *State v. Staggers*, 12 Rich. 286; *Tinsley v. Kirby*, 8 S. C. 113.

(2275) § 9. Oppression in Office, Etc.—Liability in Civil Action—Proviso.—For oppression in office, whether by undue personal violence,

cruelty, taking an amount of property in an unreasonable proportion to the sum to be collected, or for any wilful official misconduct, habitual negligence, habitual drunkenness, or fraud, a Constable shall be liable to an action for damages by the party aggrieved; but if in any such action the plaintiff fails to recover, he shall be liable to be mulcted in double or treble costs, by order and at the discretion of the presiding Judge.

Civ. '12, § 1479; Civ. '02, § 1054; G. S. 869; R. S. 912; 1839, XI, 81, § 7.

State v. Greenwood, 1 Mill 420; State v. Williams, 2 Speer 26.

(2276) § 10. To Attend Circuit Courts—When Required.—All or so many of the Constables of any County as may be thereto required by the Sheriff shall be bound to attend any of the Circuit Courts, shall be officers of Court, and perform the appropriate duties and services assigned them by the Sheriff and presiding Judge; and each Constable so attending shall be entitled to receive the compensation of one dollar and fifty cents for each day's attendance.

Civ. '12, § 1480; Civ. '02, § 1055; G. S. 871; R. S. 913; 1839, XI, 81, § 9; 1816, VI, 29, § 2.

(2277) § 11. Constable for Chester County.—The Governor, upon the recommendation of the members of the General Assembly from Chester County, shall appoint a Constable for the County of Chester, whose especial duty it shall be to enforce the provisions of law in said county prohibiting the sale of alcoholic liquors, and shall have and exercise all the powers now conferred by law upon Sheriffs, Constables, and other peace officers. Before entering upon the discharge of his duties said Constable shall enter into bond in the sum of five hundred dollars, in the usual form, with sufficient surety to be approved by the Clerk of the Court of said county, conditioned for the faithful performance of his duty; said Constable shall be subject to removal by the Governor upon request of the Sheriff of said county.

1912, XXVII, 633.

(2278) § 12. Compensation.—The said Constable shall be under the control of and subject to the orders of the Sheriff of said county, and shall receive as compensation for his services eighty dollars per month, payable monthly, and such actual expenses as may be incurred in the performance of his duties upon the filing of an itemized and sworn statement of such expenses: *Provided*, Said expenses shall not exceed in any one year the sum of three hundred dollars.

1912, XXVII, 633.

(2279) § 13. Disposition of Fines.—The amount above provided for shall be paid out of the ordinary county funds. All fines collected from persons convicted as a result of the arrest by said Constable shall be turned into the ordinary county funds; and whenever the fines in any year fail to equal the amount paid out on salary and expenses of said officer, he shall immediately be dismissed from the service by the Sheriff: *Provided*, The Constables of Chester County are hereby authorized and required to enforce the laws against speeding on the highways of Chester County, and

against carrying concealed weapons, and the said Constables shall be entitled to receive as their compensation one-half of the fines collected from persons arrested by them and convicted in the Magistrates' Courts of Chester County of violating the laws against speeding on the said public highways or of carrying concealed weapons within the said County of Chester.

1912, XXVII, 633; 1921, XXXII, 126.

(2280) § 14. Constable for Givhan in Dorchester County.—That the Governor shall appoint a Constable for the town of Givhan, in the County of Dorchester, for two years, by and with the consent of the Senate, who shall receive a salary of \$100.00 per year and mileage from where he may make an arrest, to and from the nearest Magistrate, in conveying prisoners, either to a Magistrate or to the chaingang, at the rate of four cents per mile each way for himself and four cents per mile for prisoner.

1914, XXVIII, 618; 1915, XXIX, 70.

(2281) § 15. Powers.—That said Constable shall have and exercise all the powers now conferred by law upon Policemen and Constables within this State within his jurisdiction.

1914, XXVIII, 618.

(2282) § 16. Jurisdiction.—That he shall have jurisdiction from the Town of Ridgeville, in said county, and six (6) miles in every direction from the Town of Givhan. It shall be his duty to detect and arrest all persons who are guilty of violating any of the laws of this State, and to turn them over to the nearest Magistrate or such Magistrate as he may deem advisable, having jurisdiction for trial, and make a report of the disposition of each case to the Board of County Commissioners of the County of Dorchester, who shall withhold the payment of his salary until such report is filed.

1914, XXVIII, 618.

TITLE VII.

OF PUBLIC CHARGES.

CHAPTER XXI. Paupers, 678.

CHAPTER XXII. Pensions, 683.

CHAPTER XXI.

Paupers.*

(2283) § 1. County Board of Commissioners Overseers of Poor—Rule—Superintendent, Etc.—The County Board of Commissioners shall, until otherwise provided by law, be Overseers of the County Poor House and Farm, and shall have power and authority to make all necessary rules and regulations for the government of the same, and to appoint a Superintendent, with such assistants as may be needed. They shall also have the power,

and it shall be their duty, to provide such employments as will be best suited to the inmates of the Poor House; and to see that every such poor person, able to work, is employed at some kind of labor; and to dispose of all articles manufactured, and all produce raised on said farm, in such manner as may be most profitable: *Provided*, That the proceeds accruing from sales of produce, from rents, or other sources, shall be faithfully appropriated to the support of the poor in said county: *And provided, further*, That no unusual or cruel punishment shall ever be allowed in any Poor House in this State.

Civ. '12, § 1529; Civ. '02, § 1056; G. S. 879; 1870, XIV, 369, § 2.

See ante, §§ (1090) to (1118), as to duty of the County Board of Commissioners to provide for the poor.

(2284) § 2. How Legal Settlements May Be Acquired.—Legal settlements may be acquired in any county, so as to oblige such county to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, in the manner following, namely:

1. OF MARRIED WOMEN.—A married woman shall follow and have the settlement of her husband, if he has any within the State; and otherwise, her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage.

2. OF LEGITIMATE CHILDREN.—Legitimate children shall follow and have the settlement of their father, if he has any within the State, until they gain a settlement of their own; but if he has none, they shall, in like manner, follow and have the settlement of their mother, if she has any.

3. OF ILLEGITIMATE CHILDREN.—Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then has any within the State; but neither legitimate nor illegitimate children shall gain a settlement by birth in the county where they may be born, if neither of their parents then has a settlement therein.

4. OF CITIZENS GENERALLY.—Any person of the age of twenty-one years, being a citizen of this or any other of the United States, who has lived for three successive years in any county, and who has during that time maintained himself and family, shall be held to have acquired a legal settlement therein.

Civ. '12, § 1530; Civ. '02, § 1057; G. S. 880; R. S. 914; 1870, XIV, 370, § 3.

County not bound to support child who has left it. *Lynch v. Commissioners*, 2 McC. 170.

(2285) § 3. Overseers to Care for Nonresidents—Expenses—How Recovered.—The Overseers of the Poor, in their respective cities or counties, shall provide for the immediate comfort and relief of all persons residing or found therein, having lawful settlements in other places, when they fall into distress and stand in need of immediate relief, and until they are removed to the city or county of their lawful settlement; the expenses whereof, incurred within three months next before notice is given to the place to be charged, as also of their removal, or burial, in case of their death, may be recovered by the city or county incurring the same, against the city or county liable therefor, in an action at law, to be instituted within two years after the cause of action arises, but not otherwise.

Civ. '12, § 1531; Civ. '02, § 1058; G. S. 883; R. S. 915; 1870, XIV, 370, § 6.

(2286) § 4. To Notify Overseers of Proper County, and Request Removal.—The Overseers of the Poor of any city or county may send a written notification, stating the facts relating to any person actually become chargeable thereto, to one or more of the Overseers of the city or county where his settlement is supposed to be, and requesting them to remove him, which they may do by a written order directed to any person therein designated, who may execute the same.

Civ. '12, § 1532; Civ. '02, § 1059; G. S. 884; R. S. 916; 1870, XIV, 371, § 7.

(2287) § 5. How Removed, If Request Not Complied With.—If such removal is not effected by the last mentioned Overseers within one month after receiving the notice, they shall, within the said one month, send to one or more of the Overseers requesting such removal a written answer, signed by one or more of them, stating their objections to the removal; and if they fail to do so, the Overseers who requested the removal may cause the pauper to be removed to the city or county of his supposed settlement by a written order directed to any person therein designated, who may execute the same; and the Overseer of the city or county to which the pauper is so sent shall receive and provide for him; and such city or county shall be liable for the expenses of his support or removal, to be recovered in an action by the city or county incurring the same, and shall be barred from contesting the same question of settlement with the plaintiff in such action.

Civ. '12, § 1533; Civ. '02, § 1060; G. S. 885; R. S. 917; 1870, XIV, 371, § 8.

(2288) § 6. The Notice and Answer May Be Sent by Mail—Proviso.—The notification and answer mentioned in the two preceding Sections may be sent by mail; and such notification or answer, directed to the Overseer of the Poor of the city or county intended to be so notified or answered, postage prepaid, shall be deemed a sufficient notice or answer, and shall be considered as delivered to the Overseer to whom it was directed at the time when it is received at the Postoffice of the city or county to which it is directed, and in which the Overseer resides: *Provided*, That said letter of notification be registered.

Civ. '12, § 1534; Civ. '02, § 1061; G. S. 886; R. S. 918; 1870, XIV, 379, § 9.

See Criminal Code for penalty for importing paupers into any city or County, Vol. II.

(2289) § 7. Counties in Same Circuit May Combine for Support of Their Poor.—Hereafter the several counties within any Judicial Circuit of the State, whenever they can agree thereupon, may combine for the purpose of furnishing support to their indigent citizens by uniting in the selection of sites, purchase of lands and erection of buildings to provide for the care, comfort, maintenance and support of the indigent and helpless citizens of the respective counties.

1919, XXXI, 127.

(2290) § 8. Governing Board, Personnel and Powers.—That the County Supervisors or Chairman of the Boards of County Commissioners, or other officers designated by the county authorities as hereafter provided by law, shall constitute the governing board of any such institution, with power to elect officers, prescribe their duties and fix their compensation for the management and control thereof.

1919, XXXI, 127.

(2291) § 9. Payment of Expenses.—That the expense incurred in carrying out the provisions of this Article shall be borne by each county in proportion to the assessed valuation of the property of each county.

1919, XXXI, 127.

(2292) § 10. Governor to Appoint Committee to Take Charge of Poor House of Aiken County.—There shall be appointed by the Governor on recommendation of the Delegation to the General Assembly from Aiken County, a committee of five (5) citizens of the said county, two of whom shall be ladies, who shall take charge of the Poor House and Farm of the said county, and make such repairs as are needed thereon and shall provide for the proper care, treatment and support of the inmates of the said Poor House, by and with the approval of the Chief Commissioner of the said county.

1918, XXX, 715.

(2293) § 11. Appropriation.—That for the purpose of carrying out the provisions of Section above, there is hereby appropriated the sum of five thousand (\$5,000.00) dollars, which sum shall be disbursed by the County Commissioners of the said county upon the sworn itemized statement of the said Commission, and shall be approved as other bills against the county are now approved.

1918, XXX, 715.

(2294) § 12. Counties to Aid in Support of Rescue Orphanage.—The County Supervisors or County Commissioners of the several counties of this State are hereby authorized and required to draw their warrants in favor of and payable to the South Carolina Woman's Rescue Orphanage Association for the sum of five dollars per month, payable monthly, for the support and maintenance of each child which may be sent or committed to the South Carolina Rescue Orphanage Home by the Probate Judge, on the approval of the County Board of Commissioners, of the several counties of this State, and the County Treasurers of each of said counties are hereby authorized and required to pay said warrants upon proper presentation and endorsement by the said South Carolina Woman's Rescue Orphanage Association.

1913, XXVIII, 139.

(2295) § 13. Charleston and Columbia May Provide for Their Own Poor, Respectively.—The city authorities of Charleston and Columbia shall be allowed, and it shall be their duty, to provide for the care of the poor within the limits of their respective cities; and the County Board of Commissioners of Charleston and Richland Counties shall, when they levy a general poor tax for their counties, except from the payment of the same the said cities of Charleston and Columbia: *Provided*, That the aforesaid authorities of the cities of Charleston and Columbia shall have made adequate provision for the support of their poor.

Civ. '12, § 1535; Civ. '02, § 1062; G. S. 889; R. S. 920; 1870, XIV, 379, § 12.

(2296) § 14. Annual Return of Overseers to Secretary of State—Nature—Secretary Furnishes Blanks.—The Overseers of the Poor of each city

and county in this State shall, on or before the first day of November of each year, make and return to the Secretary of State a statement of the paupers in each city or county as they were during the year ending the thirtieth day of September preceeding, which return shall contain true and correct answers to the following inquiries: What number of persons have been relieved or supported by your county (or city) during the year ending September 30th? Of those, how many have a legal settlement in your county or city? How many are foreign born? How many colored? How many white? Have you a Poor House? What number of acres of land is attached to your Poor House? What is the present estimated value of your Poor House establishment? Real Estate? Personal? What number of persons have been supported in your Poor House during the whole or any part of the year? What is the average number supported in the Poor House? What is the average weekly cost of supporting each pauper in the Poor House? What number of persons have been inmates of your Poor House who are unable to perform any kind or amount of labor? What is the estimated value of all the labor performed by the poor in your Poor House? What was the kind and quantity of crops raised on the Poor Farms? The value of that sold? The estimated value of that retained for use on the Farm? How many persons, including the families, have you supported out of the Poor House during the whole or a portion of the year? What is the average weekly cost of supporting each pauper out of the Poor House? How many have you aided out of the Poor House? How many have you relieved who were insane? How many who were idiots? What number of your poor, supported at the public charge, have been made dependent by intemperance in themselves? What number by intemperance in those who ought to have been their supporters? What is the total net cost of supporting or relieving the poor in your county or city during the year, including interest on your Poor House establishment? How many are supported in your Poor House at the present time? How many are supported out of the Poor House at the present time? They shall, at the same time, make correct returns of all children in such county or city, under fourteen years of age, who are supported at the public charge, specifying therein the name, age, sex and color of each. And the Secretary of State shall furnish County Commissioners of every county, and the Overseers of the Poor of each city in the State, with blank forms of returns, which shall contain, in substance, the foregoing interrogatories.

Civ. '12, § 1536; Civ. '02, § 1063; G. S. 890; R. S. 921; 1870, XIV, § 13; XV, 457.

(2297) § 15. Secretary of State to Transmit Abstract of Return to General Assembly.—The Secretary of State shall, on or before the first day of December of each year, make out an abstract of the returns made to him, together with such explanatory remarks as he deems proper, and, through the Governor of the State, transmit the same to the Legislature.

Civ. '12, § 1537; Civ. '02, § 1064; G. S. 891; R. S. 922; 1870, XIV, 372, § 14; 1873, XV, 457.

See State Hospital for Insane, *post*, for provisions as to pauper lunatics.

The provisions of Chapter XXII, Sections 926-938, of the Revised Statutes of 1893; and Sections 900-910 of the General Statutes of 1882 in reference to the estate of Dr. John De LaHove, the Downer Fund and the Beresford Fund are omitted in this Code, because they are special, and not general, in their nature.

CHAPTER XXII.

Pensions.

(2298) § 1. **Honor Roll of Confederate Soldiers and Sailors.**—There shall be, and there is hereby, created an Honor Roll of the Confederate Soldiers, Sailors and others who, in the State Militia, performed actual service in the Confederate States Army or Navy, who did not desert the services of this State, or the Confederate States, resident of this State, and the widows of such, residents of this State.

Civ. '12, § 1557; Civ. '02, § 1078; 1900, XXIII, 409; 1919, XXXI, 275; 1920, XXXI, 1099; 1921, XXXII, 204.

(2299) § 2. **Who Eligible.**—That said Honor Roll shall consist of all soldiers, sailors, militiamen, and widows of such soldiers or sailors, who were married prior to January, 1900, if they have attained the age of 50 years, and such on the pension roll of the State prior to 1919, including inmates of the Confederate Home, and all so enrolled during 1919, and such as may hereafter enroll under this Chapter.

Civ. '12, § 1539; Civ. '02, § 1066; 1900, XXIII, 409; 1902, XXIII, 1029; 1904, XXIV, 377; 1910, XXVI, 716; 1919, XXXI, 275; 1920, XXXI, 1099; 1921, XXXII, 204.

(2300) § 3. **Payment of Expenses—Compensation of Commissioners—Payment of Yearly Pension Upon Death of Pensioner.**—The necessary expenses of administering the provisions of this Article shall be paid out of the amount appropriated for pensions: *Provided*, In the event of the death of a soldier, sailor or militiaman, the amount which would have been paid to him shall be, for that year only, paid to his widow, or the party defraying the funeral expenses of the said deceased pensioner.

Civ. '12, § 1558; Civ. '02, § 1079; 1900, XXIII, 409; 1905, XXIV, 943; 1919, XXXI, 275; 1920, XXXI, 1099; 1921, XXXII, 204.

(2301) § 4. **Applications for Enrollment.**—All applications for enrollment hereafter from year to year shall be made to the Board of Honor of the county in which applicant resides.

Civ. '12, § 1546; Civ. '02, § 1068; 1900, XXIII, 409; 1906, XXV, 119; 1919, XXXI, 275; 1920, XXXI, 1099; 1921, XXXII, 204.

(2302) § 5. **County Boards of Honor—Election—Term—Vacancies—Duties—Appeals—Compensation—Probate Judge to Act as Clerk.**—The Board of Honor in each of the several counties of the State shall consist of three (3) Confederate Veterans, and for two (2) years, from January 1, 1920; the several County Pension Boards as now constituted shall constitute the County Boards of Honor. The term of office of such County Board of Honor shall be two (2) years and such Honor Board shall be elected at a called meeting of the veterans to be held at the county seat of the respective counties, said meeting to be in January and to be held once in every two years. Any vacancies in the Board to be filled in the same manner at a meeting to be called by the Chairman of the Board. That the names and addresses of the members of such Boards so elected shall be communicated to the Comptroller General of the State not later than November 1 of the year of election and prior to commencement of

their terms of service. Such County Boards shall report to the Comptroller General of the State, between January 1 and January 15 of each year, all deaths occurring among those on the roll since the preceding January 1 that may come to their knowledge, and also all enrollments made since the preceding January 1. The decision of such County Board of Honor in granting or refusing enrollment shall be final. The members of the County Board of Honor shall each be paid two (\$2.00) dollars per day for not more than ten days in each year, and be reimbursed for all necessary and proper postage and advertising, and ten (10) cents per mile for each mile actually traveled in the discharge of their duties. The Judge of Probate in each county shall be the Clerk of the Board of Honor in his county, and he shall disburse all amounts sent to him by the Comptroller General for those on said roll, for the County Board or otherwise, and he shall receive for his services twenty-five (25) cents for each enrollment and twenty-five (25) cents for each disbursement under this Chapter. He shall keep a complete list of all enrolled, the amount paid or payable to each, and a receipt from the pensioner for all such payments. In the event of the death of one enrolled, and there being no widow to receive the decedent's allotment, he shall pay same to the one paying his funeral expenses, and likewise in the case of the death of a widow.

Civ. '12, § 1548; Civ. '02, § 1070; 1900, XXIII, 409; 1919, XXXI, 275; 1920, XXXI, 1099; 1921, XXXII, 204.

(2303) § 6. Enrollment—Apportionment of Pension Fund—Classification of Pensioners.—That any soldier or sailor, a *bona fide* resident of the State for two years, who served in the Confederate States army or navy, or who in the State militia performed actual service, and who did not desert the service of the State of South Carolina or of the Confederate States, or the widow of such soldier, shall be entitled to enrollment, who was living with him as his faithful wife at the time of his death. As soon as practicable after the appropriation has been made each year by the General Assembly, the Comptroller General of the State shall apportion to each county a pension fund in proportion as the number of white pensioners in such county bears to the total number of pensioners in the entire State, then it shall be the duty of the several County Pension Boards to classify all pensioners in their respective counties into such classes as the respective County Boards may deem best without regard to financial ability, and fix the amount the various pensioners in each class shall receive. All pensioners as soon as they arrive at the age of eighty (80) years, shall be elevated to Class A. The Comptroller General shall forward the amount apportioned for each county to the Probate Judge of such county for distribution. When any Confederate veteran whose widow shall be entitled to a pension shall die, it shall be sufficient for such widow to prove her relationship and was living with him as his faithful wife at the time of his death, in order to entitle her to a pension as the widow of such veteran: *Provided*, That any pensioner entering the Confederate Home shall be limited to fifty (\$50.00) dollars.

Civ. '12, § 1567; 1907, XXV, 542; 1919, XXXI, 275; 1920, XXXI, 1099; 1921, XXXII, 204.

(2304) § 7. **Duty of Secretary of Historical Commission.**—The Secretary of the Historical Commission is hereby required to give full information as to the services in the Army or Navy of any soldier, sailor or militiaman, as same appears on the Confederate Rolls, when requested.

1919, XXXI, 275; 1920, XXXI, 1099; 1921, XXXII, 204.

(2305) § 8. **Custody of Pension Records.**—That all records in regard to pensions, now and hereafter existing, shall be, by the one or ones in control or possession thereof, immediately turned over to the Comptroller General of the State.

1919, XXXI, 275; 1920, XXXI, 1099; 1921, XXXII, 204.

(2306) § 9. **Pension Clerk.**—That the Comptroller General shall be, and hereby is, authorized to employ one additional clerk, at a salary of not exceeding twenty-four hundred (\$2,400.00) dollars per annum, to assist him in discharging the duties herein placed upon his office.

1921, XXXII, 204.

(2307) § 10. **Appropriation.**—The sum of six hundred thousand (\$600,000.00) dollars is hereby appropriated for the purpose of paying the allotments to those on said Honor Roll and all other expenses provided for in this Chapter.

Civ. '12, § 1538; Civ. '02, § 1065; 1888, XX, 27; 1896, XXII, 187; 1900, XXIII, 409; 1901, XXIII, 754; 1902, XXIII, 1029; 1907, XXV, 640; 1919, XXXI, 274; 1920, XXXI, 1099; 1921, XXXII, 204.

TITLE VIII.

OF THE PUBLIC HEALTH.

CHAPTER XXIII.

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ARTICLE I.

Boards of Health.

(2308) § 1. **State Board of Health—How Constituted.**—The South Carolina Medical Association, and their successors, in their corporate capacity, together with the Attorney General and Comptroller General of the State, and their successors in office, are a Board of Health for the State of South Carolina, to be known as the State Board of Health.

Civ. '12, § 1569; Civ. '02, § 1084; G. S. 911; R. S. 956; 1878, XVI, 729, §§ 1, 2.

(2309) § 2. Rights and Duties—In General.—Said Board is invested with all the rights and charged with all the duties pertaining to organizations of like character, and shall be the sole adviser of the State in all questions involving the protection of the public health within its limits. The Board shall make an annual report to the Legislature on all matters relating to its action. It shall be the duty of the State Board of Health, through its representatives, to investigate the causes, character and means of preventing such epidemic and endemic diseases as the State is liable to suffer from; the influence of climate, location and occupations, habits, drainage, scavenging, water supply, heating and ventilation; and shall make inspection annually, or oftener if necessary, of the sanitary condition of all institutions provided as State charities or supported at the public expense. They shall supervise and control the quarantine system of the State, and shall annually, or oftener if necessary, require reports from the Health Officer on such forms as may be prescribed in all matters pertaining to quarantine. They shall also be authorized to establish quarantine both by land and sea. This quarantine shall not be established except by the advice and consent of the Governor. The State Board of Health is required to make all Wasserman blood tests without charge as in case of other blood tests now provided for by law.

Civ. '12, § 1570; Civ. '02, § 1085; G. S. 912; R. S. 957; 1878, XVI, 729, § 3; 1892, XXI, § 19; 1916, XXIX, 958.

(2310) § 3. Executive Committee—Appointment and Duties.—The said Association, at its first meeting after the first of January, 1893, and every seven years thereafter, shall elect seven members, to be recommended to the Governor, who shall appoint them to cooperate with the State officers above named, to constitute an Executive Committee, having power to act in the intervals of the meetings of the State Board of Health. This Committee shall make, annually, a detailed report to the State Board of Health. Members of this Committee shall be removable by and at the pleasure of the Governor, upon the request of the State Board of Health, or for neglect of duty, or other causes set forth by the majority of the members of the Executive Committee. Vacancies shall be filled by appointment by the Governor, on recommendation of the State Board of Health, or of the Executive Committee when such vacancies occur in the intervals of the meetings of the Association.

Civ. '12, § 1571; Civ. '02, § 1086; G. S. 913; R. S. 958; 1878, XVI, 729, § 4.

(2311) § 4. Committee—How to Organize—Registrar General—Control Over Local Boards, Etc.—The Executive Committee shall, immediately after their appointment, proceed to organize by electing a Chairman and Secretary, the latter to be *ex officio* Registrar General of the State. They are authorized and empowered to divide the State into health districts, and in those districts in which no Boards of Health exist they are required to appoint Subboards of Health, which shall consist of two practicing physicians and one layman. Local Boards of Health, established as hereinafter provided, shall be subject to the supervisory and advisory

control of the State Board of Health, through its Executive Committee. They shall pass no ordinances, nor consider any such of force, which are repugnant to the rules and regulations of the State Board of Health.

Civ. '12, § 1572; Civ. '02, § 1087; G. S. 914; R. S. 959; 1878, XVI, 729, § 5; 1883, XVIII, 291; 1885, XIX, 319; 1892, XXI, 20.

(2312) § 5. Duties as to Epidemic Diseases—Other Investigations.—It shall be the duty of the State Board of Health, through its representatives, to investigate the causes, character and means of preventing such epidemic and endemic diseases as the State is liable to suffer from; the influence of climate, localities and occupations, habits, drainage, scavenging, water supply, heating and ventilation; and shall make inspections annually, or oftener if necessary, of the sanitary condition of all institutions provided as State charities or supported at the public expense.

Civ. '12, § 1573; Civ. '02, § 1088; G. S. 915; R. S. 667; 1878, XVI, 730.

(2313) § 6. State Board of Health Empowered to Promulgate and Enforce Rules for Public Health.—The Executive Committee of the State Board of Health shall have the power to make, adopt, promulgate and enforce reasonable rules and regulations from time to time requiring and providing for the thorough sanitation and disinfection of all passenger cars, sleeping cars, steamboats, and other vehicles of transportation in this State, and also of all convict camps, penitentiaries, jails, hotels, schools and other places used by or open to the public; to provide for the care, segregation and isolation of persons having, or suspected of having, any communicable, contagious or infectious disease; to regulate the methods of disposition of garbage or sewage and any like refuse matter in or near any incorporated town, city, or unincorporated town or village of the State; to provide for the thorough investigation and study of the causes of all diseases, epidemics and otherwise in this State, and the means for the prevention of contagious disease, and the publication and distribution of such information as may contribute to the preservation of the public health, and the prevention of disease; to make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other dangers to the public life and health: *Provided, however,* That nothing herein contained shall be construed as in anywise limiting any duty, power, or powers now possessed by or heretofore granted to the said State Board of Health or its Executive Committee by the Statutes of this State, or as affecting, modifying or repealing any rule or regulation heretofore adopted by said Board.

1912, XXVII, 744.

(2314) § 7. Misdemeanor to Violate Rules of Board of Health—Proviso.—That any person, who shall after notice, violate, disobey, refuse, omit or neglect to comply with any rule of said Executive Committee of the State Board of Health, made by it in pursuance of this Article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding the sum of one hundred dollars, or be imprisoned for thirty days.

Provided, This section shall not apply to any person until the rules of State Board of Health are promulgated.

1912, XXVII, 744.

(2315) § 8. Supervision of Quarantine—Establishment of Quarantine.—

The State Board of Health shall supervise and control the quarantine system of the State, and shall annually, or oftener if necessary, require reports from the Health Officer on such forms as may be prescribed in all matters pertaining to quarantine. They shall also be authorized to establish quarantine, both by land and sea. The quarantine shall not be established except by the advice and consent of the Governor.

Civ. '12, § 1574; Civ. '02, § 1089; G. S. 917; R. S. 968; 1878, XVI, 730.

For penalty see Criminal Code.

(2316) § 9. Municipal Corporations to Maintain Boards of Health.—

Each incorporated village, town and city of this State shall have and maintain a Board of Health, under the direction and control, also, of the State Board of Health.

Civ. '12, § 1575; 1905, XXIV, 903.

(2317) § 10. Duties of Local Boards of Health as to Quarantine.—All local Boards of Health shall forthwith quarantine such contagious diseases as smallpox, diphtheria and scarlet fever, as soon as the knowledge of the occurrence of such disease comes or is brought to their attention; they shall cause to be placed notices at the entrance of the premises where the disease may be located, stating the disease and that the building infected is quarantined. The quarantine shall remain in force until the attending physician shall certify that the danger of the contagion is passed or removed; that no person shall enter or depart from the premises so quarantined during its quarantine, except attending physicians, without a special permit from the Board of Health.

Civ. '12, § 1576; 1905, XXIV, 903.

(2318) § 11. Duty of Attending Physician.—When infectious diseases, such as enumerated in Section 10 above, occur outside of incorporated towns, the attending physician shall quarantine the premises whereon the same occurs, give the notices, and assume the duties of the Board of Health in the premises, and he shall report the same to the nearest Board of Health; and that, in the case of such quarantine of a country house by the attending physician, no one except himself shall enter or depart the premises without the permit of the attending physician.

Civ. '12, § 1577; 1905, XXIV, 903.

(2319) § 12. Physicians to Report Contagious Diseases to Local and State Board of Health.—In all cases of known or suspected contagious or infectious diseases occurring within any incorporated city or town of this State, it shall be the duty of the attending physician to report such disease to the Secretary of the Board of Health of each city or town within twenty-four hours, stating the name and address of the patient, and the nature of the disease. It shall be the duty of the Secretary of each local Board of Health to report to the Secretary of the State Board of Health all such

cases of infectious and contagious diseases as have been reported to him during the preceding months, such reports to be made upon blanks furnished by the State Board of Health, and not later than the fifth day of each month. It shall be the duty of the attending physician in all cases of known or suspected contagious or infectious diseases outside of incorporated cities and towns, to report such cases to the Secretary of the State Board of Health within twenty-four hours after they have come under his observation, said reports to be made upon blanks furnished by the State Board of Health. The State Board of Health is hereby authorized to name the disease it considers contagious and infectious.

Civ. '12, § 1578; 1910, XXVI, 728; 1900, XXIII, 444.

For penalty see Criminal Code.

(2320) § 13. Cities and Towns May Pass Ordinances for Vaccination.—

The City or Town Council of every incorporated city or town in this State may provide by ordinance for the vaccination and revaccination with fresh bovine virus, under the direction of the health authorities of said cities or towns, or of some competent physician appointed for that purpose, of all the citizens and residents of such cities and towns, excepting such persons as obtained the certificate of a reputable physician that vaccination would be dangerous to health. Such ordinances shall establish the periods of time, satisfactory to the State Board of Health, within which vaccination and revaccination shall be required; shall provide for vaccination and revaccination of indigent and pauper individuals at the expense of the city or town; and shall establish and provide penalties by quarantine and otherwise of such persons as are convicted of neglect or refusal to obey the provisions of such ordinances.

Civ. '12, § 1579; 1905, XXIV, 871.

(2321) § 14. Board of Health to Have General Supervision.—The State Board of Health shall have general direction and supervision of vaccination and revaccination in all cities and towns, and shall, in case of threatened epidemic of smallpox in any community, and of insufficient ordinances therein, request the passage of the City or Town Council of a new ordinance, framed in accordance with the provisions of Section 13 above. The State Board of Health shall have full and absolute control in matters of vaccination and revaccination of all persons within this State, who do not reside within the limits or jurisdiction of any incorporated city or town, and shall promulgate rules and regulations which shall have the force and effect of law for vaccination and revaccination of such persons under the supervision and direction of agents appointed by the said Board, and which shall contain provisions similar to those of Section 13 above, applying to ordinances, but such requirements may be modified by the State Board of Health in case of sparsely settled communities so as only to apply during apprehended danger of an epidemic of smallpox; and the necessary expense of such vaccination or revaccination shall be paid by the County Commissioners of the county within which the persons treated reside, and a bill or certificate of the services performed endorsed and approved by the State Board of Health shall be *prima facie* evidence of the existence and value of such services. The State Board of Health shall at all times keep

in stock a supply of fresh bovine virus and supply the same to cities, towns and individuals without cost, that the charge for each vaccination under this Section shall not exceed ten cents.

Civ. '12, § 1580; 1905, XXIV, 871.

(2322) § 15. Board of Health May Pass Rules on Neglect of Cities or Towns.—If the City or Town Council of any incorporated city or town shall neglect or refuse to pass an ordinance in accordance with the provisions of Section 13 above, it shall be the duty of the State Board of Health to promulgate rules and regulations for the vaccination of the citizens and residents of such incorporated city or town, which rules and regulations shall have the force of an ordinance, and the State Board of Health shall have the power, and it is hereby made its duty, to enforce obedience to such rules and regulations by the promulgation and enforcement of proper quarantine regulations whenever the said Board shall deem it necessary for the preservation of the public health from possible danger of a threatened epidemic of smallpox, at the cost and expense of such incorporated city or town. In case such incorporated city or town shall refuse or neglect to reimburse the State Board of Health for all of the costs, charges and expenses incurred under this Section, including the cost of any necessary quarantine, then the State Board of Health is hereby empowered to collect the same by suit in any Court of the State having jurisdiction, from such incorporated city or town, and a statement of such costs and expenses by the State Board of Health shall be *prima facie* evidence of the amount of said costs and expenses.

Civ. '12, § 1581; 1905, XXIV, 871.

(2323) § 16. School Pupils to Be Vaccinated.—No superintendent of any institution of learning, and no School Board, or principal of any school in this State, shall admit as a pupil any child or person who cannot produce satisfactory evidence of having been vaccinated so often as the ordinance of the city or town in which the school is located, or if not located within the city or town, so often as the rules and regulations of the State Board of Health may direct.

Civ. '12, § 1582; 1905, XXIV, 871.

(2324) § 17. Parents, Etc., to See That Children Are Vaccinated.—It is hereby made the duty of every parent, guardian, or other person, charged with the care of or responsibility for any child, to see that such child is vaccinated so often as may be directed by ordinance of the incorporated city or town in which such child resides, or if not a resident of an incorporated city or town, so often as the rules and regulations of the State Board of Health may direct.

Civ. '12, § 1583; 1905, XXIV, 871.

(2325) § 18. Registration of Vital Statistics.—It shall be the duty of the Executive Committee of the State Board of Health to recommend such provisions of law as shall be deemed necessary for the thorough organiza-

tion of a system of registration of vital statistics throughout the State, and shall prepare the necessary methods and forms of obtaining and preserving such statistics.

Civ. '12, § 1584; Civ. '02, § 1090; G. S. 918; R. S. 969; 1878, XVI, 730.

(2326) § 19. Supervision Over Local Boards of Health.—The State Board of Health is invested with authority to direct and supervise the action of the local Board of Health in incorporated cities and towns and in all townships in all matters pertaining to said local Boards, and upon refusal or neglect to execute the orders of the State Board of Health, the members of the local Board shall be subject to removal by the said State Board of Health. Such removal shall not be made until ten days' notice of the charges against the offending members of the local Board shall have been mailed to or served upon him or them, stating the cause of complaint and the time and place for the answer to said charges. Said removal to be additional to any penalty now imposed by law; and it shall be the duty of the Secretary of said local Board to report to the State Board of Health all such facts and statistics as may be required of them, under such regulation and upon such blanks as may be presented and furnished for the same, and any Secretary of a local Board who shall fail to make such return or refuse to obey any regulation or demand of the State Board of Health shall be deemed derelict in duty, and upon failure to show cause for same shall be subject to removal by the said State Board of Health.

Civ. '12, § 1585; Civ. '02, § 1091; 1901, XXIII, 733.

(2327) § 20. Local Boards of Health Outside of Incorporated Towns.—All local Boards of Health in the several counties in the State outside of incorporated towns and cities, are hereby invested with the same powers and duties that are now imposed by law upon local Boards of Health in incorporated cities, towns and villages in the State of South Carolina: *Provided*, That nothing herein contained shall be construed as giving to local Boards outside of incorporated towns and cities the right to enforce compulsory vaccination.

Civ. '12, § 1586; Civ. '02, § 1092; 1901, XXIII, 733.

For further provisions as to powers of municipal corporations to compel vaccination, see Chapter on Municipal Corporations.

(2328) § 21. County Health Officer for Greenville County—Appointment and Salary.—The Executive Committee of the State Board of Health shall appoint, upon the recommendation of the County Delegation, a Health Officer for the County of Greenville, who shall continue in office during the pleasure of said Delegation. Said officer shall receive an annual salary of eighteen hundred (\$1,800.00) dollars, payable monthly, three hundred (\$300.00) dollars per annum for traveling expenses, and two hundred (\$200.00) dollars per annum for equipment and supplies; the items of such expenditures to be approved by the Supervising Auditor; the expenditures and salary to be paid out of the ordinary county funds.

1916, XXIX, 730; 1918, XXX, 747.

(2329) § 22. Duties.—That it shall be the duty of the County Health Officer to inspect frequently the sanitary conditions throughout the county,

and to inform the people by private and public communications as to the needs and means of promoting health and preventing disease, and to recommend and enforce that all premises, closets, hog pens, etc., be kept in sanitary condition, and use proper measures for the control and removal of epidemic of typhoid fever, meningitis, infantile paralysis, scarlet fever, smallpox and any and every other infectious or contagious disease. It shall be further his duty to discover, as far as practicable, every case of tuberculosis or other contagious or infectious disease in the county and endeavor to effect an isolation or segregation of such case or cases so as to prevent the spread of such disease, and whenever persons afflicted with such disease cannot provide themselves with necessary care for the prevention of the spread of such disease, it shall be the duty of the County Health Officer to endeavor to secure for such persons the care of the tuberculosis camp or of such other institution as may be available.

1916, XXIX, 730; 1918, XXX, 747.

(2330) § 23. Duties Further Prescribed.—That it shall be the duty of the said County Health Officer to require and enforce certain sections to install a system of sanitary closets where the said County Health Officer, the County Physician, and the Secretary of the State Board of Health shall deem necessary.

1918, XXX, 747.

(2331) § 24. Duties Further Prescribed.—That it shall further be the duty of the said County Health Officer to examine all children in the county under the age of twelve years, unless they have been examined by a physician, and to ascertain whether they have physical defects which may be remedied by treatment, and in every case where he discovers the need of treatment he shall communicate the fact to the parents, guardian or other custodian of such child. And it shall be unlawful for the County Health Officer to do any private practice or receive any fees or compensation only as prescribed by this Article.

1916, XXIX, 730; 1918, XXX, 747.

(2332) § 25. Penalty.—Any person or persons not complying with the provisions of this Article, shall be subject to a fine of not less than five (\$5.00) dollars and not more than ten (\$10.00) dollars, or be made to serve not less than five days and not more than fifteen days on county chaingang.

1918, XXX, 747.

(2333) § 26. State Board of Health to Enforce Vaccination.—The State Board of Health and its duly appointed representatives shall have power to order and enforce the vaccination of all such persons as it may consider necessary for the preservation of the public health: *Provided*, That any person who has been exposed to the contagion and refuses vaccination, shall not be forcibly vaccinated, but in the discretion of the State Board of Health, or their agent, be quarantined and guarded until the period of incubation of the threatened disease has passed.

Civ. '12, § 1587; Civ. '02, § 1093; 1899, XXIII, 104.

(2334) § 27. Regulations for Transportation of Dead Bodies of Contagious or Infectious Disease.—The transportation of bodies dead of any dangerous, contagious or infectious disease is absolutely forbidden, into, through or out of the State, or any city or town within the same, except on compliance with such rules and regulations as shall be made and ordained by the State Board of Health. And for the purpose of enforcing this Section, the said Board is hereby empowered and required by its Executive Committee to make and declare rules and regulations declaring what diseases shall be regarded as dangerous, contagious or infectious, and to classify the same, designating such as are of so dangerous a character that transportation of the dead is absolutely forbidden, and prescribing such regulations as the said Board may deem proper for the transportation of the dead from other causes. That said rules and regulations as may be adopted by the said Board be submitted to the Governor for his approval, and be published in at least three daily papers of this State, and be advertised and disseminated by such other methods as to the Board may seem expedient, and such rules and regulations shall go into effect on the approval of the Governor.

Civ. '12, § 1588; Civ. '02, § 1094; 1900, XXIII, 408.

(2335) § 28. Co-operation With Federal Government in Protecting Live Stock Industry—Regulations.—It shall be the duty of the State Board of Health to cooperate with officials of the Federal Government and with those of other States in establishing interstate quarantine lines, and in making and enforcing of such rules and regulations as shall best protect the live stock industry of this State against infectious or contagious diseases.

The said State Board of Health shall prescribe such rules and regulations as are necessary within said quarantine lines for the preservation of the live stock industry within such territory and duly promulgate the same.

Civ. '12, § 1590; Civ. '02, § 1096; 1899, XXIII, 103.

(2336) § 29. Appointment of Board of Health in Cities and Towns—Term—Special Provision for Orangeburg.—It shall be the duty of the Mayor or Intendant of every incorporated city, town or village in the State of South Carolina to appoint, by and with the consent of the City or Town Council of every such city, town or village, five persons, not members of such Council, in cities or towns of five thousand or less population, and in cities exceeding five thousand in population the number may be increased to twenty, as the city may determine, one or more of whom shall be reputable physicians of not less than two years' standing in the practice of his profession. The Mayor or Intendant of said city or town shall designate one-fifth of the members of the Board to serve one year, one-fifth to serve for two years, one-fifth to serve for three years, one-fifth to serve for four years, and one-fifth to serve for five years, and thereafter one-fifth of the number of said Board shall be appointed annually to serve for five years. The members shall serve without compensation; and in case any one of these, after accepting and being duly appointed, shall refuse to qualify and serve on the Board, he shall be subject to a fine of twenty-five dollars, to be imposed and collected by the Town Council: *Provided, however, That*

in all cases of vacancies on said Board occurring from any cause at any time said vacancies shall be filled in the manner hereinbefore prescribed by appointment for the unexpired term, or terms, as aforesaid: *Provided, further*, That in the City of Greenville the Board of Health shall consist of seven, and in the City of Orangeburg the Board of Health shall consist of three members, one of whom shall be a reputable physician of not less than two years' standing in the practice of his profession, and that the Chairman of the Board of Health shall receive such compensation annually as shall be fixed by the City Council of Orangeburg, not exceeding two hundred dollars per annum: *Provided, further*, That the Town Council of the Town of Newberry is hereby authorized and empowered to pay the Chairman of the Board of Health in the said town a salary of one hundred and fifty dollars per annum, to be paid out of the funds not otherwise appropriated.

Civ. '12, § 1591; Civ. '02, § 1097; 1897, XXII, 456; 1912, XXVII, 1076; 1915, XXIX, 139; 1918, XXX, 693.

Darling v. Brunson; Same v. Hoole, 94 S. C. 207, 77 S. E. 860.

(2337) § 30. Oath—Organization—Salary—Bond—Fees.—The members of the Board shall severally take the oath prescribed for town and city officers, and shall annually organize by the selection of one of their number as President. They shall elect a Secretary, who shall keep the minutes of their proceedings and perform such other duties as may be prescribed by the Board, and a Health Officer, who shall execute the orders of the Board and for that purpose shall have and exercise the powers and authority of a Policeman of the town or city. The Secretary and Health Officer shall receive such salary as may be fixed by the Board, ratified by Council, and shall hold their offices at the pleasure of the Board. They shall severally give bond to the town or city in such sums as may be fixed by ordinance for the faithful discharge of their duties, and shall also take and subscribe the oath required by members of the Board. All fees which shall be collected or received by the Board or any officer thereof, in his official capacity, shall be paid over into the town or city treasury monthly, together with all penalties which shall be recovered for the violation of any regulation of the Board. The President and Secretary shall have full power to administer oaths or affirmations in any proceedings or investigations touching the regulations of the Board, but shall not be entitled to receive any fee therefor.

Civ. '12, § 1592; Civ. '02, § 1098; 1894, XXI, 818; 1906, XXV, 102.

Darling v. Brunson; Same v. Hoole, 94 S. C. 207, 77 S. E. 860.

(2338) § 31. Rules and Regulations—Hospitals.—The said Board of Health shall have power and it shall be their duty to make and enforce all needful rules and regulations to prevent the introduction and spread of infectious or contagious diseases by the regulations of intercourse with infected places, by the arrest, separation and treatment of infected persons, and persons who shall have been exposed to any contagious or infectious diseases, and by abating and removing all nuisances which they shall deem prejudicial to the public health, to enforce vaccination, to mark infected houses or places, to prescribe rules for the construction and maintenance

of house drains, waste pipes, soil pipes and cesspools, and make all such other regulations as they shall deem necessary for the preservation of the public health. They shall also have power, with the consent of the Town or City Council, in case of the prevalence of any contagious or infectious disease within the town or city, to establish one or more hospitals and to make provisions and regulations for the management of the same.

Civ. '12, § 1593; Civ. '02, § 1099; 1894, XXI, 818.

Alston et al v. Bail et al, Board of Health of City of Charleston, 93 S. C. 553, 77 S. E. 727.

(2339) § 32. Appointment of Physicians and Salary—Duties of Physicians.—The Board may in such cases appoint as many ward or district physicians and other sanitary agents as they may deem necessary, whose salaries shall be fixed by the Town or City Council before their appointment. It shall be the duty of all physicians practicing within the town or city to report to the Secretary of said Board of Health the names and residences of all persons coming under their professional care afflicted with such contagious or infectious diseases, in the manner directed by said Board.

Civ. '12, § 1594; Civ. '02, § 1100; 1894, XXI, 818.

(2340) § 33. Powers of Board.—The said Board of Health shall have power, as a body or committee, as well as the Health Officer, together with his subordinates, assistants and workmen, under and by order of said Board, to enter at any time upon any premises in the town or city upon which there is suspected to be any contagious or infectious diseases or nuisance detrimental to the public health, for the purpose of examining and abating the same; and all written orders for the removal of nuisances issued to the said Health Officer by order of said Board, attested by the Secretary, shall be executed by him and his subordinates and workmen: *Provided*, The person or persons refusing to remove such nuisance, and the cost and expenses thereof, shall be recoverable from the owner or owners of the premises from which the nuisance shall be removed or from any person causing or maintaining the same, in the same manner as debts of like amounts are now collected by law.

Civ. '12, § 1595; Civ. '02, § 1101; 1894, XXI, 818.

(2341) § 34. Inspections of Court House, Jails, Etc.—Duty of Physician Attending Prisoners.—The said Board of Health shall have the power, and it shall be their duty, to visit and inspect every month the Court House and various offices therein contained, the jail and other prisons located in their respective cities and towns, in regard to the purity of the water supply, the lighting and ventilation and heating of the various offices of the Court House and the cells and other rooms occupied by prisoners in the jails; they shall inquire into the efficiency of drainage and plumbing of these public buildings, the disposition of garbage and refuse, the closet accommodations, into the condition of the soil pipes, waste pipes and cesspools, and shall recommend to the county authorities the removal of all nuisances on the premises on which said buildings are located which might prove detrimental to the public health; they shall report the number of prisoners, their diet and treatment, the disease and number of cases of sickness which has occurred among the prisoners during the three pre-

vious months. And it shall be the duty of every physician who attends in sickness any prisoner in jail to report immediately to the Secretary of the Board of Health the name, sex, age, race and disease of said prisoner.

Civ. '12, § 1597; Civ. '02, § 1103; 1894, XXI, 818.

(2342) § 35. Inspection of Schools, Etc.—Water Supply, Etc.—Schools Closed During Epidemic.—It shall be the duty of the Board of Health as a body, or by committee, with the Health Officer, to make quarterly visits and inspections to all schools, seminaries or colleges (while in session) which are supported in part or entirely by public taxation, and examine and report on the sanitary condition of the same, the abatement and removal of garbage, refuse matter and nuisances which may prove prejudicial to the health of the pupils. They shall inquire into the purity of the water supply, the condition and efficient working of the drains, waste pipes, soil pipes and cesspools, the ventilation, lighting of the dormitories, lecture and study rooms of the buildings and the appliances in use for fire escapes. In case of the epidemic prevalence of contagions or infections, and in order to prevent the spread of the same, the Board of Health, by and with the consent of the City or Town Council, may order the schools, seminaries or colleges, in such town or city, partially or entirely supported by public taxation, closed until such times as they may deem it safe to reopen them. The Board of Health shall have the right to declare any epidemic or cause of ill health so injurious as to make it necessary to close any or all of the private schools in the limits of such city or town. Whatever sanitary conditions or evils shall be found by the Board of Health to exist in or around the public colleges, schools, etc., shall be reported by the Secretary of the Board of Health to the Trustees of the same, who shall take immediate steps to remedy the sanitary defects according to the rules and regulations prescribed by the Board of Health.

Civ. '12, § 1598; Civ. '02, § 1104; R. S. 964; 1883, XVIII, 793; 1894, XXI, 818.

(2343) § 36. Every Water Company to Have Analysis of Water Made and Analysis Published.—Every water company, whether owned by private individuals or corporations or by a municipality, shall have made, not less frequently than once in every three months, at its own expense by a chemist, to be approved by the State Board of Health, a chemical analysis, and once every three months a bacteriological examination, at its own expense, by a biologist to be approved by the State Board of Health, of a sample of its water drawn from a faucet used for drinking purposes, packed and shipped in accordance with the instructions to be furnished by the Secretary of the State Board of Health, and the result of such examination shall be verified by a statement under oath of the chemist or biologist making the same, and published at least once in a newspaper published in the town or city using said water, within ten days after receipt thereof: *Provided*, That in the town of Manning the said examination and analysis shall be made at least once in every year.

Civ. '12, § 1599; 1907, XXV, 536; 1917, XXX, 39.

(2344) § 37. Fee for Bacteriological Examination.—For carrying out the provisions of this Chapter, the State Board of Health is authorized and

empowered to have the bacteriological examination made as hereinbefore provided for and to charge for the same the sum of five (\$5.00) dollars for each examination.

Civ. '12, § 1600; 1907, XXV, 536.

(2345) § 38. Water Sheds to Be Inspected.—As a check and as a guarantee of the faithful performance of the requirements laid down in this Article the State Board of Health shall make or have made by its authorized agents such inspections of the water sheds and such chemical and bacteriological examinations of the public water supplies of the State as may be deemed necessary to insure their purity. Should such inspections or examinations show condition or conditions dangerous to the public health, the Secretary of the State Board of Health shall notify the Mayor, the Municipal Health Officer and the Superintendent or Manager of the waterworks at fault, and demand the immediate removal of said dangerous condition or conditions. If at the end of thirty days after the service of said notice and demand, the said dangerous condition or conditions shall have not been removed to the extent that due diligence could accomplish such removal, the said Secretary shall have printed in one or more of the local newspapers a plain statement of the facts for the information and protection of the citizens using the water: *Provided*, That nothing herein contained shall be construed to prohibit any municipality from imposing such additional tests and requirements as they may deem necessary, and the decision of the municipal authorities shall be supreme.

Civ. '12, § 1601; 1907, XXV, 536.

(2346) § 39. Meetings of Board—Force and Effect of Rules, Etc.—Penalties.—The Board shall meet at least once a month for the transaction of business, and shall make and cause to be published all necessary rules and regulations for carrying into effect the powers and functions with which they are hereby invested, which rules and regulations, when approved by the Town or City Council, and when advertised in the same manner as other ordinances, shall have the force of ordinances of the town or city; and all penalties for the violation thereof as well as expenses necessarily incurred in carrying into effect the same, shall be recoverable for the use of the town or city in the same manner as penalties for the violation of the town or city ordinances, subject to the like limitations as to the amount thereof.

Civ. '12, § 1602; Civ. '02, § 1105; 1894, XXI, 818.

For violation of the last three Sections, see Criminal Code.

(2347) § 40. Estimate of Expenses — Report — Communication With State Board.—It shall be the duty of the Board of Health to submit annually to the Council, before the commencement of the fiscal year, an estimate of the probable receipts and expenditures of the Board during the ensuing year, and the Council shall then proceed to make such appropriation thereto as they shall deem necessary; and the said Board shall, in the month of October of each year, submit a report in writing to the Council of its operations for the preceding year, with the necessary statistics thereof, together with such information and suggestions relative to the

sanitary condition and requirements of the town or city, as it may deem proper, and the Council shall publish the same in its official journal. It shall be the duty of the Board to communicate to the State Board of Health at least annually, in the month of October, notice of its organization and membership, and copies of all its reports and publications, together with such sanitary information as may from time to time be required by said State Board.

Civ. '12, § 1603; Civ. '02, § 1106; 1894, XXI, 818.

(2348) § 41. Exception as to Charleston.—Nothing in the last nine Sections shall apply to the Board of Health as now organized in the City of Charleston.

Civ. '12, § 1604; Civ. '02, § 1107; 1894, XXI, 818.

(2349) § 42. Duties of Existing Boards and Others Hereafter Appointed.—It shall be the duty of all existing Boards of Health, and also of all that may hereafter be appointed under the provisions of this Article, to aid the municipal authorities in the enforcement of all State laws as to the adulteration of all kinds of food and drink, and to prevent the sale or exposure for sale of any kind of meat, or vegetables, or fruits, or other articles of food that are unwholesome or unfit for food; and also to define and declare what shall be nuisances to health in lots, streets, docks, ponds, wharves, piers, vessels and all public or private places in such city or town, or in any part thereof; and to prevent the spread of dangerous epidemic or contagious diseases in such city or town, or in any part thereof; and also to maintain and enforce a proper quarantine whenever this may be deemed expedient or necessary by the State Board of Health and approved by the Governor; and to regulate and control the keeping or slaughter of all kinds of cattle, sheep, goats and swine or other animals in any city or town or any part thereof; and to regulate and prohibit the accumulating of offal and all decaying or injurious vegetables or other substances in any place in such city or town, public or private; and to prohibit and remove any nuisance or offensive matter in any public highway, road, street or other place, public or private, in such city or town, and to cause the removal of the same at the expense of the owner thereof if he decline to remove it after notice to that effect; and to regulate and control, or prohibit, the cleansing of sewers and the dumping of garbage, or using of any noxious or unsuitable material for filling town lots, marshes, ponds and other places, and to provide for filling of sunken or low lots and other places in any part of said city or town. Subboards constituted as provided in Section 4 of this Article and local Boards of Health are charged with the duty of investigating within their districts all matters of sanitary interest or scientific importance bearing in any wise upon the protection of the public health, and shall report to the Executive Committee at such times and in such manner and form as the Executive Committee may prescribe.

Civ. '12, § 1605; Civ. '02, § 1108; R. S. 961; 1883, XVIII, 292, § 3; 1892, XXI, 20.

(2350) § 43. Powers as to Removal or Abatement of Nuisances, Etc.—

Whenever such nuisance, source of foulness or cause of sickness hazardous to public health shall be found on private property, the Board of Health of the city or town, within whose limits it may be, shall at once notify the municipal authorities, who shall require the owner to remove and abate the same at his own expense within such time as the Board may deem the public health to require, a duplicate of the notification being left with one or more of the tenants or occupants. If the owner or agent is unknown, resides out of the State, or cannot be reached with the notice speedily enough for the necessities of the public health, a notice left at the house or premises with the tenant or occupant, or published in a newspaper printed in the county, and if there is no such newspaper, posted on the door of the Court House or postoffice, shall suffice; and if the owner thus notified shall not comply with such notification or order within the time specified the municipal authorities shall proceed to remove such nuisance, source of foulness or cause of sickness hazardous to public health, and shall have a right to recover the expenses incurred in such removal from any person or persons who shall have caused or allowed the same, or from any occupant or tenant of premises, or (in case it affect the freehold) from the owner, who, after notice, as aforesaid, shall have failed to remove such nuisance, source of foulness or cause of sickness hazardous to the public health within the time specified in such notice. Nothing herein contained shall be held to bar an action for damages by such owner, occupant or tenant for unlawful proceedings in the premises.

Civ. '12, § 1606; Civ. '02, § 1109; R. S. 962; 1883, XVIII, 292, § 4.

(2351) § 44. Powers of School Authorities to Prevent Spread of Contagious or Infectious Diseases.—Any Board of Education, School Trustees, or any other body having control of any of the schools, may, on account of the prevalence of any contagious or infectious diseases, or to prevent the spread of any such disease, prohibit the attendance of any teacher or scholar upon any school under their control, and may specify the time such teacher or scholar shall remain absent, or they shall require a satisfactory certificate from one or more reputable practicing physicians that such attendance is no longer attended with risk to others attending school, and may also prohibit the entrance into or attendance at any school of all unvaccinated persons who have not had the smallpox. The said Board of Control or Trustees may also require vaccination of any or all teachers, scholars and attendants if a case of smallpox have occurred in the city or town.

Civ. '12, § 1607; Civ. '02, § 1110; R. S. 965; 1883, XVIII, 292, § 6.

(2352) § 45. Persons With Infectious Diseases Prohibited from Teaching in Public Schools.—That all persons in this State teaching school and infected with tuberculosis or other infectious diseases are hereby prohibited from teaching in the public schools of this State.

1920, XXXI, 941.

(2353) § 46. **Health Certificates.**—Any person applying for the position of school teacher in any of the public schools of this State is hereby required as a prerequisite to his or her employment as such teacher to first secure a health certificate from a County Physician, or any other reputable physician, certifying that said person has not an open or active infectious stage of tuberculosis or any other contagious disease.

1920, XXXI, 941.

(2354) § 47. **Form of Certificate.**—The physician shall make the afore-said certificate or form supplied by the South Carolina State Board of Health, whose duty it shall be to provide said forms of certificate upon request of the applicant or applicants under the provisions of this Article.

1920, XXXI, 941.

(2355) § 48. **Violation a Misdemeanor—Penalty.**—Any person failing to comply with the provisions of this Article or in any manner violating same, shall be guilty of a misdemeanor, and shall be subject to a fine of not more than fifty (\$50.00) dollars or not more than thirty (30) days imprisonment.

1920, XXXI, 941.

(2356) § 49. **Annual and Other Reports to Executive Committee—What to Contain, Etc.**—All local Boards of Health are required to report to the Executive Committee of the State Board of Health annually, or oftener if so required, all marriages, births, and deaths occurring in their respective jurisdictions; and, when notified, shall report upon all diseases or supposed causes prejudicial to public health therein, and the measures employed to check or abate the same; also, upon such other subjects as are usually under control of Boards of Health. They are also charged with the duty of investigating, within their districts, all matters of sanitary interest or scientific importance bearing in any wise upon the protection of the public health, and shall report thereon to the Executive Committee at such times and in such manner and form as the committee may prescribe.

Civ. '12, § 1608; Civ. '02, § 1111; G. S. 916; R. S. 966; 1883, XVIII, 294, § 7.

(2357) § 50. **State Board of Health to Appoint Local Boards in Towns**—The Executive Committee of the State Board of Health shall have power, and it shall be their duty, to appoint local Boards of Health in all unincorporated towns and villages, where the population of any of said towns and villages is not less than one hundred inhabitants, which local Boards shall consist of seven members, one of whom shall be a regularly licensed practicing physician, one the nearest Magistrate, and five laymen: *Provided, however*, That no such Board of Health shall be appointed until one-fourth of the qualified electors of such unincorporated towns and villages shall have, in writing, asked for the appointment thereof.

Civ. '12, § 1609; 1906, XXV, 125.

(2358) § 51. **Organization of Local Boards.**—The members of said local Boards shall, immediately after their appointment, organize by the selection of one of their number as President. They shall select a Sec-

retary, who shall keep the minutes of their proceedings, and perform such other duties as may be prescribed by the Board, and for the purpose of executing and the enforcement of any of the orders or rules by said Boards, the said Magistrates shall be invested with power and authority equal to that of a police officer in municipalities.

Civ. '12, § 1610; 1906, XXV, 125.

(2359) § 52. Powers and Duties.—The said local Boards of Health shall have power, and it shall be their duty, to make and enforce all needful rules and regulations to prevent the introduction and spread of infectious or contagious diseases by the regulation of intercourse with infectious places, by the arrest, separation and treatment of infected persons, and persons who shall have been exposed to any contagious or infectious disease, and by abating and removing all nuisances which they shall deem prejudicial to the public health, to enforce vaccination, to mark infected houses or places, to prescribe rules for the construction and maintenance of house drains, waste pipes, soil pipes and cesspools, and make all such other regulations as they shall deem necessary for the preservation of the public health. They shall also have power, in case of the prevalence of any contagious or infectious disease within any of the said towns or villages, to establish one or more hospitals and quarantine stations, and to make provisions and regulations for the management of the same.

Civ. '12, § 1611; 1906, XXV, 125.

Alston et al v. Ball et al, Board of Health of City of Charleston, 93 S. C. 553, 77 S. E. 727.

(2360) § 53. Penalties as to Matters Relating to Local Boards.—All penalties which attach by law to Boards of Health of incorporated cities and towns and to persons violating the rules and regulations thereof, are hereby made applicable to Boards of Health organized under the last two Sections, and to persons violating the rules and regulations thereof: *Provided, however,* That all the expenses incurred by the provisions of the last two Sections shall be borne by the communities incurring such expenses.

Civ. '12, § 1612; 1906, XXV, 125.

(2361) § 54. State Health Officer Created—Bond and Term of Office.—The Governor shall, upon the recommendation of the Executive Committee of the State Board of Health, appoint a State Health Officer, who shall be a graduate of a regular reputable medical college and a physician, skilled in hygienic and sanitary science; he shall qualify by giving an official bond in the usual form, in the penalty of two thousand dollars, conditioned for the faithful discharge of his duties, to be approved and filed as the bonds of other State Officers, and shall take an oath of office and the usual constitutional oaths required of a State officer; he shall hold office at the pleasure of the Executive Committee of the State Board of Health and until his successor is elected and qualified; he shall receive an annual salary of twenty-five hundred dollars, and his necessary traveling expenses, one thousand dollars, if so much be necessary, payable quarterly, out of the contingent fund appropriated to prevent the spread of contagious and infectious diseases, on the

warrant of the Comptroller General, on accounts approved by the State Board of Health; he shall hold his office in the City of Columbia, furnished him by the State.

Civ. '12, § 1613; 1908, XXV, 997.

(2362) § 55. Duties—Assistance of Sheriff.—The State Health Officer shall be the Secretary and Executive Officer of the State Board of Health, and shall have power to administer oaths and take depositions in the line of duties; and when directed by the Executive Committee of the State Board of Health, or by the Chairman, when the Board is not in session, he shall investigate the reported causes of communicable or epidemic disease, and shall enforce or prescribe such preventive measures as may be needed to suppress or prevent the spread of said diseases, by proper quarantine or other measures of prevention, as may be necessary to protect the citizens of the State. The State Health Officer shall have power, and it shall be his duty, to declare, when the facts justify it, any place to be infected, and in case of hydrophobia or other diseases transmitted from animals to man, he shall declare such animal or animals to be quarantined, and shall place all such restrictions upon ingress and egress of persons or animals therefrom as may be, in his judgment, necessary to prevent the spread of disease from the infected locality. All Sheriffs or Constables in the several counties of this State, and Police Officers and Health Officers of cities and towns, shall aid and assist the State Health Officer, and shall carry out or obey his orders, or those from the State Board of Health, to enforce and carry out any and all restrictive measures and quarantine regulations that may be prescribed; and the said State Health Officer shall make immediate report of his acting and doing to the State Board of Health, or its Chairman, when the Board is not in session.

Civ. '12, § 1614; 1908, XXV, 998.

(2363) § 56. Powers of State Board.—The State Board of Health, or its Chairman, when the Board is not in session, shall have power, by its actions or through its Health Officer, to impose upon all railway and navigation companies, vessels or cars, such restrictions and regulations as to inspections, quarantine or sanitary rules as, in their judgment, may be necessary to protect the health of the people of the State, and which are not in conflict with Acts of Congress already passed or that may hereafter be ordained in that regard.

Civ. '12, § 1615; 1908, XXV, 998.

(2364) § 57. Further Duties of Health Officer.—It shall be the duty of the State Health Officer, when it is deemed necessary by the municipal officers of any town or city, or the County Board of Commissioners of any county, to visit cities, towns, villages or localities where disease is prevalent or threatened, and to investigate and to advise with the local authorities or persons as to such measures as may tend to prevent the spread of disease, or to remove or abate causes that may tend, cause or intensify diseases, and to advise, when practicable or possible, as to measures of sanitation and hygiene, and to investigate and advise as to all matters as to food or water supply, sewerage or drainage, or as to ventilation or heating or

lighting, or other measures connected with public sanitation or safety: *Provided*, Nothing herein contained shall be construed to conflict with the present law providing for periodical examination of city water supplies.

Civ. '12, § 1617; 1908, XXV, 998.

(2365) § 58. State Health Officer—Secretary of State Board of Health.

—The State Health Officer shall be Secretary of the Executive Committee of the State Board of Health; he shall be the custodian of books, papers, instruments or appliances belonging to the State Board of Health, or that may be entrusted to his care. He shall summon the Board to meetings, and shall attend all meetings of the Board, and discharge the duties appertaining to the office of Secretary.

Civ. '12, § 1617; 1908, XXV, 998.

SANITARY INSPECTION OF HOTELS AND RESTAURANTS.

(2366) § 59. Definitions.—A hotel within the meaning of this Article is an inn or public lodging house of more than ten bedrooms where transient guests are fed or lodged for pay in this State. The term "restaurant" as used in this Article shall include lunch counters and cafes. The term "transient guests," within the meaning of this Article, shall mean one who puts up for less than one week at such hotel.

1920, XXXI, 860.

(2367) § 60. Hotels to Post Rates.—Every transient hotel shall keep posted in a conspicuous place in the office a list of its charges for rooms, with or without meals, in accordance with the plan or plans on which the hotel is operated, giving the exact transient rate, and shall also keep posted in each room the rate for that room, with or without meals, in accordance with its plans as stated above, giving the transient rate per day and week, and the rate for each person in the room; also the fractional part of a day: *Provided*, No hotel shall charge a higher rate for a fractional part of a day than for a whole day.

1920, XXXI, 860.

(2368) § 61. Fire Extinguishers to Be Provided.—Every hotel shall provide each floor with one or more fire extinguishers of a type approved by the National Board of Fire Underwriters, which shall be kept in good working order at all times, with plain instructions thereon.

1920, XXXI, 860.

(2369) § 62. Stairways—Fire Escapes.—That all hotels hereafter constructed in this State over two stories in height and over one hundred feet in length, shall be constructed so that there shall be at least two stairs for the use of guests leading from the ground floor to the uppermost story, and for larger buildings such number as the State Insurance Commissioner shall designate. Every hotel in this State over two stories in height shall be provided, without delay, with permanent iron balconies with iron stairs leading from one balcony to the other, above the ground floor, and with stairway or ladder extending to the ground, in case such hotel is over one hundred and fifty feet in length, and in other cases such number as may

be directed by the State Insurance Commissioner or agent: *Provided*, That where said hotels already built and are, in the opinion of the State Insurance Commissioner or agent, provided with sufficient inner stairways, so located as to furnish sufficient egress in case of fire, the aforesaid official may waive the requirement for outside iron balconies and stairs. Such balconies and iron stairs shall be constructed at the expense of the owner of said hotel: *Provided*, That where hotels are already built where fire escapes are located so as to go through any room, this Section shall not apply: *Provided*, That this Article not apply to private residences at which lodgers are not received for hire.

1920, XXXI, 860.

(2370) § 63. **Directions for Reaching Fire Escapes.**—In every hotel having fire escapes directions for reaching the fire escape shall be kept posted at the entrance of stairway, elevator shaft, and in each bedroom above the ground floor. From eight o'clock in the evening until six o'clock in the morning the location and direction of the fire escapes shall be indicated by red lights.

1920, XXXI, 860.

(2371) § 64. **Exits from Inside Courts.**—The owner or proprietor, manager, or person in charge of every hotel now existing or hereafter constructed with an inside court or light well enclosed on all sides and with sleeping rooms or lodging apartments, the only windows of which open upon or into such court or light well, shall provide escape from such inside court or light well through room or rooms, or otherwise, on a level with the lowest floor to which the light well extends.

1920, XXXI, 860.

(2372) § 65. **Water-Closets—Washroom.**—In all cities, towns or villages where a system of waterworks and sewerage is maintained for public use, every hotel therein accessible to water main and sewer main shall be equipped, within six months after the passage of this Article, with suitable water-closets for the accommodation of its guests, which water-closets shall be connected and trapped by proper plumbing with such water and sewerage systems, and there shall be some adequate means of flushing said water-closets with the water in such manner as to prevent sewer gas from arising therefrom. The wash bowls in the main washroom of such hotel must be connected and trapped and equipped in similar manner, both as to method and time; all such equipment to be paid for by the owner.

1920, XXXI, 860.

(2373) § 66. **Privies.**—In all towns and villages not having a system of waterworks in cases where the water is derived from some public water supply, shall be in the preceding Section provided, shall have properly constructed privies as approved by the State Board of Health, the same to be kept in sanitary condition at all times.

1920, XXXI, 860.

(2374) § 67. **Cisterns and Tanks.**—The proprietor of every hotel shall keep all cisterns, tanks, and other receptacles containing standing water screened or otherwise so covered as to prevent the entrance of flies, mosquitoes, and other disease carrying insects. The term “standing water” as used in this Article shall mean that remains for ten days or more in a cistern, tank, or other receptacle.

1920, XXXI, 860.

(2375) § 68. **Analyses of Water.**—A sample of water used in every hotel and restaurant, except in cases where the water is derived from such public water supply, shall be sent by the proprietor to the State Board of Health for analysis twice each year, with a certificate that it is the water used in such hotel or restaurant, and if the sample is found by such analysis to be unfit for the use that is made of the water in the hotel or restaurant, the further use of such water shall be discontinued until permission is granted by the said State Board of Health to resume the use of such water.

1920, XXXI, 860.

(2376) § 69. **Fly Screens.**—The proprietor or keeper of every hotel or restaurant shall at all times keep screened the outside doors, windows, and all openings of the kitchen and dining room with suitable meshwire gauze. Every hotel must have all bedroom windows screened for protection against flies, mosquitoes, and other insects, and it shall be the duty of the proprietor or keeper of every hotel and restaurant to use such other means as fly paper, flytraps, etc., as may be necessary to keep their restaurant, kitchen and dining rooms reasonably free from flies.

1920, XXXI, 860.

(2377) § 70. **Bedding.**—All hotels shall hereafter provide each bed, bunk, cot or other sleeping place for the use of guests with pillow slips, under and top sheets to be sufficient width to cover the mattress thereof, and to be at least ninety (90) inches long. All pillow slips and sheets after being used by one guest must be washed and ironed before being used by another guest, a clean set being furnished each succeeding guest.

1920, XXXI, 860.

(2378) § 71. **Bedding to Be Clean and Free of Vermin.**—All beds, bed-clothing, mattresses and pillows shall always be kept clean and free of vermin.

1920, XXXI, 860.

(2379) § 72. **Fumigation and Airing of Rooms.**—Every room after being occupied by anyone known or suspected to be suffering from tuberculosis, diphtheria, or other contagious disease, must be thoroughly disinfected as prescribed by the State Board of Health before further occupancy, and every room after being occupied by anyone known or suspected to be suffering from measles or whooping cough must be thoroughly aired for twenty-four (24) hours before subsequent occupancy.

1920, XXXI, 860.

(2380) § 73. **Towels and Soap.**—All hotels shall furnish each guest with a clean towel and individual soap; and the use of the roller or other towels used in common is hereby prohibited in all hotels and restaurants.

1920, XXXI, 860.

(2381) § 74. **Refrigerators — Kitchens.**—The refrigerator, ice box and cold storage rooms of all hotels or restaurants must be kept free from foul and unpleasant odors, mold and slime. The kitchen must be well lighted and ventilated, the floor clean and the side walls and ceilings free from cobwebs and accumulated dirt.

1920, XXXI, 860.

(2382) § 75. **Dishes — Utensils.**—All dishes, tableware and kitchen utensils must be thoroughly washed and rinsed with clean water after using; food served to customers, when part of same has been used, must not again be served to customers.

1920, XXXI, 860.

(2383) § 76. **Disposal of Garbage.**—All garbage must be kept covered and protected from flies, in barrels or galvanized iron cans, and removed at least twice a week.

1920, XXXI, 860.

(2384) § 77. **Premises Sanitary.**—Every lodging house and every part thereof shall at all times be kept free from filth and rubbish in or on the premises belonging to or connected with the same. All water-closets, wash basins, bath, windows, fixtures, fittings and painted surface shall at all times be kept clean and in good repair. The floors, walls and ceilings of all rooms, passages and stairways must at all times be cleaned and in good repair.

1920, XXXI, 860.

(2385) § 78. **Inspection—Fees.**—For the purpose of carrying out the provisions of this Article the State Board of Health is authorized and required to have inspected, through its inspectors to be by it designated therefor, all hotels and restaurants in the State at least once a week. If, upon inspection of any hotel or restaurant, it shall be found that this law has been fully complied with, the Secretary of the State Board of Health shall issue a certificate to that effect to the person operating the same, and such certificate shall be kept posted in plain view in some conspicuous place in said hotel or restaurant: *Provided*, That for the purpose of carrying out the provisions of this Article a fee for inspection shall be collected from each hotel, lodging house, or restaurant, according to following schedule: For each hotel or public lodging house of ten to twenty rooms, \$3.00; for twenty to thirty rooms, \$5.00; for thirty to forty rooms, \$10.00; for forty to sixty rooms, \$15.00; for sixty to one hundred rooms, \$20.00; for one hundred rooms and above, \$25.00. For each restaurant, \$10.00.

1920, XXXI, 860.

(2386) § 79. **Reports of Inspectors.**—The official representative or inspector of the State Board of Health shall, after inspection, make a report

of the condition of the hotel inspected upon blanks to be provided by the State Board of Health, showing in detail the condition of the hotel with reference to compliance with this law, which report shall be filed in the office of the Commission.

1920, XXXI, 860.

(2387) § 80. Powers of Inspectors.—The inspectors or representatives of the State Board of Health are hereby empowered and authorized to enter any hotel at all reasonable hours to make such inspection; and it is hereby made the duty of every person in the management or control of such hotel to afford free access to every part of the hotel, and render all aid and assistance necessary to enable the inspector to make a full, thorough, and complete examination thereof; but no inspector shall violate the privacy of any guest without his or her consent.

1920, XXXI, 860.

(2388) § 81. Score Cards.—The representative or inspector of the State Board of Health herein required to be appointed by it shall adopt the score-card system, after each inspection of the State Board of Health, or inspector, shall issue to each hotel, lodging house, or restaurant an inspection score-card showing the per cent. or degree of compliance with the provisions of this Act.

1920, XXXI, 860.

(2389) § 82. Physical Examination of Employees.—Before any owner or manager of any such hotel, lodging house or restaurant shall receive in its employ any cook, waiter or other employee, they shall require a health card showing that such employee has stood a physical examination by some reputable physician and that they are free from all infectious and contagious diseases and are in sound health.

1920, XXXI, 860.

(2390) § 83. Compliance With Requirements.—It shall be the duty of the inspector, upon ascertaining by inspection or otherwise that any hotel is being carried on contrary to any of the provisions of this Article, to notify the manager or proprietor in what respect it fails to comply with the law, requiring such persons within a reasonable time to do or to cause to be done the things necessary to make it comply with the law, whereupon such proprietor or manager shall forthwith comply with such requirements.

1920, XXXI, 860.

(2391) § 84. Violation a Misdemeanor—Penalty—Each Day a Separate Offense.—Any owner or manager, agent or person in charge of a hotel or restaurant or any other person who shall wilfully obstruct, hinder or interfere with any inspector in the proper discharge of his duty, or who shall wilfully fail or neglect to comply with any of the provisions of this Article, after notice from the inspector or any other person in authority, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars for each offense, and each day of failure to comply with the provisions of this Article shall be a separate and distinct offense.

1920, XXXI, 860.

(2392) § 85. **Inspector to Swear Out Warrants.**—It shall be the duty of the inspector, in case he shall have knowledge of any violation of this Article, to swear out a warrant against the person offending.

1920, XXXI, 860.

VITAL STATISTICS.

(2393) § 86. **Bureau of Vital Statistics.**—The State Board of Health shall establish a Bureau of Vital Statistics and provide an adequate system for the registration of births and deaths, by formulating, promulgating and enforcing rules and regulations prescribing the method and form of making such registration.

Civ. '12, § 1596; Ex. 1914, XXIX, 24.

(2394) § 87. **State Registrar of Vital Statistics.**—That the Secretary of the State Board of Health shall be the State Registrar of Vital Statistics, and it shall be his duty to carry into effect the rules, regulations and orders of the State Board of Health. The Board shall provide suitable apartments, properly equipped with fireproof vaults and filing cases, for the permanent preservation of all official records.

Ex. 1914, XXIX, 24.

(2395) § 88. **Registration Districts.**—That for the purposes of the Article the State Registrar shall divide the State into registration districts, defining and designating the boundaries thereof and appointing local registrars in each district.

Ex. 1914, XXIX, 24.

(2396) § 89. **Local Registrar—Compensation.**—That each local Registrar shall be paid the sum of twenty-five cents for each birth certificate properly and completely made out and registered with him, correctly recorded and promptly returned by him to the State Registrar, as required by the rules and regulations. And in case no births or no deaths were registered during any month, the local Registrar shall be entitled to be paid the sum of twenty-five cents for each report to that effect, but only if promptly made in accordance with the rules and regulations. All amounts payable to the Registrar under the provisions of this Section shall be paid by the Treasurer of the county in which the registration district is located, upon certification by the State Registrar. And the State Registrar shall annually certify to the Treasurers of the several counties the number of births and deaths properly registered, with the names of the local Registrars, and the amount due each at the rates fixed therein: *Provided*, That in cities of over fifty thousand inhabitants, that each local Registrar shall be paid ten cents.

Ex. 1914, XXIX, 24; 1917, XXX, 329.

(2397) § 90. **State Registrar to Furnish Copy of Record—Compensation.**—That the State Registrar shall, upon request, furnish any applicant a certified copy of the record of any birth or death registered under the provisions of this Act, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant, and any such copy of the record of a birth or death, when properly certified by the State

Registrar to be a true copy thereof, shall be *prima facie* evidence in all Courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the State Registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, to be paid by the applicant. And the State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the State Treasurer each month.

Ex. 1914, XXIX, 24.

(2398) § 91. Penalty for Violation of Laws.—That any person, firm or corporation who shall violate any rule, regulation or order of the State Board of Health relative to recording, reporting or filing information for the Bureau of Vital Statistics, or who shall wilfully neglect or refuse to perform any necessary or reasonable duties imposed upon them by said orders, or who shall furnish false information for the purpose of making incorrect records for said Bureau, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than one hundred dollars, or be imprisoned in the County Jail not exceeding thirty days, or suffer both fine and punishment, in the discretion of the Court.

Ex. 1914, XXIX, 24.

ARTICLE II.

Physicians, Pharmacists, Dentists and Trained Nurses.

(2399) § 1. Practice of Medicine Restricted.—No person shall practice medicine or surgery within the State unless he or she is twenty-one years of age, and either has been heretofore authorized so to do, pursuant to the laws in force at the time of his or her authorization, or is hereafter authorized to do so by subsequent subdivisions of this Article.

Civ. '12, § 1618; Civ. '02, § 112; 1881, XVII, 571; 1887, XIX, 820; 1888, XX, 54; 1890, XX, 699; 1920, XXXI, 1004.

(2400) § 2. Practice of Medicine Defined—Provisos.—Any person shall be regarded as practicing medicine within the meaning of this Act, who shall as a business treat, operate on or prescribe for any physical ailment of another, or who shall engage in any branch or specialty of the healing art, or who shall diagnose, cure, relieve in any degree, or profess or attempt to diagnose, cure or relieve any human disease, ailment, defect, abnormality or complaint, whether of physical or mental origin, by attendance or by advice, or by prescribing or using or furnishing any drug, appliance, manipulation, adjustment, or method, or by any therapeutic agent whatsoever. But nothing in this Article shall be construed to prohibit service in cases of emergency or the domestic administration of family remedies: *Provided*, That nothing herein contained shall apply to those who practice the religious tenets of their church without pretending a knowledge of medicine or surgery, and provided that the laws, rules and regulations relating to contagious diseases and sanitary matters are not violated: *Provided*, That

nothing in this Article shall be construed to prohibit licensed druggists from selling, using, and dispensing drugs in their places of business, respectively.

Civ. '12, § 1618; 1904, XXIV, 512; 1905, XXIV, 938; 1908, XXV, 1083; 1920, XXXI, 1004.

Parks v. McDaniel, 75 S. C. 7, 11, 54 S. E. 801, 117 Am. St. Rep. 878.

(2401) § 3. State Board of Medical Examiners—Appointment—Terms—Vacancies—Classes.—There shall be established a State Board of Medical Examiners, composed of eight reputable physicians or surgeons, one from each of the seven Congressional Districts, and one from the State at large, to be nominated by the State Medical Association, and appointed and commissioned by the Governor. The terms of office of the members of the Board shall be for a period of four years, and until their successors in office shall have been appointed and qualified. Any vacancy in said Board of Examiners by death, resignation or otherwise, shall be filled in the same manner as above specified: *Provided*, That the Governor shall have the right to reject any or all of the members nominated, upon satisfactory showing as to the unfitness of those rejected. In case of such rejection, former members of the Board shall hold over until their successors can be chosen in the manner as above provided. The members of the Board first appointed under the provisions of this Section shall be divided into four classes. The first class to consist of one member from the First and the other from the Third Congressional District, the second class, one member from the Second and the other from the Fourth Congressional District; the third class, one member from the Fifth and the other from the Seventh Congressional District; the fourth class, one member from the Sixth Congressional District and the other from the State at large. The first class shall hold office under said first appointment for the period of one year; the second class for the period of two years; the third class for the period of three years, and the fourth class for the period of four years. Each year the State Medical Association shall nominate two members to succeed the two members whose terms expire: *Provided, further*, That the first nomination herein provided for shall be held at the next annual meeting of the said State Medical Association, and the members of the State Board of Examiners, as constituted under law existing at the time of the passage of this Article, shall continue as the State Board of Examiners hereunder until appointment and qualification of members of said Board as hereinabove provided.

Civ. '12, § 1619; 1904, XXIV, 513; 1920, XXXI, 1004.

Parks v. McDaniel, 75 S. C. 7, 11, 54 S. E. 801, 117 Am. St. Rep. 878.

(2402) § 4. Meetings—By-Laws—Quorum.—The State Board of Medical Examiners shall meet regularly at Columbia, S. C. on the fourth Tuesday in June of each year, and continue in session until all applicants are duly examined. Should the Board deem it expedient, its regular meeting may be held at a later date than the fourth Tuesday in June, but in such event notice of the date of meeting must be published ten days prior to the date of the meeting. At their first meeting they shall organize by the election of a President and a Secretary, who shall also be Treasurer, and said Board shall have power to call extra meetings, when necessary, for the examination of applicants and for the transaction of such business as may

properly come before it and to make all necessary by-laws and rules for their government. A majority of said Board shall constitute a quorum for the transaction of business.

Civ. '12, § 1620; 1905, XXIV, 938; 1920, XXXI, 1004.

(2403) § 5. Examinations—Fees—Temporary Certificates.—It shall be the duty of the said Board, when organized, to examine all candidates for examination, as hereinafter provided and described, and to pass upon their qualifications and fitness to practice medicine in this State, and to give to each successful applicant a certificate to that effect: *Provided*, That each applicant, before being allowed to take said examination, shall pay to the Treasurer of said Board a fee of twenty-five dollars, one-half of which shall be returned if the applicant fails to secure a certificate of qualification. Such certificate of qualification shall entitle the holder thereof, respectively, to be registered as a lawful practicing physician by the Clerk of Court of the county in which he or she, or they, may reside, upon the payment to said Clerk of Court of a fee of twenty-five cents for each registration. No physician will be considered as a legally qualified practitioner, or as having fully complied with the law, until he shall have obtained said registry. In the interim, between the meetings of the Board, the President and Secretary of the Board shall be allowed to grant temporary license to practice medicine until the next regular meeting of the Board, to each person as would, under this Section, be eligible for examination. Said temporary license shall not entitle the holder to registry with the Clerk of Court of the county in which he resides, but at the next regular meeting of the Board the applicant must appear for the regular examination for permanent license and surrender said temporary license for cancellation.

Civ. '12, § 1621; 1905, XXV, 939; 1920, XXXI, 1004.

(2404) § 6. Revocation of License.—The said Board of Medical Examiners is hereby authorized and empowered to suspend or revoke, subject on appeal to revision by the Circuit Courts of the State, by a majority vote of its total membership, the license of any practitioners qualified under any provision of this Act, and whether qualified prior or subsequent to the passage of this Act, after due notice and fair opportunity for hearing, upon its being made satisfactorily to appear that the holder thereof is guilty of felony or gross immorality, or is addicted to the liquor or drug habit to such a degree as to render him or her unworthy or unfit to practice medicine in this State, or has been convicted in a Court of competent jurisdiction of illegal practice. And the said Board is further authorized and empowered to administer oaths in the taking of testimony upon any and all matters pertaining to the business or duties of the Board: *Provided*, That pending an appeal under this Section the doctor under charges shall practice his or her profession until the decision of the tribunal appealed to.

Civ. '12, § 1622; 1908, XXV, 1083; 1920, XXXI, 1004.

(2405) § 7. Eligibility for Examination.—All persons who hold diplomas dated prior to March 20, 1904, from any medical college or schools of established reputation as recognized by the Board, and who present certificates of their good moral character and of their sobriety, from some reputable

person or persons known or approved by the Board, and who give evidence of sufficient preliminary education (equivalent to the possession of a teacher's first grade certificate), shall be eligible for examination before the Board, irrespective of their time of attendance upon medical lectures; but no person who shall have graduated after March 20, 1904, and prior to the passage of this Act, shall be eligible to appear before the Board for examination unless he or she shall give evidence in addition to his or her good moral character and sobriety, and sufficient preliminary education, that he or she has attended four full courses of lectures of at least twenty-six (26) weeks each, no two courses being in the same year, and has received a diploma of M. D. therefrom: *Provided*, That applicants in 1920 and thereafter must have such preliminary and medical education as may be prescribed by the Board.

Civ. '12, § 1623; 1905, XXV, 939; 1920, XXXI, 1004.

(2406) § 8. Subjects and Conduct of Examinations.—For each examination the Board shall seasonably prepare suitable questions for thoroughly testing the knowledge of the applicants in the following subjects: Anatomy, Physiology, Hygiene and Sanitary Science, Materia Medica and Therapeutics, Chemistry, Toxicology, Urinalysis, Bacteriology, Pathology, Surgery, Practice of Medicine, Pediatrics, Obstetrics and Gynecology, Medical Jurisprudence, and such other subject as the Board may deem necessary. Said examinations conducted by the Board shall be written in the English language, but may, at its discretion, by oral or practical laboratory or bedside examination, or both. In case of failure at any examination, the applicant shall have the privilege of a second examination with the payment of the regular fee. In case of failure in a second examination the applicant, to be eligible, in addition to the requirements for previous examinations, must have pursued his studies for such time as the Board may approve and furnish satisfactory evidence thereof.

Civ. '12, § 1624; 1904, XXV, 915; 1920, XXXI, 1004.

(2407) § 9. Reciprocal Certification.—The Board may grant certificates to licentiates of the National Board of Medical Examiners without further examination, and shall have the power to make and establish all necessary rules and regulations for the reciprocal recognition of certificates issued by other State Boards having an equal standing.

Civ. '12, § 1626; 1904, XXIV, 516; 1920, XXXI, 1004.

(2408) § 10. Grade on Examination Required.—The standard required by the State Board of Medical Examiners shall be an average of not less than seventy-five per cent. on all the branches examined upon, and not less than sixty per cent. on any individual branch.

Civ. '12, § 1627; 1904, XXIV, 516; 1920, XXXI, 1004.

(2409) § 11. Records of Board—Register of Applicants.—The Board shall keep a record of all the proceedings thereof, and also a record or register of all applicants for a license, together with his or her age, time spent in the study of medicine, and the name and location of all institutions

granting such applicant's degrees or certificates of lectures in medicine or surgery. Said books and register shall be *prima facie* evidence of all the matters therein recorded.

Civ. '12, § 1628; 1904, XXIV, 516; 1920, XXXI, 1004.

(2410) § 12. Compensation of Board—Disposition of Fees.—Each member of said Examining Board shall receive for his services traveling expenses at the rate of five cents per mile and five dollars per day for each day engaged. Said compensation to be paid from the State Treasury, upon the certificate of the President of the Board, countersigned by the Secretary. The license fees collected from applicants shall be turned into the State Treasury. There shall be set aside from said fees each year the sum of one hundred dollars (if so much be needed) as a contingent fund, for the purpose of supplying the Secretary with necessary stamps, stationery, expenses of printing proceedings of Board, the balance of said license fees, if any, shall be turned into the general fund of the State.

Civ. '12, § 1629; 1906, XXIX, 38; 1920, XXXI, 1004.

(2411) § 13. Exemptions from Provisions of Article.—This Article shall not apply to surgeons of the United States Army, Navy or Public Health Service, practicing in the discharge of their official duties as such, nor to physicians or surgeons of other States or Territories in actual consultation with a licensed physician or surgeon of this State, and shall not be construed to apply to or to change existing laws, relating to dentists, trained nurses, pharmacutists, opticians and optometrists or midwives.

1920, XXXI, 1004.

(2412) § 14. Special Practitioners.—Osteopaths, homeopaths, chiropractors, naturopaths, magnetic healers and other practitioners of any branch of the healing art, may practice such branch or specialty within this State, by obtaining from the State Board of Medical Examiners, by the same method as is herein provided for the obtaining of licenses to practice allopathic or regular medicine, a license to practice such branch or specialty, which license shall not be granted until the applicant shall have successfully passed the examinations required of applicants to practice allopathic or regular medicine (save that examinations in *materia medica*, major surgery and therapeutics and the practice of medicine shall not be required), and shall also exhibit to the said Board a diploma from a college, showing that the applicant has graduated therefrom, in the said specialties, which college shall be one, the course of instruction in which shall have been investigated and approved by the said Board, and which shall be found by the said Board to teach such subjects and to conduct courses containing such number of hours, lasting over such number of years, as shall satisfy the said Board that the competency of the applicant has been assured by graduation therefrom.

1920, XXXI, 1004.

(2413) § 15. Penalties for Failure to Comply With Article.—Any practitioner of medicine or surgery, or any branch or specialty of same, within the meaning of this Article, failing to comply with the requirements of this

Article, shall not be exempt from jury or military duty, nor be permitted to collect any fees or charges for services rendered, nor be allowed to testify as a medical or surgical expert in any Court in this State, nor execute any certificate as a physician or surgeon nor to hold any medical office, nor to be recognized by the State or county or municipal corporation as a physician or surgeon; nor shall he be entitled to enjoy any of the privileges, rights or exemptions granted to physicians or surgeons by the laws of this State.

Civ. '12, § 1630; 1904, XXIV, 517; 1920, XXXI, 1004.

(2414) § 16. Appeals from Refusal of License.—Upon the refusal of the Board to grant a license to any applicant an appeal may be had to the Governor, who may order a reexamination of the applicant, to be held in the presence of the dean of the faculty of any regular medical college in this State, and a committee composed of seven allopathic or regular physicians.

Civ. '12, § 1631; 1904, XXIV, 518; 1920, XXXI, 1004.

(2415) § 17. Violation of Article a Misdemeanor—Penalty.—It shall be unlawful for any person or persons to practice medicine or surgery, or any branch or specialty of the same, within the meaning of this Article, in this State who has failed to comply with the provisions of this Article, and anyone violating said provisions shall be deemed guilty of a misdemeanor and for each offense, upon conviction by any Court of competent jurisdiction, shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the County Jail for a period of not less than thirty nor more than ninety days, or both, at the discretion of the Court, and that each day of such violation shall constitute a separate offense. One-half of said fine to go to the informant and the other half to the State.

1920, XXXI, 1004.

(2416) § 18. Parts of Article Independent.—In the event that any provision or part of this Article shall be questioned in any Court and shall be held to be invalid, the remainder of this Article shall not be invalid, but shall remain in full force and effect.

1920, XXXI, 1004.

(2417) § 19. Fees for Testifying at Inquests, Etc.—Physicians in this State shall be paid the following fees for *post mortem* examinations and testifying at Coroner's inquest: For a *post mortem* examination and testifying when no dissection is required, five dollars; when dissection is necessary and the body not interred, if requested by the Coroner's jury, ten dollars; for same after interment for three days or more, fifteen dollars; for chemical analysis, a sum not exceeding forty dollars and expenses for such analysis; and when chemical analysis has been made the chemist who makes it must furnish to the County Board of Commissioners, with his account, a full statement of the analysis. The Clerk of the County Board of Commissioners shall verify and file with the Clerk of Court of General Sessions a copy of such statement of analysis and account.

Civ. '12, § 1632; Civ. '02, § 1115; 1901, XXIII, 734.

PHARMACISTS.

(2418) § 20. Pharmaceutical Examiners—Elections—Vacancies—Name and Meetings—Quorum.—The Pharmaceutical Association of the State of South Carolina shall elect six pharmacists doing business within this State who shall be commissioned by the Governor, who shall constitute the Board of Pharmaceutical Examiners of the State of South Carolina, and shall hold office as follows: One of them for the term of one year; another for two years; another for three years; another for four years; another for five years; and another for six years; each, however to hold further until his successor shall have been duly elected and qualified, and the said association shall, at each election, indicate the person chosen for each of said terms respectively. Annually thereafter the said Association shall elect one member of said Board to fill vacancy annually recurring, such members so elected to hold office respectively for the term of six years, and until his successor shall be elected, qualified and commissioned. In case of the death, resignation or removal from the State of any member of the Board, the President of the Association shall appoint in his place a pharmacist, who shall be commissioned by the Governor, to serve for the remainder of his unexpired term. The said Board shall be styled "The Board of Pharmaceutical Examiners," and shall meet in the City of Charleston, or any other place in this State which may be designated by said Association, once every four months, and keep in session until applicants who have previously made application to the Secretary of said Board shall have been examined. Four members of said Board shall constitute the quorum for the transaction of business and the granting of licenses.

Civ. '12, § 1633; Civ. '02, § 1116; G. S. 923; R. S. 973; 1876, XVI, 116; 1893, XXI, 518; 1917, XXX, 358.

Smith v. Matthews, 77 S. C. 357, 360, 57 S. E. 1099.

(2419) § 21. Board of Pharmaceutical Examiners to License Druggists.—The Board of Pharmaceutical Examiners shall alone possess and exercise all of the powers heretofore given and now possessed by the Medical College of the State of South Carolina and the Medical Faculty of the University of South Carolina, in respect to the licenses of pharmacists, apothecaries and druggists.

Civ. '12, § 1634; Civ. '02, § 1117; G. S. 924; R. S. 974; 1876, XVI, 116; 1920, XXXI, 993.

Smith v. Matthews, 77 S. C. 357, 360, 57 S. E. 1099.

(2420) § 22. License Required.—Every pharmacist, apothecary and retail druggist, who has not been previously licensed according to law, who carries on and conducts the business of such occupation in this State, must have a license therefor from the above named Board.

Civ. '12, § 1635; Civ. '02, § 1118; G. S. 925; R. S. 974; 1876, XVI, 116; 1920, XXXI, 993.

Smith v. Matthews, 77 S. C. 357, 360, 57 S. E. 1099.

As to Act 1887, repealed. Robbs v. State Board of Medical Examiners, 28 S. C. 589, 6 S. E. 824.

(2421) § 23. Unlawful for Other Than Licensed Pharmacist to Dispense Poisons, Etc.—Proviso.—That it shall not be lawful for the proprietor of any pharmacy or drug store to allow any person not qualified in accordance

with the provisions of this Article to dispense poisons or compounds of physicians, except under the personal supervision of a licensed pharmacist: *Provided, however,* That outside of cities, towns and villages, and in the towns and villages of three hundred inhabitants or less, where there is no regular pharmacist, practicing physicians shall have the right to compound and sell medicines, upon their obtaining a special license from said Board of Pharmaceutical Examiners, and paying therefor a fee of ten dollars. Nothing in this Article, however, shall be construed as intending to hinder or prohibit any physician lawfully engaged in the practice of his profession anywhere within this State from putting up his own prescriptions or dispensing his own medicines.

Civ. '12, § 1637; 1910, XXVI, 749; 1920, XXXI, 993.

(2422) § 24. Qualification of Applicants for License.—On and after July 1st, 1918, an applicant for examination as registered pharmacist must be twenty-one years of age, of good moral character and temperate habits, a graduate from a college of pharmacy, school of pharmacy or department of pharmacy of a university, which is recognized by said Board, such recognition to be established by the Board of Pharmaceutical Examiners on the basis of uniform and reasonable standards of educational requirements to be observed by school of pharmacy, college of pharmacy, or departments of pharmacy of universities. The said educational requirements being at least a two year course in a recognized high school as a matriculation requirement, and the said Board may determine their reputability by reference to their compliance with such standards, and shall, further, furnish proofs of a three years' experience. Actual time of attendance at the school or college of pharmacy from which the applicant is a graduate, but not to exceed two years, shall be accredited upon the required service of three years. The remainder of the experience required must have been in compounding and dispensing drugs, medicines and poisons under the supervision of a registered pharmacist in a drug store or pharmacy, where the prescriptions of medical practitioners are compounded. An applicant for examination as an assistant pharmacist must be eighteen years of age, of good moral character and temperate habits, and furnish proof of three years' experience. Actual time of attendance at a recognized college of pharmacy, school of pharmacy, or department of pharmacy of a university, but not to exceed one year, shall be accredited upon the required experience of three years: *Provided,* The applicant must show, by proper certificate from the college or school of pharmacy he attended, that his school work was satisfactory. The remainder of the experience required must have been under the supervision of a registered pharmacist in compounding drugs, medicines and poisons in a drug store or pharmacy where the prescriptions of medical practitioners are compounded.

Civ. '12, § 1636; Civ. '02, § 1119; G. S. 926; R. S. 976; 1893, XXI, 519; 1910, XXVI, 748; 1917, XXX, 358; 1920, XXXI, 993.

(2423) § 25. Assistant Pharmacists.—An assistant pharmacist may lawfully take charge of a drug store or pharmacy during the temporary absence of the registered pharmacist, but cannot own or operate a drug

store or pharmacy, unless he employs a registered pharmacist, and places him in active charge of all professional duties connected with the proper conduct of the business. The Board of Pharmacy shall make rules and regulations clearly defining temporary absence.

1920, XXXI, 993.

(2424) § 26. Examination and License Fees.—The charge made each applicant for examination and for granting the license to a licensed pharmacist shall be twenty dollars and for an assistant pharmacist ten dollars.

Civ. '12, § 1637; 1910, XXVI, 749; 1920, XXXI, 993.

(2425) § 27. Labels on Poisons.—That all persons in the State engaged in business as pharmacists, apothecaries or druggists, either in the whole-sale or retail of drugs, shall, to every bottle, vial, box or other package containing any poison named in the preceding Section, or any one or more of the following articles, viz.: Oxalic acid, chloroform, belladonna and its preparations, digitalis and its preparations, henbane and its preparations, hemlock or conium, or any other articles that may be added to this list by the Board of Pharmacy of the State of South Carolina, securely attach a label, whereupon shall be either printed or legibly written, with red ink, the name of the poison and the name of at least one antidote, with brief directions as to the mode of using the same: *Provided*, That nothing herein contained shall be construed to apply to the filling of prescriptions made by regular physicians: *And provided, further*, That it shall be the duty of the Board of Pharmaceutical Examiners, on application at the time of registration, to furnish to the party registering a form of label for poison.

Civ. '12, § 1642; Civ. '02, § 1125; G. S. 932; R. S. 892; 1876, XVI, 118; 1920, XXXI, 993.

(2426) § 28. Sale of Poisons—Record.—That every pharmacist or other person selling any poison shall be satisfied that the purchase is made for the legitimate purposes and shall keep a book on file in which shall be recorded every sale of the following articles, viz.: Arsenic and its preparations, all metallic cyanides and cyanides of potassium, tartar emetic, corrosive sublimate, aconite and its preparations, strychnine and all other poisonous alkaloids and their salts, cantharides, ergot, hydrocyanic acid; and the said record also to exhibit the name of the person to whom sold, place of residence and the purpose of purchase as stated, which book or file shall be kept at all times subject to the inspection of the Coroner of the county and the solicitor of said Association, or such other persons as either of them may designate.

Civ. '12, § 1641; Civ. '02, § 1124; G. S. 931; R. S. 981; 1876, XVI, 118; 1920, XXXI, 993.

(2427) § 29. Sale of Prepared Medicines Allowed.—This Article shall not be construed to prevent merchants or shopkeepers from vending or exposing for sale medicines already prepared.

Civ. '12, § 1643; Civ. '02, § 1126; G. S. 933; R. S. 982; 1876, XVI, 108; 1920, XXXI, 993.
For penalty for unqualified persons making up prescriptions, see Criminal Code.

(2428) § 30. Renewal of Registration—Fees.—Every person holding a certificate of registration from the Board of Pharmacy of South Carolina, shall renew annually, on or before the first day of November, their registra-

tion with said Board as provided by this Article. Every such person who desires to retain his registration on the books of the Board of Pharmacy in this State, shall annually, on or before the first day of July of each year, pay to the Secretary of said Board of Pharmacy, renewal fee of one dollar, for which fee a renewal certificate of registration shall be issued, said fee of one dollar to be placed in the treasury of the South Carolina Pharmaceutical Association. In case any person defaults in payment of said fee, the Secretary of the Board of Pharmacy shall notify said delinquent in writing, that if said fee is not paid within sixty days after the first day of July, a penalty of twenty-five (\$25.00) dollars must be paid, in addition to all fees due. If delinquency in payment continues for a period of two years, then such registration shall be cancelled: *Provided, however,* That such registration may be restored by payment of all fees due, together with a penalty of fifty (\$50.00) dollars.

1920, XXXI, 993.

(2429) § 31. Violation a Misdemeanor—Penalty.—Any person guilty of violating the provisions of any Section of this Article shall be guilty of a misdemeanor, and, upon conviction thereof, shall, for a first offense, be punished by fine of twenty-five (\$25.00) dollars or imprisonment for thirty (30) days, or both, within the discretion of the Court; and, upon a second conviction, shall be punished by a minimum fine of fifty (\$50.00) dollars or imprisonment for sixty (60) days, or both, in the discretion of the Court. All fines and fees collected shall be used for the enforcement of this Article.

1920, XXXI, 993.

(2430) § 32. Reciprocal Registration.—That the State Board of Pharmacy may, in its discretion, grant certificates of registration as pharmacists to such persons as shall furnish with their applications satisfactory proof that they have been registered by examination in some other State requiring a degree of competency equal to that required of an applicant in this State: *Provided, however,* That existing requirements in this State shall not prevent the said Board of Pharmacy of this State from granting reciprocal registration to applicants whose experience and results of examination, together with the proofs of qualifications upon which they were permitted to take the examination at the time of their registration in the States from which they apply, would have entitled them to registration as a registered pharmacist in this State at that time.

1917, XXX, 65; 1920, XXXI, 993.

(2431) § 33. Register of Druggists.—That it shall be the duty of the Board of Pharmacy of the State of South Carolina to establish, carry and preserve, in a book or file kept for the purpose, a register of all pharmacists, apothecaries and retail druggists in the State, including the names of persons registered, place of business, the fact whether the person registered be a graduate of medicine or pharmacy, or under license granted under examination, and any other matter of information the said Association may see fit to add.

Civ. '12, § 1638; Civ. '02, § 1121; G. S. 928; R. S. 978; 1826, XVI, 117; 1920, XXXI, 993.

(2432) § 34. **Appropriation.**—For defraying the expenses of the Examining Board of the Pharmaceutical Association of the State of South Carolina an annual appropriation of three thousand (\$3,000.00) dollars from the State Treasury is hereby made and that the Board of Examiners shall turn over to the State Treasurer all fees received for examinations.

1920, XXXI, 993.

(2433) § 35. **Pharmacists to Register.**—It shall be the duty of all active pharmacists, apothecaries and retail druggists on or before the first day of November in each year to have their names registered in manner aforesaid by the Pharmaceutical Association of the State of South Carolina and pay therefor one dollar registration fee to the Secretary of the Association (said one dollar to be used for the enforcement of pharmaceutical laws of the State of South Carolina) and to report at that time whether any, and, if yea, what changes have occurred within the then preceding year as to their respective places of business: *Provided, however,* This Section shall not apply to inactive or retired druggists or traveling men holding license.

Civ. '12, § 1639; Civ. '02, § 1122; G. S. 929; R. S. 979; 1876, XVI, 117; 1917, XXX, 358.

(2434) § 36. **Reports.**—That it shall be the duty of the Pharmaceutical Association of South Carolina to make a correct report to the Governor of work done by them in accordance with the provisions of this Article, on or before the first day of December of each year.

Civ. '12, § 1640; Civ. '02, § 1123; G. S. 930; R. S. 980; 1876, XVI, 118; 1920, XXXI, 993.

(2435) § 37. **Prosecutions.**—That the said Board of Pharmacy is hereby authorized, through and by its solicitor, or otherwise, as it may deem most expedient, to prosecute all persons violating the provisions of this Article or any of them.

1920, XXXI, 993.

DENTISTS.

(2436) § 38. **Dentists to Obtain License.**—No person shall hereafter enter upon the practice of dentistry in this State unless he shall have obtained a license from the Board of Dental Examiners in the State of South Carolina, and all dentists authorized by law to practice dentistry in this State shall be exempt from jury duty in this State.

Civ. '12, § 1644; Civ. '02, § 1127; G. S. 936; R. S. 984; 1887, XIX, 788.

(2437) § 39. **Board of Dental Examiners.**—The South Carolina State Dental Association shall elect a Board of Examiners, to consist of five members, to be known by the title of Board of Dental Examiners in the State of South Carolina. The members of this Board shall be elected for terms of one, two, three, four and five years, respectively, or until their successors shall have been elected. The South Carolina State Dental Association, at each annual meeting thereof, shall elect a person for the term of five years to fill the place of the member of the Board whose term of office shall at that time expire, and shall also fill such vacancies in the Board as may have occurred during the year. If, at any regular meeting of the Board, any member or members shall fail to be present, the South Carolina State Dental

Association may, at its discretion, declare the office of such absentee to be vacated, and may proceed to elect a new member or members for the unexpired term of such person or persons, or it may elect a member or members to fill, temporarily, the place or places of such absentees. This Board shall be organized by the election of a President and a Secretary.

Civ. '12, § 1645; Civ. '02, § 1128; G. S. 937; R. S. 985; 1875, XV, 856; 1887, XIX, 788.

(2438) § 40. Meeting of Dental Examiners—Notice—Course of Study—Licenses—Registry—Fee.—The Board of Examiners shall meet annually at such time and place as they shall designate, giving thirty days' notice in the public newspapers, published in not less than three different places in the State, viz.: One in Charleston, one in Columbia and one in Greenville, of such annual meeting; shall prescribe a course of reading for those who study dentistry under private instructions; shall grant licenses to all applicants who undergo a satisfactory examination; shall keep a book in which shall be registered all persons licensed to practice dentistry in the State of South Carolina. The expenses of said license shall be fifteen dollars, to be paid by said licensee.

Civ. '12, § 1646; Civ. '02, § 1129; G. S. 938; R. S. 986; 1887, XIX, 789; 1911, XXVII, 130.

(2439) § 41. Book of Record of Dentists.—The book so kept shall be a book of record, and a transcript from it, certified by the officer who has it in keeping, with the common seal, shall be evidence in any Court of the State.

Civ. '12, § 1647; Civ. '02, § 1130; G. S. 939; R. S. 987; 1875, XV, 857.

(2440) § 42. Quorum of Board of Dental Examiners.—Three members of said Board shall constitute a quorum for the transaction of business; and should a quorum not be present on the day appointed for their meeting, those present may adjourn from day to day until a quorum is present.

Civ. '12, § 1648; Civ. '02, § 1131; G. S. 940; R. S. 988; 1875, XV, 857.

(2441) § 43. When One Member of Board of Dental Examiners May Grant License.—One member of said Board may grant a license to an applicant to practice until the next regular meeting of the Board, when he shall report the fact, at which time the temporary license shall expire; but such temporary license shall not be granted by a member of the Board after the Board has rejected the applicant.

Civ. '12, § 1649; Civ. '02, § 1132; G. S. 941; R. S. 989; 1875, XV, 857.

(2442) § 44. Each Dentist to Keep a Record.—Every dentist in this State shall keep a record of all cases treated in his practice, in accordance with a form to be designated by the South Carolina State Dental Association, and furnish his patient with a copy of the same, if so desired by the patient.

Civ. '12, § 1650; Civ. '02, § 1133; G. S. 942; R. S. 990; 1875, XV, 857.

(2443) § 45. South Carolina Dental Association a Body Corporate.—The South Carolina State Dental Association is a body politic and corporate,

may have and use a common seal, sue and be sued, plead and be impleaded, and be empowered to make all necessary by-laws, not inconsistent with the State laws and Constitution.

Civ. '12, § 1651; Civ. '02, § 1134; G. S. 944; R. S. 991; 1875, XV, 857.

(2444) § 46. When License of Dentists to Be Revoked—Notice—Hearing.—Whenever it shall appear to the Board of Dental Examiners that any licensed dentist, practicing in the State of South Carolina, has been guilty of fraud, or deceit, or misrepresentation in obtaining a license, or of gross immorality, habitual use of intoxicants or drugs, rendering him unfit for the practice of dentistry, or of malpractice, gross ignorance, incompetency, or wilful negligence in the practice of dentistry, or of committing any crime involving moral turpitude, either before or after conviction in Court, or practicing deceit or fraud upon the public or individual patient in attempting to obtain practice, or advertising to practice dentistry without pain, or advertising in any way with a view of receiving or defrauding the public that would tend to deceive the public, or advertising to use any drug medicine, formula, system or anæsthetic of unknown formula, or one that is not generally used by dental profession, or the publication or circulation of exaggerated or fraudulent claims or misleading statements as to his art, skill or knowledge, or of his methods of treatment or practice, the Board of Dental Examiners shall suspend or revoke the license of such person: *Provided*, That nothing in this Article contained shall apply to prevent the employment of a student to work in the office of, and under the direction and supervision of, a licensed dentist: *Provided, further*, That when the revocation is contemplated by the Board such licensee shall be given at least thirty days' previous notice of such action and allowed to appear in his own defense, by himself or attorney, and present witnesses before such action shall be taken.

1915, XXIX, 218.

REGISTERED NURSES.

(2445) § 47. State Board of Medical Examiners to Examine Applicants for Registration as Trained Nurses.—The State Board of Medical Examiners of this State, at their regular annual meetings hereafter, and at such special meetings as the said Board may deem proper and necessary for such purpose, shall, in addition to their present duties, examine all applicants for registration under the provisions of this and the remaining Sections of this Article, for the purpose of determining their qualifications and fitness to give efficient care to the sick, and shall award a certificate, duly attested by the Secretary of said Board, and signed by the Chairman thereof, to all applicants who pass in a satisfactory manner the examination required by the said Board, and who are registered as herein required. That each applicant for examination shall forward with his or her application a fee of two dollars, which shall be deposited with the Treasurer of said Board and used as now prescribed by law.

Civ. '12, § 1652; 1910, XXVI, 567.

(2446) § 48. Unlawful to Act as Professional Nurse Until Registered—Qualifications—Exceptions.—It shall be unlawful for any person to prac-

tice or pursue the calling of a professional nurse in this State for compensation, unless such person shall have furnished to the said State Board of Medical Examiners satisfactory evidence, of such nature and in such form and manner as said Board shall require, that he or she is twenty-one years of age, of good moral character, has received the equivalent of a common school education, and has graduated from a training school connected with a general hospital, where at least two years of continuous residence training, with a systematic course of instruction is given, and has passed a satisfactory examination before said Board and registered as hereinafter required: *Provided*, That this Section shall not be construed to apply to those who may be registered prior to January 1, 1911, in accordance with the provisions of this Act applicable to such persons as hereinafter declared in Sections 49 and 50: *Provided, further*, That this Section shall not apply, at any time, to the gratuitous nursing of the sick by friends or members of the family thereof, nor to those persons nursing the sick for hire who do not in any way claim or assume to be, or to hold themselves out as registered nurses: *Provided, further*, That nothing herein contained shall be construed so as to prevent a professional nurse who does not hold such a certificate from said Board, and who resides in another State, from accompanying and attending a person traveling in or through this State, or sojourning therein for his or her health, or any nonresident nurse without such certificate from serving any person in this State in case of necessity or emergency, where such nurse is authorized and empowered to practice his or her profession under the law of the State in which he or she resides; and if there be no such law, when such nurse has received the training required in this Act as a prerequisite to examination and registration by said Board of Examiners after January 1, 1911.

Civ. '12, § 1653; 1910, XXVI, 567.

(2447) § 49. Certain Nurses May Register Without Examination.—That all nurses heretofore graduated or hereafter graduated, before January 1, 1911, from such general hospital, and otherwise possessing the qualifications prescribed in this Article, shall be permitted to register and receive a certificate without an examination upon application duly made and upon payment of the prescribed fee, provided that such application be made before January 1, 1911.

Civ. '12, § 1654; 1910, XXVI, 568.

(2448) § 50. Same.—That all nurses graduating from training schools in connection with special hospitals, whose standing and reputation shall be approved by the said Board, giving a two years' course, who shall obtain six months' additional training in general hospital, shall be entitled to registration and a certificate without examination before January 1, 1911, upon payment of required fee; and all nurses graduating from such special hospitals shall be entitled to registration and a certificate prior to said date upon passing a special examination before the Board of Examiners, in subjects not adequately taught in the training school from which they are graduated, upon payment of the required fee.

Civ. '12, § 1655; 1910, XXVI, 568.

(2449) § 51. **Graduate Nurses of State Hospital for Insane Entitled to All Rights and Privileges of Registered Nurses Under Act of 1910, 26 Stat., 567.**—All persons who graduate at the training school for nurses at the State Hospital for the Insane and hold diplomas signed by the President of the Board of Regents and the Superintendent of the said institution, shall be entitled to all the rights and privileges of nurses graduating from any other training school, hospital or institution in this State, as is provided by an Act entitled “An Act to provide for the examination and registration of trained nurses,” approved February 23d, A. D. 1910.

1912, XXVII, 738.

State ex rel. Ray v. Blease, Governor S. C., 95 S. C. 403, 79 S. E. 247.

(2450) § 52. **Registered Nurse—Board.**—That a nurse who has received his or her certificate according to the provisions herein shall be styled and known as a “Registered Nurse,” and no other person, without a certificate from the said Board of Examiners, shall assume such a title or use the abbreviation R. N., or any other letters, figures or characters to indicate that he or she is a registered nurse: *Provided*, That the Board shall be empowered, without examinations, to endorse, upon the receipt of the license fee of two (\$2.00) dollars, the licenses issued by other State Boards having equal standard: *Provided, further*, Said other Board shall accord to the licenses of the South Carolina State Board the same courtesy, and said other State Board licenses, when endorsed, shall entitle the holder to register in this State and to all rights and privileges thereby granted.”

Civ. '12, § 1656; 1910, XXVI, 569; 1915, XXIX, 178.

(2451) § 53. **Application Blanks—Register of Nurses—Records.**—That said Board of Examiners shall prescribe and have printed application blanks and such other forms as may be necessary to carry out the provisions herein, which shall be furnished to any applicant upon request and free of charge. Said Board shall also keep a register in which shall be entered the full name, age, residence, source of training and date of registration of every person to whom a certificate is issued under the provisions herein, and said register shall be at all times open to public inspection, and be *prima facie* proof of all matters therein contained. It shall also be the duty of the Board to keep the application of each applicant, together with any additional evidence which shall be required by the Board to be offered in support of the qualifications of said applicant, which shall also be open to public inspection.

Civ. '12, § 1657; 1910, XXVI, 569.

(2452) § 54. **Board May Revoke Certificate.**—The said Board of Examiners may revoke any certificate issued under this Article for sufficient cause, of which the Board shall be the judge; but before this is done the holder of said certificate shall have thirty days' notice, and such action shall only be taken after a full and fair hearing of the charge, in which counsel may appear for either or both sides, and only by a majority of the whole Board: *Provided*, That from such judgment or revocation of license the person feeling himself or herself aggrieved shall have the right to appeal to the Circuit Court of the county in which he or she resides, and to the Supreme Court.

Civ. '12, § 1658; 1910, XXVI, 569.

ARTICLE III.**Opticians and Optometrists.**

(2453) § 1. Practice of Optometry Defined.—Any person shall be deemed to be practicing optometry within the meaning of this Article who shall display a sign, or in any way advertise as an optician or optometrist, or who shall employ any means, other than the use of drugs, for the measurement of the powers of vision, or the adaptation of lenses, for the aid thereof, or who shall in the sale of spectacles or eyeglasses or lenses, use in the testing of the eyes therefor, lenses other than lenses actually sold.

1917, XXX, 1.

(2454) § 2. Unlawful to Practice Optometry Without Certificate of Registration.—It shall be unlawful for any person to engage in the practice of optometry or as an optician in the State of South Carolina unless such person shall have obtained a certificate of registration from the South Carolina State Board of Examiners of Opticians and Optometrists, as hereinafter provided.

1917, XXX, 1.

(2455) § 3. Board of Examiners.—There is hereby created a Board whose duty it shall be to carry out the purposes and enforce the provisions of this Article and shall be styled the South Carolina Board of Examiners of Opticians and Optometrists.

1917, XXX, 1.

(2456) § 4. Composition of Board—Term—Qualifications.—The said Board shall consist of six members, of whom three shall be members of and nominated by the South Carolina Optical Association, and the President and Secretary of the State Board of Medical Examiners shall be *ex officio* members, who shall have full power to vote on all questions, and one oculist, who shall be nominated by the South Carolina Medical Association. The term of each appointed member shall be four years, or until his successor is appointed and qualified, and vacancies shall be filled for the unexpired term only; but in the original appointment of the members of the Board, one shall be appointed for the term of one year, one for two years, one for three years, and one for four years; said Board shall be commissioned by the Governor of this State and annually thereafter as vacancies occur. The Governor shall have power to remove from office any member of said Board for incapacity, misconduct or neglect of duty. No member of said Board shall be a stockholder, member of the faculty or on the Board of Trustees of any school of optometry, or financially interested in a manufacturing or wholesale optical house.

1917, XXX, 1.

(2457) § 5. Meetings and Powers of Board.—The members of said Board shall qualify by taking oath of office before a notary public, or other officer empowered to administer oaths in the county in which each one, respectively, resides. At the first meeting of said Board after each annual appointment, the Board shall elect a President, Vice President and Secre-

tary-Treasurer. A majority of members of the Board shall constitute a quorum. Regular meetings shall be held at least once a year, at such time and place as shall be deemed most convenient. Due notice of such meetings shall be given by publication in such papers as may be selected by the Board. Special meetings may be held upon a call of three members of the Board. The Board may prescribe rules, regulations and by-laws, fix the salary of the Secretary-Treasurer, employ attorneys or offer rewards for the conviction of persons violating this Article, for its own proceedings and government, for the examination of applicants for the practice of optometry. Said Board, or any member thereof, shall have the power to administer oaths for all purposes required in the discharge of its duties, and shall adopt a seal to be affixed to all of its official documents.

1917, XXX, 1.

(2458) § 6. Examination of Applicants—Fee—Certificate.—Every person before beginning to practice optometry in this State after the passage of this Article shall pass an examination before said Board of Examiners in theoretic, practical and physiological optics, theoretic and practical optometry and in the anatomy of the eye. Every person before beginning the work as an optician in this State after the passage of this Article shall pass an examination before the said Board in light theory, transposition and neutralization of lenses, service grinding and edging, frame measuring and adjusting. Any person desiring to be examined by said Board must fill out and swear to an application furnished by the Board at least two weeks prior to the holding of an examination. Each applicant, on making application, shall pay to the Secretary of the Board a fee of ten dollars. All persons successfully passing such examination shall be numbered and registered in the Board Register, which shall be kept by the Secretary, as licensed to practice optometry or as an optician, and shall receive a certificate of such registration, to be signed by the President and Secretary of the Board, upon payment to the Secretary of the Board of the sum of five dollars, which said sum shall be for use of said Board.

1917, XXX, 1.

(2459) § 7. Admission to Practice Without Examination—Fee—Right of Appeal.—Every person who shall submit to said Board of Examiners satisfactory proof as to the character, competency and qualifications, and that he is a *bona fide* resident of this State and has been continuously engaged in the practice of optometry or as an optician in this State for more than two years prior to the passage of this Article, shall, on or before October 1st, file an affidavit in proof thereof on blanks furnished by the said Board, who shall make and keep a record of such person, and shall, in consideration of the sum of ten dollars, issue to him a certificate of registration per exemption. Any applicant for certificate of registration being denied such certificate, or any person feeling himself aggrieved by the action of said Board, will have the right of appeal to the Court of Common Pleas.

1917, XXX, 1.

(2460) § 8. **Certificate of Exemption—Waiver—Record.**—All persons entitled to a certificate of registration under the provisions of Section 7 shall be exempt from the provisions of Section 6 of this Article, also every person entitled to a certificate of exemption as herein provided, must make application therefor and present the evidence to entitle him thereto, on or before October 1st, as allowed by law, or he shall be deemed to have waived his right to such certificate. Before any certificate is issued, it shall be numbered and recorded in a book kept by the Secretary of the Board of Examiners, and its number shall be noted upon the certificate. In all legal proceedings the record so kept in the office of the Secretary of the Board, or certified copies thereof, shall be *prima facie* evidence of the facts therein stated.

1917, XXX, 1.

(2461) § 9. **Recordation of Certificates—Penalty.**—All recipients of said certificates of exemption or registration shall present the same for recording to the Clerk of the county in which they reside, and shall pay a fee of fifty cents to the Clerk for recording the same. Said Clerk shall record said certificate in a book provided for that purpose. Any failure, neglect or refusal on the part of any person holding such certificate of registration to display or record the same, as herein provided, for three months after the issuance of said certificate, shall *ipso facto* work the forfeiture of his certificate of registration, and it shall not be restored except upon the payment of twenty-five dollars to the Board of Examiners.

1917, XXX, 1.

(2462) § 10. **Certificate to Be Displayed.**—Every person to whom a certificate of registration or exemption is granted under this Act shall display the same in a conspicuous place in his principal office, place of business, or employment.

1917, XXX, 1.

(2463) § 11. **Compensation of Members of Board—Disposition of Funds.**—Out of the funds coming into possession of said Board, each member may receive as compensation the sum of five dollars and expenses for each day actually engaged in the duties of his office, and mileage at three cents per mile for all distances necessarily traveled in going to and from the meetings of the Board. Said expenses shall be paid from the fees and licenses received by the Board under the provisions of this Article, and no part of the salary or other expenses of the Board shall ever be paid out of the State Treasury. All money received in excess of said per diem allowance and mileage, as above provided for, shall be held by the Secretary and Treasurer as a special fund for meeting the expenses of said Board and carrying out the provisions of this Article, and he shall give such bond as the Board shall from time to time direct, and the said Board shall make an annual report of its proceedings to the Governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this Article.

1917, XXX, 1.

(2464) § 12. Annual Registration Fee—Procedure in Case of Default in Payment—Penalties.—Every registered and exempt optician and optometrist who desires to continue the practice in this State, shall annually, on or before the first day of October of each year, pay to the Secretary of the Board a registration fee, to be fixed by the Board, and which in no case exceed the sum of five dollars per annum, for which he or she shall receive a renewal of such registration, and in case of the default of such payment by any person his or her certificate shall be revoked by the Board of Examiners on twenty days' notice, in writing by the Secretary, of the time and place of considering such revocation, and the deposit of said notice in the U. S. Postoffice addressed to the person at his or her last known place of residence or business, and the registered postage prepaid thereon shall be due and legal service of such notice, but no certificate shall be revoked for nonpayment if the person so notified shall pay such penalty as may be imposed by said Board: *Provided*, That the said Board may impose a penalty not exceeding ten dollars upon persons so notified as a condition allowing certificates to stand valid. Any person whose certificate of registration has been revoked for failure to pay his or her renewal fee, as herein provided, may apply to have the same regranted to him or her upon payment to the Board of all renewal fees that should have been paid had the certificate of registration not been revoked, together with the penalty of twenty-five dollars.

1917, XXX, 1.

(2465) § 13. Revocation of or Suspension of Certificate—Grounds—Notice to Party—Hearing—Reissuance of Certificate.—Any person registered as provided for in this Article may have his or her certificate of registration revoked or suspended by the South Carolina State Board of Opticians and Optometrists for any of the following causes: (1) His or her conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy thereof certified by the Clerk of Court by the Judge in whose Court the conviction is had, shall be exclusive evidence. (2) When their certificate of registration has been secured by fraud or deceit practiced upon the Board. (3) For unprofessional conduct or for gross ignorance or inefficiency in his profession. Unprofessional conduct shall mean employing what are known as "Cappers," "Peddlers," or "Steerers," employing directly or indirectly any suspended or unlicensed optician or optometrist to perform any work covered by this Article, the advertising of an optical business or treatment or advice in untruthful, improbable or impossible statements are made, or habitual intemperance or gross immorality. (4) When the holder is suffering from a contagious or infectious disease: *Provided, however*, That before any certificate shall be revoked or suspended, the holder thereof shall have notice, in writing, of the charge or charges against him or her, and at a date specified in said notice, at least five days after the service thereof, be given public hearing, and have an opportunity to produce testimony in their favor and confront the witnesses against him or her. Any person whose certificate has been suspended may, after expiration of ninety

days, apply to have the same regranted, and the same shall be regranted him or her upon a satisfactory showing that their disqualification has ceased.

1917, XXX, 1.

(2466) § 14. Premiums Forbidden.—It shall be unlawful for any person or persons to offer or give as a premium, with newspapers, books, magazines or merchandise, or in any other manner to induce trade, eyeglasses, spectacles or lenses.

1917, XXX, 1.

(2467) § 15. Violation of Article a Misdemeanor—Penalty.—Any person who shall violate the provisions of this Article shall be deemed guilty of a misdemeanor, and, upon conviction in a Court of competent jurisdiction, be punished by a fine of not less than twenty-five dollars and not exceeding one hundred dollars, or by imprisonment not less than twenty days and not exceeding thirty days, all fines thus received, one-fourth to be paid party or parties furnishing proof necessary to convict, three-fourths to go to the common schools fund in the county in which the conviction takes place.

1917, XXX, 1.

(2468) § 16. Magistrates to Have Jurisdiction—Duty of Solicitors, Sheriffs and Constables.—All Magistrates shall have jurisdiction of violations of this Article. It shall be the duty of the respective Solicitors to prosecute all violations of this Article, and it shall be the duty of Sheriffs and Constables to report any violations of this Article to the Secretary of the South Carolina State Board of Examiners, and render such assistance to the Board or an officer as may be called on to perform.

1917, XXX, 1.

(2469) § 17. Not Applicable to Certain Physicians or Established Opticians—Applicable to Peddlers—Proviso as to Holders of Certificates.—Nothing in this Article shall be construed to apply to physicians authorized to practice under the laws of the State of South Carolina, nor to persons who sell spectacles or eyeglasses as merchandise from a regular established place of business, but does apply to those commonly called peddlers, who solicit from house to house in cities and counties: *Provided*, The provisions of this Article shall not be construed to prevent persons who hold certificates from practicing from town to town, or from house to house, or place to place.

1917, XXX, 1.

(2470) § 18. When Optometrist Shall Not Use Prefix "Doctor."—Any person practicing optometry shall be prohibited from using the prefix Doctor to his name, unless he has received a degree from a duly authorized college authorized to grant the title.

1917, XXX, 1.

(2471) § 19. Minor Not to Be Granted Certificate.—It shall be unlawful for the Board of Examiners to grant a certificate to any one in the State of South Carolina under legal age.

1917, XXX, 1.

ARTICLE IV.**Veterinary Medicine and Surgery.**

(2472) § 1. License for Practice of Veterinary Medicine.—No person shall practice veterinary medicine or surgery in any of its branches in the State of South Carolina unless he shall have obtained a license from the Board of Veterinary Examiners for South Carolina.

1920, XXXI, 905.

(2473) § 2. Board of Veterinary Examiners—Election—Term—Meeting.—That a Board is hereby constituted and established, which shall be known by the name of the "Board of Veterinary Examiners for South Carolina," which shall consist of three members, each of whom shall be a graduate of a recognized veterinary college, but not more than two of whom shall be graduates of the same veterinary college. Members of the said Board shall be elected by the South Carolina Association of Veterinarians and thereupon shall be commissioned by the Governor. The members of the Board shall be elected first for terms of one, two and three years, respectively, or until their successors shall have been elected. The South Carolina Association of Veterinarians shall at each annual meeting thereafter elect a person for the term of three years, or until their successor shall have been elected to fill the place of the member of the Board whose term of office shall at that time expire, and shall also fill such vacancies in the Board as may have occurred. The South Carolina Association of Veterinarians shall hold a meeting and elect said Board as early as it is convenient to do so after the passage of this Article, and said Board shall hold a meeting within three months after being commissioned by the Governor, at which meeting shall be elected a President and a Secretary and Treasurer. The said Board shall meet at least once a year, at such time and place as may be ordered by the President, who shall have power to call extra meetings, if in his discretion he deems it necessary.

1920, XXXI, 905.

(2474) § 3. Secretary-Treasurer—Records.—It shall be the duty of the Secretary and Treasurer to keep a record of all proceedings of the Board and a book showing all licenses issued, collect all fees provided for herein, and shall advertise the place and date on which the Board will meet and hold examinations twice, in at least three daily papers of this State, at least one month prior to the examination. The Secretary shall keep a full record of the proceedings of the said Board and of the traveling and necessary incidental expenses of the members thereof, and all necessary expenses of the Board shall be paid out of the funds collected by the Secretary and Treasurer.

1920, XXXI, 905.

(2475) § 4. License of Certain Practitioners Upon Application—Provisos.—All persons who are not graduates of recognized veterinary colleges, but who have been in actual practice in South Carolina of veterinary medicine and surgery continuously as their vocation for five consecutive years immediately prior to the passage of this Article, desiring to practice

veterinary medicine and surgery in this State, shall make application therefor to the Board of Veterinary Examiners for South Carolina within six months after the passage of this Article, which shall be accompanied by affidavits of five disinterested freeholders, and owners or breeders of live stock, which affidavits shall state, of affiant's own knowledge, that said applicant has been in actual practice in South Carolina of veterinary medicine and surgery continuously as a vocation for five consecutive years immediately prior to the passage of this Article. Upon satisfactory proof that said applicant has been in the actual practice of veterinary medicine and surgery in South Carolina as above stated for a period of five years, the Board of Veterinary Examiners for South Carolina shall, upon payment of the fees hereinafter provided, issue to said applicant a license to practice as a nongraduate practitioner, but such license shall not entitle the holder thereof to append to his name or cause to be appended thereto any initials or title whatsoever, unless said nongraduate practitioner has been engaged in the actual practice of veterinary medicine and surgery in South Carolina as above stated for a period of ten years prior to the passage of this Article: *Provided, however,* That all persons who are graduates of recognized veterinary colleges and are now engaged in the practice of their profession in this State shall forward to said Board their diploma or satisfactory proof within six months after the passage of this Article, that they are graduates of a recognized veterinary college, and upon satisfactory proof that said applicant is a graduate of a recognized veterinary college, practicing in this State, the Board of Veterinary Examiners for South Carolina shall, upon the payment of the fees hereinafter provided, issue all such applicants a license to practice veterinary medicine and surgery.

1920, XXXI, 905.

(2476) § 5. Examinations for License.—All persons except those to whom a license is issued under Section 4 of this Article desiring to obtain a license to practice veterinary medicine and surgery in this State shall make application in writing to the Secretary of said Board of Veterinary Examiners for South Carolina at least two weeks prior to the date of examination upon blanks prescribed and furnished by said Board, which shall be accompanied by applicant's affidavit setting forth his qualifications. A license shall be granted upon the applicant passing an examination satisfactory to said Board upon such branches of veterinary medicine and surgery as the said Board may prescribe. Such examinations may be oral or written, or both, at the discretion of the Board. The said Board shall have the right to refuse to issue a license to any applicant upon the grounds of gross immorality or gross malpractice, and shall have like power, upon satisfactory cause shown, to revoke such license on said grounds after due hearing: *Provided,* That the said Board before acting upon any application, if deemed necessary, may require additional statements or affidavits or other information relative to applicant's qualifications.

1920, XXXI, 905.

(2477) § 6. **Fee.**—Every applicant for a license to practice veterinary medicine and surgery in this State shall be accompanied by a fee of ten dollars and no application shall be considered unless said fee has been paid: *Provided, however,* A temporary license may be issued to a graduate of a recognized veterinary college by any member of said Board, upon the payment of a fee of five dollars, to practice until the next regular meeting of the Board, at which time the temporary license shall expire, but such temporary license shall not be granted by a member of the Board after the Board has rejected the applicant. All fees shall be paid to the Secretary and Treasurer of the Board of Veterinary Examiners.

1920, XXXI, 905.

(2478) § 7. **Record of License—Forfeiture.**—Every person shall, upon receipt of his license to practice in this State, have said license recorded in full in the office of the Clerk of Court in the county in which he resides, which license shall be recorded by said Clerk only upon presentation of the license. Any person holding a license moving to another county shall notify the Secretary of the Board of Veterinary Examiners for South Carolina of the fact of his removal, his new postoffice address, and shall have said license recorded in the office of the Clerk of Court of the county to which he moves. Any failure, neglect or refusal on the part of any person holding such license to have the same recorded in the office of the Clerk of Court, as above directed, within three months after issuance of same, or removal, as above stated, shall constitute a forfeiture of said license, and no person who forfeits his license shall be issued a new license, except upon payment to the said Board of the sum of twenty-five dollars as a penalty for such failure, negligence or refusal. A traveling veterinarian, who has been licensed to practice in this State, shall keep the Secretary of the Board of Veterinary Examiners of South Carolina informed of all changes in his postoffice address and give the time and place he enters the State of South Carolina.

1920, XXXI, 905.

(2479) § 8. **Annual Fee.**—Every person holding a license to practice veterinary medicine and surgery in the State of South Carolina shall pay an annual fee of one dollar to the Secretary and Treasurer of the Board of Veterinary Examiners of South Carolina, and the Board of Veterinary Examiners may revoke the license of any person failing or refusing to pay said dues.

1920, XXXI, 905.

(2480) § 9. **Compensation of Examiners.**—The members of said Board of Veterinary Examiners of South Carolina shall receive for their services the same per diem and mileage as is paid to members of the General Assembly for each day engaged. After all expenses have been paid, any surplus may be set aside by said Board as a contingent fund for the purpose of supplying the Secretary and Treasurer with necessary stamps and stationery and to enforce the performance of this Article.

1920, XXXI, 905.

(2481) § 10. **Persons Subject to License.**—All persons who profess publicly to be a veterinary surgeon, or veterinary dentist, or who shall treat, operate or prescribe for any physical ailment in, or any physical injury to, or deformity of any domesticated animal, for which he shall receive compensation, either directly or indirectly, shall be regarded as practicing veterinary medicine within the meaning of this Article: *Provided*, Nothing in this Article shall be construed to prevent, interfere with, or punish veterinarians of the United States Army, or of the United States Bureau of Animal Industry, or of veterinarians engaged in State live stock sanitary work under proper State officials, when actually engaged in performing such duties as are required by their respective departments, nor to prevent any lawfully qualified veterinarian residing in other States or countries meeting qualified veterinarians in this State in consultation, nor to prevent persons from gratuitously treating animals, nor to prevent any person from castrating, spaying or dehorning domesticated animals: *Provided, however*, The person who gratuitously treats animals, castrates, spays or dehornes domesticated animals does not use or assume any title appertaining to the practice of veterinary medicine and surgery. Nothing in this Article shall prevent students of recognized veterinary colleges from practicing, from the end of one college season to the beginning of another college season, under a licensed veterinarian after such students have completed one college year, and nothing in this Article shall prevent official county and State Farm Demonstration Agents and other properly instructed persons holding permits from the State Veterinarian from administering anti-hog cholera serum and virus.

1920, XXXI, 905.

(2482) § 11. **Practice Without License a Misdemeanor—Penalty.**—Any person practicing veterinary medicine and surgery in this State without a license as hereinabove provided shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than twenty-five or more than one hundred dollars, or be imprisoned for not less than ten days or more than thirty days, for each and every offense.

1920, XXXI, 905.

ARTICLE V.

Embalmers.

(2483) § 1. **Board of Embalming of South Carolina.**—There is hereby established and created a Board to be known as the State Board of Embalmers of South Carolina.

1912, XXVII, 752.

(2484) § 2. **How Appointed—Vacancies.**—The Board shall consist of five members to be appointed by the Governor, of whom three shall be members of the South Carolina Funeral Directors' and Embalmers' Association, and the President and Secretary of the South Carolina State Board of Health shall be *ex officio* members. All vacancies occurring on the

Board shall be filled by the Governor. Each of the three appointive members shall serve for a term of three years from the date of the going into effect of his appointment, except those first appointed, who shall serve as follows: One for one year, one for two years, one for three years, and of these the Governor shall designate the number of years each shall serve. Any one having served as a member of the Board shall be eligible for reappointment. The first Board shall be appointed on or before the first day of July, 1912, *anno Domini*, and one member annually thereafter shall be appointed, who shall serve for a term of three years, from the first day of July thereafter. All subsequent appointments on the Board, except those made to fill vacancies and those of the President and Secretary of the South Carolina Board of Health, shall be selected from three names sent to the Governor by the South Carolina Funeral Directors' and Embalmers' Association. But if said nominations are not made to the Governor by June 15th, of any year, the Governor shall appoint and commission a suitable person to fill the vacancy occasioned by the expiration of the term of said member of said Board. The members of said Board of Embalmers shall be residents of the State of South Carolina, each of whom shall have had at least five years' experience in the practice of embalming, and in the care and disposition of dead human bodies in the State of South Carolina, except the President and Secretary of said Board of Health. The Governor shall have power to remove from office any member of said Board for incapacity, misconduct or neglect of duty.

1912, XXVII, 752.

(2485) § 3. Board to Be Commissioned.—The Governor shall furnish each person appointed to serve on the State Board of Embalmers a commission of appointment. The appointee shall qualify by taking usual oath of office before a competent officer, within ten days after said appointment has been made, and this fact shall be noted on the commission of appointment, and shall be filed with the Board of Embalmers.

1912, XXVII, 752.

(2486) § 4. Organization.—There shall be elected at first meeting a President and Secretary from the members of the said Board, who shall serve for one year, or until their successors shall have been elected and qualified. The Secretary shall furnish such bonds as may be required of him by the Board. The Board may adopt a common seal. The President of said Board (or in his absence a President *pro tempore* elected by members present) is hereby authorized to administer oaths to witnesses testifying before said Board. The said Board shall, from time to time, adopt rules, regulations and by-laws, not inconsistent with the laws of this State, or of the United States, whereby the performance of the duties of said Board and the practice of embalming dead human bodies and the conduct of schools for teaching embalming shall be regulated. The said Board shall meet at least once in each year, and may meet as often as the proper and efficient discharge of its duties shall require, upon the call of its President. The members of said Board shall be entitled to a per diem allow-

ance of five dollars each day actually engaged in the Board's duties, and to expenses not exceeding five cents a mile for every mile traveled while so engaged, payable as herein provided.

1912, XXVII, 752.

(2487) § 5. **Embalmers to Obtain License.**—Every person desiring to engage in the practice of embalming dead human bodies within the State of South Carolina, shall make a written application to the State Board of Embalming for a license, accompanying the same with a license fee of ten dollars, whereupon the applicant, as aforesaid, shall present himself or herself before said Board at a time and place fixed by said Board, and if the Board shall find, upon examination, that the applicant is of good moral character, possessed of skill and knowledge of embalming, anatomy and the care and disposition of the dead and has a reasonable knowledge of sanitation and the disinfection of bodies of deceased persons, and the apartment, clothing and bedding in cases of death from infectious and contagious diseases, and has attended a school of embalming of recognized standards and merits as determined by said Board, and taken a six months' course therein and served with an embalmer holding a license from the duly constituted authorities of any State for three months, or has served six months under such embalmer and taken a three months' course in such school, the Board shall issue to said applicant a license to practice embalming and the care and disposition of the dead and shall register such applicant as a duly licensed embalmer. Such license shall be signed by a majority of the Board and attested by its seal. All persons receiving a license under the provisions of this Article shall also register the fact at the office of the Board of Health of the city, and, where there is no Clerk of the town, with the nearest Magistrate, where it is proposed to carry on said practice, and shall display said license in a conspicuous place, in the office of such licentiate: *Provided*, That said Board may issue such license without such examination to persons licensed by the duly constituted authorities of any State wherein persons licensed by the State Board of Embalming of the State of South Carolina are permitted to practice embalming in such other State by virtue of such license and without the examination otherwise required by law: *And provided, further*, That all licenses heretofore or hereafter issued by the State Board of Embalming of this State shall terminate on the 30th day of June of each year, but may be renewed on the day following by making payment of one dollar to said Board therefor.

Civ. '12, § 1589; Civ. '02, § 1095; 1900, XXIII, 408; 1912, XXVII, 752; 1921, XXXII, 164.

(2488) § 6. **Per Diem and Fees.**—All expenses and per diem of members of this Board shall be paid from fees received under the provisions of this Article, and shall in no manner be an expense to the State. All moneys received in excess of said per diem allowance and other expenses provided for, shall be held by the Secretary of said Board as a special fund for meeting expenses of said Board.

1912, XXVII, 752.

(2489) § 7. Arterial or Cavity Treatment Prohibited After January 1, 1913.—On and after the first day of January, 1913, *anno Domini*, it shall be unlawful for any person not a licensed embalmer, licensed either under the provisions of this Article, or licensed previously to the passage hereof by the State Board to practice or pretend to practice embalming, either by arterial or cavity treatment.

1912, XXVII, 752.

(2490) § 8. Law Not to Apply in Certain Cases.—Nothing in this Article shall apply to, or in any manner interfere with, the duties of any officer of local or State institutions, nor shall this Article apply to any person engaged simply in the furnishing of burial receptacles for the dead, and burying the dead, but who do not practice embalming.

1912, XXVII, 752.

(2491) § 9. Misdemeanor to Violate Law.—Any person who shall practice or hold himself or herself out as practicing embalming, without having complied with the provisions of this Article, shall be guilty of a misdemeanor, and, upon conviction thereof in any Court of competent jurisdiction, shall be sentenced to pay a fine of not less than five dollars nor more than one hundred dollars for each and every offense. All fines assessed for the violation of any of the provisions of this Article shall be paid into public school fund of this State.

1912, XXVII, 752.

(2492) § 10. Prohibited from Embalming Body Where Crime is Suspected.—It shall be unlawful to embalm a dead human body when any fact within the knowledge, or brought to the attention of the embalmer is sufficient to arouse suspicion of crime in connection with the cause of death of the deceased, until the permission of the Coroner or of a Magistrate, if a Coroner be not accessible, shall have first been obtained. Any person violating the provisions of this Section shall be deemed guilty of a misdemeanor; and upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

1912, XXVII, 752.

ARTICLE VI.

Quarantine.

(2493) § 1. Port of Charleston, Administration of Quarantine—Quarantine Officer, Appointment, Term, Salary of.—The administration of quarantine of the port of Charleston shall be in charge of the Board of Health of the City of Charleston, subject to the advice and supervision of the Executive Committee of the State Board of Health, and they shall have full power and authority to make such rules and regulations for the institution and enforcement of quarantine as they may deem expedient and as may be conformable to law.

The quarantine officer of the port of Charleston shall be appointed by the Governor on the nomination of the Board of Health of the City of

Charleston, and shall be vested with all the powers and authority heretofore by law conferred upon the Health Officer of the port of Charleston, and shall exercise the same under the direction and control of the said Board of Health of the City of Charleston. He shall receive a salary from said Board at the rate of eighteen hundred dollars per annum, and he shall reside at the quarantine station. He shall be appointed during the month of January, and hold his office for two years, and until his successor shall be appointed, unless sooner removed by the Governor, at the request of the Board of Health of the City of Charleston, or for other reasons satisfactory to him.

For the purpose of carrying out the provisions of this Article with regard to the port of Charleston, the sum of two thousand five hundred dollars shall be annually appropriated, to be paid by the State Treasurer, on the order of the Chairman of the Board of Health of Charleston.

Civ. '12, § 1659; Civ. '02, § 1135; G. S. 997; R. S. 977; 1881, XVII, 597; 1884, XVIII, 691.

(2494) § 2. Supervision and Control of Port of Georgetown—Quarantine Officer, Appointment, Term, Salary of.—The port of Georgetown shall remain under the supervision and control of the Executive Committee of the State Board of Health, and a quarantine officer shall be appointed for the said port who shall be vested with the power and authority heretofore by law conferred upon the Health Officer, and shall exercise the same under the direction and control of the Executive Committee of the State Board of Health, or such local Board as the said Executive Committee may appoint for that purpose. He shall return to the said Executive Committee, or to the said local Board, all fees collected by him, and shall receive for his services annually five hundred dollars, and one hundred and fifty dollars for boat hire.

Civ. '12, § 1660; Civ. '02, § 1136; G. S. 977; R. S. 993; 1881, XVII, 597; 1884, XVIII, 691.

(2495) § 3. Administration of Quarantine at Port of Beaufort.—The administration of the quarantine of the port of Beaufort, embracing St. Helena entrance and Port Royal, shall be in charge of the Township Board of Health of Beaufort Township, subject to the advice and supervision of the Executive Committee of the State Board of Health; and they shall have full power and authority to make such rules and regulations for the institution and enforcement of quarantine as they may deem expedient and as may be conformable to law. The Quarantine Officers of the Port of Beaufort, St. Helena and Port Royal shall be appointed by the Governor on the nomination of the Township Board of Health of Beaufort Township. They shall be invested with all powers and authority heretofore by law conferred upon the Health Officers of St. Helena and Port Royal, and they shall exercise such powers and authority under the direction and control of the said Township Board of Health of Beaufort Township. They shall each receive a salary from said Board at the rate of eight hundred dollars per annum, and the officer at St. Helena entrance one hundred and fifty dollars for boat hire, and the officer at Port Royal three hundred dollars for boat hire, and each shall reside at the quarantine station for which he

is appointed. They shall be appointed during the month of January, and shall hold their office for two years, and until their successors shall be appointed, unless sooner removed by the Governor at the request of the Township Board of Health of Beaufort Township, or for other reasons satisfactory to him. For the purpose of carrying out the provisions herein with regard to the port of Beaufort the sum of two thousand and fifty dollars shall be annually appropriated, to be paid by the State Treasurer on the order of the Chairman of the Township Board of Health of Beaufort Township.

Civ. '12, § 1661; Civ. '02, § 1137; R. S. 994; 1891, XX, 1251.

(2496) § 4. Quarantine Hospital or Lazaretto in Charleston Harbor.—The site of the Lazaretto attached to the Quarantine Station in Charleston harbor is changed from Morris Island to the point on James Island adjacent to Fort Johnson, upon the lands now the property of the State.

Civ. '12, § 1662; Civ. '02, § 1138; G. S. 945; R. S. 995; 1880, XVII, 332.

(2497) § 5. Station of Health Officer in Charleston Harbor.—The station of the Quarantine Officer of the port of Charleston, or his Deputies, shall be at a suitable point on Sullivan's Island, or at Fort Johnson, as may be thought best for the expeditious boarding and examination of vessels arriving from all ports into the harbor of Charleston; the location of said station to be determined upon by the Harbor Commission; and the necessary buildings shall be erected for the accommodation of the Quarantine Officer and his Deputies.

Civ. '12, § 1663; Civ. '02, § 1139; G. S. 946; R. S. 996; 1880, XVII, 332; XIV, 227.

(2498) § 6. Anchorage of Vessels—Hilton Head Includes Port of Beaufort.—The anchorage ground for vessels at quarantine at the ports of Georgetown, Charleston and Hilton Head shall be designated by buoys, to be anchored under the direction of the Quarantine Officers; and every vessel subject to quarantine shall, immediately on her arrival, anchor within them, and there remain, with all persons arriving on her subject to the examination and regulations imposed by law. For the purpose of quarantine, the port of Hilton Head shall be held to include the port of Beaufort. The quarantine anchorage for Port Royal shall be not less than one mile below and south of the mouth of Johnson's or St. Helena River.

Civ. '12, § 1664; Civ. '02, § 1140; G. S. 947; R. S. 997; 1868, XIV, 112, § 1; 1879, XVII, 102.

(2499) § 7. Vessels Subject to Quarantine—Regulations—Detention—Practique.—For the more certain prevention of the introduction of disease into the several ports of this State, every vessel arriving from a foreign port, or from a suspected or infected port of the United States, shall immediately proceed to the quarantine station of the port of arrival and display a yellow flag, or the vessel's ensign in the rigging, and shall be visited by the Quarantine Officer between sunrise and sunset as soon as possible after such arrival. All vessels which have had infectious or contagious diseases on board during the voyage, or while in the port of departure,

and also all vessels from infected or suspected latitudes or ports, shall be subject to a detention for such time as the constituted health authorities at the port of arrival may deem requisite, and pratique shall not be given to any such vessel until such vessel shall have been thoroughly disinfected and fumigated, the cargo and ballast having been first discharged, unless the constituted health authorities of the said port shall deem such disinfection, fumigation and discharge unnecessary.

Civ. '12, § 1665; Civ. '02, § 1141; G. S. 948; R. S. 998; 1881, XVII, 596; 1886, XIX, 441; 1893, XXI, 520.

(2500) § 8. Vessels at Quarantine on First of November.—All vessels and persons remaining at quarantine on the first day of November, shall thereafter be subject to such quarantine and restrictions as vessels and persons arriving on and after that day.

Civ. '12, § 1666; Civ. '02, § 1142; G. S. 949; R. S. 999; 1868, XVI, 113, § 3.

(2501) § 9. Infected and Foreign Vessels Arriving After First of November—Passengers to Be Vaccinated.—All vessels arriving on and after the first day of November, having had, during the voyage, a case of smallpox, cholera, or typhus, or infectious or contagious disease, and every vessel from a foreign port having passengers, and not hereinbefore declared subject to quarantine, shall, on her arrival, be anchored at quarantine ground, and be visited by the Quarantine Officer or his Deputies, but shall not be detained beyond the time requisite for due examination, unless she shall have had on board during the voyage some case of smallpox, typhus, or other infectious or contagious disease, in which case she shall be subject to such quarantine as the Quarantine Officer or his Deputies shall prescribe. And it shall be the duty of the Quarantine Officer or his Deputies, whenever necessary for the public health, to cause the persons on board of any vessel to be vaccinated.

Civ. '12, § 1667; Civ. '02, § 1143; G. S. 950; R. S. 1000; 1869, XIV, 210, § 2.

(2502) § 10. Vessels at Wharves With Passengers and Cargo May Be Ordered to Quarantine Ground.—The Quarantine Officer, Intendant and Wardens, or the Mayor and Aldermen, as the case may be, and in the port of Charleston the Harbor Commission, whenever, in their judgment the public health shall require, may order any vessel at the wharves of either of said ports, or in their vicinity, to the quarantine ground or other place of safety, and may require all persons, articles, or things introduced into said ports from such vessels to be seized, returned on board, or removed to the quarantine ground or other place. If the master, owner or consignee of the vessel, cannot be found, or shall refuse or neglect to obey the order of removal, the Quarantine Officer, Intendant and Wardens, or Mayor and Aldermen, and in the port of Charleston the Harbor Commission, as the case may be, shall have power to cause such removal, at the expense of such master, owner, or consignee, and such vessel or person shall not return to the port without the written permission of the Quarantine Officer.

Civ. '12, § 1668; Civ. '02, § 1144; G. S. 951; R. S. 1001; 1868, XIV, 113, § 4.

(2503) § 11. Vessels Bound North, After Examination, May Pass on Their Voyage.—If any vessel arriving at the quarantine ground, subject to quarantine, shall be bound to some port north of either of said ports, the Health Officer, after having duly visited and examined her, may permit her to pass on her voyage; but no such vessel shall be brought to anchor off either of said ports, nor shall any of her crew or passengers land in or hold any communication with either of said ports, or any person therefrom.
Civ. '12, § 1669; Civ. '02, § 1145; G. S. 952; R. S. 1002; 1868, XIV, 113, § 5.

(2504) § 12. Vessels Released from Quarantine to Deliver Permit to City Authorities.—The master of every vessel released from quarantine and arriving at a wharf in either of said ports shall, within twenty-four hours after such release, deliver the permit of the Quarantine Officer at the office of the Mayor or Intendant, as the case may be.

Civ. '12, § 1670; Civ. '02, § 1146; G. S. 953; R. S. 1003; 1868, XIV, 113, § 6.

(2505) § 13. Vessels Arriving at Quarantine May Return to Sea.—Nothing in this Article shall prevent any vessel arriving at quarantine from again going to sea before breaking bulk.

Civ. '12, § 1671; Civ. '02, § 1147; G. S. 954; R. S. 1004; 1868, XIV, 113, § 7.

(2506) § 14. Pilots to Ascertain Whether Incoming Vessels Are Subject to Examination.—It shall be the duty of each pilot belonging to either of the said ports to use his utmost endeavors to hail every vessel he shall discover entering the port, and to interrogate the master of such vessel in reference to all matters necessary to enable such pilot to determine whether, according to the provisions of the preceding Sections, such vessel is subject to quarantine or examination by the Quarantine Officer.

Civ. '12, § 1672; Civ. '02, § 1148; G. S. 955; R. S. 1005; 1868, XIV, 113, § 8.

(2507) § 15. Pilots to Notify Vessels Subject to Examination to Proceed to Quarantine Anchorage.—If, from the answers obtained to such inquiries, it shall appear that such vessel is subject to quarantine or examination by the Quarantine Officer, according to the preceding Sections, the pilot shall immediately give notice to the master of the vessel that he, his vessel, his cargo, crew, and passengers, are subject to such examination, and that he must proceed and anchor said vessel at the quarantine anchorage, there to await the further directions of the Quarantine Officer.

Civ. '12, § 1673; Civ. '02, § 1149; G. S. 956; R. S. 1006; 1868, XIV, 113, § 9.

(2508) § 16. Duties of Pilots Relative to Vessels Under Their Charge and Subject to Quarantine.—It shall be the duty of every pilot, who shall conduct into port a vessel subject to quarantine or examination by the Quarantine Officer: 1. To bring such vessel to anchor within the buoys marking the quarantine anchorage. 2. To prevent any vessel or boat from coming alongside of the vessel under his charge, and to prevent anything on board from being transferred to or thrown into any other vessel or boat. 3. To present to the master of the vessel a printed copy of this Article, when such copy shall have been delivered to him for that purpose. 4. To take care that no violations of this Article be committed by any person, and to report such as shall be committed, as soon as may be, to the Quarantine

Officer. 5. To subject himself to such detention and delay, and cleansing and purification, as to his person and clothing, as shall be prescribed by the Quarantine Officer, after having boarded or brought to the quarantine ground any vessel subject to quarantine.

Civ. '12, § 1674; Civ. '02, § 1150; G. S. 957; R. S. 1007; 1868, XIV, 113, § 10.

(2509) § 17. Duty of Quarantine Officer to Board Vessel and Report to Municipal Authorities.—It shall be the duty of the Quarantine Officer to board every vessel subject to quarantine or visitation by him immediately on her arrival, between sunrise and sunset; to inquire as to the health of all persons on board, and the condition of the vessel and cargo, by inspection of the bill of health, manifest, log book, or otherwise; to examine, on oath, as many and such persons on board as he may judge expedient to enable him to determine the period of quarantine and the regulations to which such vessels shall be made subject, and report the facts and his conclusions, and especially to report the number of persons sick, and the nature of the disease with which they are afflicted, to the Mayor or Intendant, in writing.

Civ. '12, § 1675; Civ. '02, § 1151; G. S. 958; R. S. 1008; 1868, XIV, 114, § 11.

(2510) § 18. Quarantine Officer to Reside Near Quarantine Grounds—Powers.—It shall be the duty of the Quarantine Officer to reside within or near the quarantine ground; and he shall have power: 1. To remove from the quarantine anchorage ground any vessel he may deem dangerous to the public health, to any place south or east of the quarantine ground, inside the bar. 2. To cause any vessel under quarantine, when he shall judge it necessary for the purification of the vessel or her cargo, passengers, or crew, or either of them, to discharge or land the same at the quarantine ground. 3. To cause any such vessel or cargo, bedding, and the clothing of persons on board, to be ventilated, cleansed and purified in such manner, and during such time, as he shall direct; and, if he shall judge necessary to prevent infection or contagion, to destroy any portion of such bedding or clothing; and, with the concurrence of the Mayor or Intendant, any portion of such cargo which may be deemed incapable of purification. 4. To prohibit and prevent all persons arriving in vessels subject to quarantine from leaving quarantine, or removing their goods or baggage therefrom, until fifteen days after the last case of pestilential, contagious, or infectious disease shall have occurred on board, and ten days after her arrival at quarantine, unless sooner discharged by him. 5. To permit the cargo of any vessel under quarantine, or any portion thereof, when he shall judge the same free from infection and contagion, to be conveyed to the landing. 6. To cause all persons under quarantine to be vaccinated, when he deems it necessary for the preservation of the public health. 7. To administer oaths and take affidavits in all examinations prescribed by this Chapter, and in relation to any alleged violation of quarantine law or regulation; such oaths to have the like validity and effect as oaths administered by a Magistrate.

Civ. '12, § 1676; Civ. '02, § 1152; G. S. 959; R. S. 1009; 1868, XIV, 114, § 12.

(2511) § 19. Quarantine Officer May Direct Arrest of Person Eloping or Violating Quarantine.—The Quarantine Officer may direct, in writing,

any Sheriff or Constable to pursue and apprehend any person, not discharged, who shall elope from quarantine, or who shall violate any quarantine law or regulation, or who shall obstruct the Health Officer in the performance of his duty, and to deliver him to said officer, to be detained at quarantine until discharged by said officer; but such confinement shall in no case exceed ten days. It shall be the duty of the Sheriff or Constable so directed to obey such direction.

Civ. '12, § 1677; Civ. '02, § 1153; G. S. 960; R. S. 1010; 1868, XIV, 114, § 13.

(2512) § 20. Quarantine Vessels Distinguished.—Every vessel during her quarantine shall be designated by colors to be fixed in a conspicuous part of her main shrouds.

Civ. '12, § 1678; Civ. '02, § 1154; G. S. 961; R. S. 1011; 1868, XIV, 114, § 14.

(2513) § 21. Boats Passing Through Range of Quarantined Vessels or Landing at Quarantine Ground Forbidden.—No vessel or boat shall pass through the range of vessels lying at quarantine, or land at the quarantine grounds, without the permission of the Health Officer.

Civ. '12, § 1679; Civ. '02, § 1155; G. S. 962; R. S. 1012; 1868, XIV, 114, § 15.

(2514) § 22. Lighters Not to Unload Quarantined Vessels.—No lighter shall be employed to load or unload vessels at quarantine without permission of the Quarantine Officer, and subject to such restrictions and regulations as he shall impose.

Civ. '12, § 1680; Civ. '02, § 1156; G. S. 963; R. S. 1013; XIV, 114, § 16.

(2515) § 23. Passengers to Be Maintained by Master of Vessel During Quarantine.—All persons being on board of vessels under quarantine shall be provided for by the master of the vessel in which they shall have arrived; and if the master shall omit or refuse to provide for them, or they shall have been sent on shore by the Quarantine Officer, they shall be maintained at the expense of such vessel, her owners, consignees, and each and every one of them; and the Quarantine Officer shall not permit such vessel to leave quarantine until such expenses shall have been repaid or secured; and the said Quarantine Officer shall have an action against such vessel, her owners and consignees, and each and every one of them, for such expenses, which shall be a lien on such vessel, and as such may be enforced as other liens on vessels.

Civ. '12, § 1681; Civ. '02, § 1157; G. S. 964; R. S. 1014; 1868, XIV, 114, § 17.

(2516) § 24. Criminal Passengers May Be Confined on Shore—Expense of Maintenance Defrayed by Vessel.—The Quarantine Officer, upon the application of the master of any vessel under quarantine, may confine in any suitable place on shore any person on board of such vessel charged with having committed an offense punishable by the laws of this State or the United States, and who cannot be secured on board of such vessel; and such confinement may continue during the quarantine of such person, or until he shall be proceeded against in due course of law; and the expense thereof shall be charged and collected as in the last preceding Section.

Civ. '12, § 1682; Civ. '02, § 1158; G. S. 965; R. S. 1015; 1868, XIV, 114, § 18.

(2517) § 25. Appeal Lies from Health Officer to Board of Appeal.—Any person aggrieved by any decision, order, or direction of the Quarantine Officer, may appeal therefrom to the Governor, Attorney General, and Comptroller General, who shall constitute a Board of Appeal; the said Board shall have power to affirm, reverse, or modify the decision, order, or direction appealed from, and the decision of the Board thereon shall be final.

Civ. '12, § 1683; Civ. '02, § 1159; G. S. 966; R. S. 1016; 1868, XIV, 114, § 19.

(2518) § 26. Appeal—How Made and Prosecuted.—An appeal to the Board of Appeal must be made by serving upon the Quarantine Officer a written notice of such appeal, within twelve hours after (Sundays excepted) the appellant receives notice of the order, decision, or direction complained of. Within twelve hours after the Quarantine Officer receives such notice (Sundays excepted) he shall make a return, in writing, including the facts on which his order, decision, or direction was founded, to the Governor, who shall immediately call a meeting of the Board of Appeal, and shall be President of said Board; and said appeal shall be heard and decided within twenty-four hours thereafter (Sundays excepted); and, until such decision is made, the order, decision, or direction complained of except it refer to the detention of a vessel, her cargo, or passengers at quarantine, shall be suspended.

Civ. '12, § 1684; Civ. '02, § 1160; G. S. 967; R. S. 1017; 1868, XIV, 114, § 20.

(2519) § 27. Health Officer May Enforce Orders—Expense to Be a Lien on Vessel.—Whenever the said Quarantine Officer, in the performance of the duties and in the execution of the powers imposed and conferred upon him by law, shall order or direct the master, owner, or consignee of any vessel under quarantine, to remove such vessel from her anchorage, or to any person or thing on board thereof, or which shall have been brought to said port therein, and said master, owner, or consignee shall neglect or refuse to comply with such order or direction, the said Quarantine Officer shall have power to employ such persons and assistants as may be necessary to carry out and enforce such order or direction, and the person so employed shall have a lien on such vessel, her tackle, apparel, and furniture, for their services and expenses.

Civ. '12, § 1685; Civ. '02, § 1161; G. S. 968; R. S. 1018; 1868, XIV, 116, § 21.

See ante, § (2493), as to supervision of quarantine by the State Board of Health.

(2520) § 28. Sanitary Inspectors—When and by Whom Appointed.—The Governor is authorized, upon the advice and recommendation of the Chairman of the State Board of Health, to appoint Sanitary Inspectors whenever any contagious or infectious disease shall appear or become epidemic in this State or any other State directly connected with this State by land or water transportation.

Civ. '12, § 1686; Civ. '02, § 1162; G. S. 970a; R. S. 1020; 1889, XX, 370.

(2521) § 29. Duty and Powers of Sanitary Inspectors.—The duty of such Sanitary Inspectors shall be, under the direction and control of the State Board of Health or its proper officers, to inspect railroad cars, vessels or other conveyances, and they are empowered to stop and detain such cars,

vessels or other conveyances, and any or all passengers, baggage and freight, when deemed expedient, and to have such cars, vessels or other conveyances, baggage or freight disinfected or destroyed if necessary to prevent the spread of disease. And the said Sanitary Inspectors are hereby constituted officers to administer oaths and to arrest all persons violating the sanitary laws of the State or interfering with and hindering them in the discharge of their duties.

Civ. '12, § 1687; Civ. '02, § 1163; G. S. 970b; R. S. 1021; 1889, XX, 370.

(2522) § 30. Appropriation to Pay Expenses.—The expenses for carrying out the provisions of the preceding Section shall be provided for by a contingent fund of three thousand dollars, which shall be administered by the State Board of Health and disbursed on the order of the Chairman of said Board, countersigned by the Governor.

Civ. '12, § 1688; Civ. '02, § 1164; G. S. 970c; R. S. 1022; 1889, XX, 370.

(2523) § 31. Governor May, by Proclamation, Declare Place Infected, Etc.—The Governor may issue his proclamation declaring any place where there shall be reason to believe a pestilential, contagious or infectious disease exists or may exist to be an infected place within the meaning of this Article and may make such regulations as may be necessary in order to prevent the entrance or spread of Asiatic cholera into or in this State.

Civ. '12, § 1689; Civ. '02, § 1165; G. S. 971; R. S. 1023; 1865, XIII, 307; 1868, XIV, 116, § 23.

(2524) § 32. When Effect of Proclamation of Infection to Cease—How Time Extended.—Such proclamation shall fix the period when it shall cease to have such effect; but such period, if he shall judge the public health to require it, may from time to time be extended, and notice of the same shall be published in all the newspapers of said port.

Civ. '12, § 1690; Civ. '02, § 1166; G. S. 972; R. S. 1024; 1868, XIV, 116, § 24.

(2525) § 33. Vessels from Infected Places Subject to Quarantine.—After such proclamation shall have been issued, all vessels arriving in either of the said ports from such infected place shall, together with their officers, crews, passengers and cargoes, be subject to all the provisions, regulations and penalties of this Article in relation to vessels subject to quarantine; but such quarantine shall not extend beyond the period when such proclamation shall cease to have effect, as provided by the last preceding Section.

Civ. '12, § 1691; Civ. '02, § 1167; G. S. 973; R. S. 1025; 1868, XIV, 116, § 25.

(2526) § 34. "Quarantine Officer" to Mean Quarantine Officer or His Deputies — Must Be Physicians.—Whenever the words "Quarantine Officer" occur in this Article, they shall be understood to mean Quarantine Officer or his Deputies: *Provided*, That said Deputies shall in all cases be graduates of a regular medical school.

Civ. '12, § 1692; Civ. '02, § 1168; G. S. 978; R. S. 1026; 1869, XIV, 210, § 1.

(2527) § 35. When Quarantine Officer May Employ Force.—The officer or officers who may be intrusted with the execution of the quarantine laws are authorized and directed, in case of a violation or attempt to violate any

of the said laws, to board, by force of arms, any vessel used in such violation or attempt to violate, and to detain her and her crew and passengers.

Civ. '12, § 1693; Civ. '02, § 1169; G. S. 980; R. S. 1027; 1809, V, 508, § 1.

(2528) § 36. May Fire Upon Vessel Violating Laws.—Any vessel which shall be restrained under quarantine laws and shall attempt to violate the same may be fired upon, and detained by force of arms.

Civ. '12, § 1694; Civ. '02, § 1170; G. S. 981; R. S. 1028; 1809, V, 508, § 3; 1832, VI, 473, § 7.

(2529) § 37. Boats and Armed Men May Be Employed by the Governor to Enforce Laws.—When the Governor may deem it necessary, he shall, at the expense of the State, hire and employ boats and small craft, and a sufficient number of able men, well armed, to be stationed wherever he may think fit, and to act under his directions, in order to enforce obedience to the laws of this State requiring the performance of quarantine, and also to arm such men, if requisite, with any firearms belonging to this State.

Civ. '12, § 1695; Civ. '02, § 1171; G. S. 982; R. S. 1029; 1797, V, 310.

(2530) § 38. Harbor Commission of Charleston Harbor—Authority.—The Harbor Commission shall control all quarantine stations and buildings in Charleston Harbor, shall designate and fix the location thereof, and shall make such regulations respecting the same as will secure the thorough and complete enforcement of the quarantine laws of the State, in no way, however, limiting or encroaching upon the powers and duties of the State Board of Health.

Civ. '12, § 1696; Civ. '02, § 1172; G. S. 983; R. S. 1031; 1880, XVII, 399.

(2531) § 39. Quarantine Charges.—The following uniform schedule of charges is hereby adopted for quarantine dues at all ports of the State, the amount collected to be expended for the more effective enforcement of quarantine at each port, to wit: For every vessel boarded and inspected, \$3; for every vessel of 100 tons or less, fumigating and disinfecting, each process, \$10; for every vessel over 100 tons and less than 250 tons, fumigating and disinfecting, each process, \$14; for every vessel over 250 tons and less than 500 tons, fumigating and disinfecting, each process, \$20; for every vessel over 500 tons and less than 750 tons, fumigating and disinfecting, each process, \$28; for every vessel over 750 tons and less than 1,000 tons, fumigating and disinfecting, each process, \$34; for every vessel over 1,000 tons and less than 1,250 tons, fumigating and disinfecting, each process, \$40; for every vessel over 1,250 tons, fumigating and disinfecting, according to tonnage of vessel, each process, \$44 to \$68. *Except*, That in every port in this State where the Holt System of Marine Sanitation is in use the following charges shall be enforced, to wit: *Inspection Fees*—For every schooner or brig, \$8; for every bark, \$10; for every steamship or ship, \$15. *Fumigation and Disinfection Fees*—For every schooner under 500 tons, a sum not exceeding \$50; for every bark or brig over 500 tons, a sum not exceeding \$60; for every steamship or ship under 1,000 tons, a sum not exceeding \$75; for every steamship or ship over 1,000 tons, a sum not exceeding \$100. In all cases the Quarantine Officer will collect the

charges made against vessels before giving permission to leave quarantine either by Captain's draft on consignee or in currency, and shall return the same to the Board charged with the administration of the quarantine at such port, who shall be responsible for the disbursement thereof.

Civ. '12, § 1697; Civ. '02, § 1173; G. S. 984; R. S. 1032; 1881, XVII, 579; 1883, XVIII, 619; 1889, XX, 371.

TITLE IX.

Of Public Instruction.

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CHAPTER XXIV.

Free Public Schools.

(2532) § 1. **State Superintendent of Education—His Election, Bond, and Salary.**—The State Superintendent of Education shall be elected at each general election, in the same manner as other State officers, and shall enter upon the duties of his office at the time prescribed by law. Before entering upon the duties of his office, he shall give bond, for the use of the State of South Carolina, in the penal sum of five thousand (\$5,000) dollars, with good and sufficient sureties, to be approved by the Governor, conditioned for the faithful and impartial performance of the duties of his office; and he shall also, at the time of giving bond, take and subscribe the oath prescribed in Section 26 of Article III of the Constitution of the State, which shall be endorsed upon the back of said bond; and the bond shall be filed with the Secretary of State, and by him recorded, and when so recorded, shall be filed with the State Treasurer. The Superintendent of Education shall receive as compensation for his services the sum of twenty-five hundred dollars per annum, payable monthly out of the State Treasury; and his traveling expenses, not exceeding three hundred dollars, shall be paid out of the State Treasury upon duly itemized accounts rendered by him.

Civ. '12, § 1698; Civ. '02, § 1174; 1896, XXII, 150; 1901, XXIII, 750; 1919, XXXI, 4.

(2533) § 2. **Duties.**—He shall have general supervision over all the public school funds, and it shall be his duty to visit every county in the State as often as practicable for the purpose of inspecting the schools, awakening an interest favorable to the cause of education, and diffusing as widely as possible, by public addresses and personal communications with school

officers, teachers and parents, a knowledge of existing defects and c' desirable improvements in the government and instruction of the said schools. He shall secure, by and with the advice of the State Board of Education, uniformity in the use of textbooks throughout the free public schools of the State, and shall forbid the use of sectarian or partisan books and instruction in said schools. He shall prepare and transmit to the several County Superintendents of Education, school registers, blank certificates, reports and such other suitable blanks, forms and printed instructions as may be necessary to aid school officers and teachers in making their reports and carrying into full effect the various provisions of the school laws of this State; and shall cause the law relating to the free public schools, with such rules, regulations, forms and instructions as shall be legally prescribed, to be printed, together with a suitable index, in pamphlet form, at the expense of the State; and he shall cause copies of the same to be transmitted to the several County Superintendents of Education for distribution. He shall collect in his office such school books, apparatus, maps and charts as can be obtained. He may certify copies of all papers filed in his office, and such certified copies shall be competent evidence thereof.

Civ. '12, § 1699; Civ. '02, § 1175; 1896, XXII, 150.

Duncan v. State Board, 74 S. C. 560, 564, 54 S. E. 760, affirmed in 78 S. C. 227, 249, 58 S. E. 1095.

(2534) § 3. To Report to General Assembly.—He shall make a report, through the Governor, to the General Assembly at each regular session thereof, showing: 1. The whole number of pupils registered in and the number enrolled as hereinafter defined in the free common schools of this State during the year ending the thirtieth day of the last preceding June, and the number in each county registered in and the number enrolled as hereinafter defined during the same period. 2. The number of whites and the number of colored, of each sex, attending the said schools. 3. The number of free schools in the State. 4. The number of pupils studying each of the branches taught. 5. The average wages paid to teachers of each sex, and to the principals of schools and departments in said schools. 6. The number of schoolhouses erected during the year, and the location, material and cost thereof. 7. The number previously erected, and the material of their construction, and their condition and value, and the number with the grounds enclosed. 8. The counties in which Teachers' Institutes were held, and the number attending the Institutes in each county. 9. Such other statistical information as he may deem important, together with such plans as he may have matured and the State Board of Education may have recommended for the management and improvement of the school fund and for the more perfect organization and efficiency of the free public schools. All State institutions of higher learning shall make an annual report on or before the first day of September of each year to the State Superintendent of Education, embracing a detailed account of the operations of such institutions, including the expenditure of the public moneys for the current scholastic year, which reports the State Superintendent of Education shall include in his annual report to the Legislature. All Acts or parts of Acts requiring annual reports to be made to other authorities are hereby repealed.

Civ. '12, § 1700; Civ. '02, § 1176; 1896, XXII, 150.

(2535) § 4. **Salary of Clerk.**—Such sum shall be allowed to the Superintendent of Education for the purpose of defraying the expenses of Clerk hire in his office, as may be appropriated from year to year.

Civ. '12, § 1701; Civ. '02, § 1177; 1896, XXII, 150.

(2536) § 5. **Comptroller General, State Superintendent of Education, State Treasurer and State Bank Examiner to Prepare and Use Uniform System of Reports.**—The Comptroller General, the State Superintendent of Education, the State Treasurer, and the State Bank Examiner are hereby authorized, empowered and directed to cooperate in the preparation of a single and uniform system of blanks to be used by these State officials in collecting data from the various County Auditors, County Superintendents of Education, County Treasurers, and other county officers who are now required by law to make reports to the State Governor. The various State officials shall issue, as far as practicable, identical forms in requesting data from county officers, thereby removing the necessity for needless and laborious tabulation and compilation of the same facts in different reports. Each State official shall distribute the blanks for his office among the county officers as now required by law.

1919, XXXI, 65.

(2537) § 6. **County Auditors, County Treasurers and County Superintendents of Education to Report on Forms Adopted—State Bank Examiner to Investigate Failure to Report.**—It shall be the duty of County Auditors, County Treasurers, and County Superintendents of Education to make all reports now required by law promptly upon the uniform blanks authorized in the preceding Section, and these reports shall at all times be open to public inspection during their respective office hours, and the State Bank Examiner shall investigate the failure, refusal or omission of any officer to make such report at such time as is now required by law. The findings of the State Bank Examiner, after such investigation, shall be filed with the Clerk of Court for record and shall be open to inspection by any citizen.

1919, XXXI, 65.

(2538) § 7. **State Treasurer to Hold, Devise or Bequest to State for Educational Purposes, Etc.**—The State Treasurer shall take and hold in trust for the State any grant or devise of lands and any gift or bequest of money or other personal property made to him for educational purposes, all gifts to the State where the purpose is not designated, all escheated property, the net assets or funds of all estates or copartnerships in the hands of the Courts of the State where there have been no claimants for the same within the last seventy years and other money coming into the treasury of the State by reason of the twelfth section of an Act entitled "An Act to provide a mode of distribution of the moneys as direct tax from the citizens of this State by the United States in trust to the State of South Carolina," approved the 24th day of December, in the year 1891, together with such other means as the General Assembly may provide. The State Treasurer shall from time to time invest in bonds of this State or of the United States, or in bonds of any county, school district or municipality within the State

of South Carolina, all such money in the name of the State, as a permanent State school fund, and shall pay out the income derived therefrom to the county or the counties of the State as the same may be apportioned among said counties by the State Board of Education: *Provided*, That no disposition shall be made of any property, grant, devise, gift, or bequest, inconsistent with the purposes, conditions or terms thereof. For faithful management of all property so received by the State Treasurer, he shall be responsible upon his bond to the State as for other funds received by him in his official capacity: *Provided, however*, That the Trustees of any school district of this State may take and hold in trust for their particular school district any property granted, devised, given or bequeathed to such school district and apply the same in the interest of the school of their district in such manner as in their judgment seems most conducive to the welfare of the schools when not otherwise directed by the terms of the grant, devise, gift or bequest: *And provided, further*, That before said Trustees shall assume control of any grant, devise, gift or bequest they shall give a bond, to be approved by the County Board of Education of the county in which such grant, devise, gift or bequest is made, conditioned for the faithful discharge of the trust reposed in them in respect to said property, which bond shall be deposited with the Clerk of the Court of said county. The said Trustees are hereby invested with the care and custody of all school-houses or other school property belonging to their districts, with full power to control the same in such manner as they may think will best subserve the interest of the free public schools, and the cause of education.

Civ. '12, § 1702; Civ. '02, § 1178; 1896, XXII, 150; 1917, XXX, 384.

(2539) § 8. Authority of State Treasurer to Invest Certain Funds Enlarged.—An Act entitled "An Act to amend an Act entitled 'An Act to authorize the State Treasurer to receive from the United States Government a certain fund, and to hold the same subject to the uses declared by an Act of Congress,' so as to allow change of investment," approved the 25th day of February, A. D. 1908, be, and the same is hereby, amended by adding after the word "State" and before the word "and," on line eight of Section 1 of said Act, the following, "or in bonds of any county, school district or municipality within the State;" and, further, by adding at the end of said Act the following: "And the State Treasurer is hereby authorized, in making the investments above provided for, to pay the market value for bonds, whether the same be above par or not," so that said Section, when so amended, shall read as follows: Section 1. That should this Bill become a law, whenever, and as soon as it shall become operative, the State Treasurer of South Carolina be, and he is hereby, authorized to receive and take from the United States Government the said sum of fifty thousand four hundred and ninety (\$50,490.00) dollars, and he is hereby directed to invest the same in bonds or stocks of the State of South Carolina, or in loans secured by like bonds or stock of the State, or in bonds of any county, school district or municipality within the State, and to hold the same subject to the trust and uses in the said Act of Congress designated, and the State Treasurer is hereby authorized in making the invest-

ments above provided for to pay the market value for bonds, whether the same be above par or not.

1914, XXVIII, 742; 1917, XXX, 340.

(2540) § 9. Other Duties.—The State Superintendent of Education shall discharge such other duties as may be provided by law; and he shall deliver to his successor, within ten days after the expiration of his term of office, all books, papers, documents and other property belonging to his office.

Civ. '12, § 1703; Civ. '02, § 1179; 1896, XXII, 150.

(2541) § 10. Vacancy—How Filled.—In case a vacancy occurs in the office of State Superintendent of Education, from any cause, such vacancy shall be filled by the Governor, by and with the advice and consent of the Senate, and the person so appointed shall qualify within fifteen days from the date of such appointment, or else the office shall be deemed vacant. If the vacancy occur during the recess of the Senate, the Governor shall fill the same by appointment until the Senate can act thereon.

Civ. '12, § 1704; Civ. '02, § 1180; 1896, XXII, 150.

(2542) § 11. State Board of Education.—The Governor, the Superintendent of Education, and seven persons, one from each Congressional District, to be appointed by the Governor, who shall hold office for four years, and until their successors may be appointed, unless sooner removed by the Governor, shall constitute the State Board of Education. Of this Board the Governor shall be *ex officio* Chairman, and the State Superintendent of Education shall be Secretary of the Board. The Secretary shall be custodian of its records, papers and effects, and shall keep minutes of its proceedings; and said records, papers and minutes shall be kept in the office of the State Superintendent of Education and shall be open to inspection by the public.

Civ. '12, § 1705; Civ. '02, § 1181; 1896, XXII, 150.

(2543) § 12. State Board of Education to Be State Board of Vocational Training—Federal Act Accepted.—The State of South Carolina hereby accepts the provisions of an Act of Congress entitled: "To provide for the promotion of vocational education; to provide for cooperation with the States in the promotion of such education in agriculture, the trades, industries and home economics; to provide for cooperation with the States in the preparation of teachers of vocational subjects, and to authorize the appropriation of money and to regulate its expenditure," and hereby designates and constitutes the State Board of Education as the South Carolina State Board of Vocational Training, to cooperate with the United States Government in putting such law into operation.

1917, XXX, 42.

(2544) § 13. May Cooperate for Educational Advancement.—The South Carolina State Board of Vocational Training is further authorized to cooperate with any local or State agency, now established or hereafter to be established, for the advancement of agricultural and industrial education.

1917, XXX, 42.

(2545) § 14. **Custodian of Funds—How Funds Disbursed.**—The Treasurer of the State of South Carolina is hereby created and appointed custodian of all funds coming to the State of South Carolina from the United States under the provisions of Section 12 above, and the State Treasurer shall be responsible on his bond for the correct and proper handling of such funds. All moneys appropriated by the State or paid into the State Treasury from the United States for the purpose herein set forth shall be paid out upon the order of the State Board of Education, duly countersigned and approved by the Secretary of the State Board of Education, and itemized vouchers shall be filed with the Comptroller General as in the case of other funds.

1917, XXX, 42.

(2546) § 15. **Field Agent for South Carolina School Improvement Association—Appointment—Duties.**—That the State Board of Education, upon the nomination of the State Superintendent of Education, shall annually elect a field agent of the South Carolina School Improvement Association, to be officially known as the School Community Organizer, who shall be paid a salary, traveling and office expenses, as appropriated by the Legislature, and have headquarters in the office of the State Superintendent of Education, and shall devote full time, under the direction of said Superintendent, in directing the work of improvement in the schools of the State and the organization of communities with reference thereto, and make such reports and perform such duties as may be necessary or helpful for the work of the South Carolina School Improvement Association; and shall perform all the duties now required by law of the President of the South Carolina School Improvement Association.

1914, XXVIII, 748; 1920, XXXI, 1187.

(2547) § 16. **Meetings of Board—Compensation.**—The said Board shall meet on the call of its Chairman, or upon the request of a majority of its members, at the office of the State Superintendent of Education, or at such other place as may be designated in the call. A majority of the Board shall constitute a quorum for transacting business. The official seal of the State Superintendent of Education shall be used for the authentication of the acts of the State Board. The members of the State Board of Education appointed by the Governor shall receive as compensation four dollars per diem and mileage as is provided for members of the General Assembly, not exceeding twenty days in any one year.

Civ. '12, § 1706; Civ. '02, § 1182; 1896, XXII, 150.

(2548) § 17. **Advisory Board to Superintendent of Education—Powers in Cases of Appeal.**—The State Board of Education shall constitute an advisory body, with whom the State Superintendent of Education shall have the right to consult when he is in doubt as to his official duty; and shall have power to review on appeal all decisions of the County Boards of Education, as hereinafter provided for. Appeals to the State Board of Education must be made through the County Boards of Education, in writing, and must distinctly set forth the question of law as well as the facts of the

case upon which the appeal is taken, and the decision of the State Board shall be final upon the matter at issue.

Civ. '12, § 1707; Civ. '02, § 1183; 1896, XXII, 150.

Ex parte Greenville College, 75 S. C. 93, 95, 55 S. E. 132. See, also, post, § (2597).
McCullum v. Crosby et al, 114, S. C. 169, 103 S. E. 514.

(2549) § 18. Powers of State Board of Education.—The State Board of Education shall have power (1) to adopt rules and regulations not inconsistent with the laws of the State for its own government, and for the government of the free public schools;* (2) to prescribe and enforce rules for the examination of teachers; (3) to prescribe a standard of proficiency before County Boards of Education which will entitle persons examined by such Board, to certification as teachers; (4) to prescribe and enforce the course of study in the free public schools; (5) to prescribe and enforce, as far as practicable, the use of a uniform series of textbooks in the free public schools of the State; to enter into an agreement with the publishers of the books prescribed, fixing the time of prescription and the price above which the books shall not be retailed during the period of prescription, and a rate of discount at not less than which the books shall be furnished by the retail dealers in this State; to require publishers, in the discretion of the Board, to establish in each county one or more depositories of their books within the State, at such place or places as the Board designates, and where such books may be obtained without delay, and to exact of the publishers a bond in the sum of not more than five thousand dollars, conditioned for the faithful performance of the agreement, and with a penalty of twenty-five dollars for each violation of the agreement, the form and execution of the bond to be approved by the Attorney General of the State, which agreement and bond shall be deposited with the State Treasurer; all recoveries thereon to go into the State Treasury for school purposes: *Provided*, That the State Board of Education shall not have power, without permission of the General Assembly of the State, to change the textbook within five (5) years from the date of its adoption, except for violation of the agreement entered into by its publisher with the State Board of Education, for which cause it may be changed by the said Board: *And provided, further*, That not more than 50 per cent. of the exchangeable books used in the first, second and third grades, and not more than 50 per cent. of the exchangeable books used in the fourth, sixth and seventh grades, and not more than 50 per cent. of the exchangeable books used in the high school grades, as designated by the State Board of Education, shall be changed at any one adoption. Every change for the textbooks adopted for any subject or grade shall be based on at least one reason to be assigned for the change by the State Board of Education, in writing, and the vote of the Board making such change shall be recorded in the minutes of said Board, and shall be taken on a roll call, said roll call to be recorded in said minutes. The meetings of the State Board of Education, at which textbooks may be adopted, shall be public, and it shall be unlawful for any teacher

*Williams v. Hiers, 51 S. C. 388, 29 S. E. 89.

There is no indication in this Section that State Board of Education may not provide by contract with publishers of school text-books to maintain at State capitol a central wholesale depository from which its agencies and the County depositories may be supplied at discount of not less than ten per cent. Duncan v. State Board, 74 S. C. 560, 564, 54 S. E. 760, affirmed in 78 S. C. 227, 249, 58 S. E. 1095.

drawing public school money, to use any book not prescribed by the State Board of Education without the consent in writing of said Board; (6) to review on appeal an order revoking a county certificate; (7) to award scholarships created by the General Assembly in the institutions of learning in whole or in part by the State; (8) to grant State teachers' certificates and to revoke them for immoral or unprofessional conduct, profanity or evident unfitness for teaching.

Civ. '12, § 1708; Civ. '02, § 1184; 1896, XXII, 150; 1914, XXVIII, 450; 1915, XXIX, 188.

Amended by Laws 1914, p. 450: State ex rel. Addy v. State Board of Education et al, 108 S. C. 312, 94 S. E. 110.

(2550) § 19. **State Board of Examiners for Teachers—Appointment—Term—Compensation.**—The State Board of Education is hereby authorized and directed to formulate a system for the examination and certification of teachers and to appoint, upon the nomination of the State Superintendent of Education, two examiners, at least one of whom shall be a woman, to conduct the work. One of the examiners shall be appointed for two years and one for four years, and all subsequent appointments shall hold for a regular term of four years. The examiners shall be regular members of the State Department of Education, with an office at the State Capitol, and shall conduct or have conducted such examinations in the several counties and in such other places as may be ordered from time to time by the State Board. Each examiner shall be paid an annual salary of three thousand dollars (\$3,000.00): *Provided*, The Registrar of the Bureau for Employment of Teachers shall be *ex officio* a member of the Board without additional compensation.

Civ. '12, § 1730; Civ. '02, § 1200; 1897, XXII, 516; 1903, XXIV, 1084; 1906, XXV, 37; 1908, XXV, 1151; 1909, XXVI, 73; 1910, XXVI, 740; 1911, XXVII, 116; 1912, XXVII, 575; 1913, XXVIII, 21; 1914, XXVIII, 500; 1917, XXX, 390; 1920, XXXI, 965.

Ex parte Greenville College, 75 S. C. 93, 94, 55 S. E. 132.

(2551) § 20. **Conversion of County Teachers' Licenses—State License to Graduates.**—All outstanding licenses issued by the State Board of Education or by the several County Boards of Education shall be convertible into State licenses, which shall be valid for the full term of such original licenses. All graduates of accredited colleges and normal schools whose curriculum standing, faculty and equipment have been examined and approved by the State Board of Education, and whose diplomas now entitle their holders to teachers' licenses without further examination, shall be granted upon written application, equivalent State licenses. After July 1, 1920, the State Board of Education may require whatever records and whatever additional tests may be necessary to insure an adequate, liberal, professional standard of certification.

1920, XXXI, 965.

(2552) § 21. **Summer Schools—Temporary County License.**—The State Board of Education may provide for teachers' institutes and summer schools in its discretion. Certificate credit on this basis shall be allowed in accordance with the rules of the Board. The several County Boards of Education may be authorized to issue temporary county licenses, which shall be valid only in the county where issued and only during the current year.

Hereafter every teacher in the free public schools shall hold a valid license issued by the State Examiners or a temporary county license issued by the County Board of Education.

1920, XXXI, 965.

(2553) § 22. Record of Teachers' Certificates.—A full record of all certificates shall be kept in the State Department of Education showing the name, age, sex, color and date of certificate of each person, and such other information as may be desired.

1920, XXXI, 965.

(2554) § 23. State Board of Education to Award Certain Scholarships.—The scholarships provided by law in the University of South Carolina, in the Clemson Agricultural College, in The Citadel, the Military College of South Carolina, and in the Winthrop College (The South Carolina College for Women), shall be awarded by the State Board of Education upon the recommendation of the faculties of the respective institutions, or of such committees as may be appointed for that purpose by the Boards of Trustees of those institutions.

Civ. '12, § 1709; 1911, XXVII, 113.

(2555) § 24. Dates of Competitive Examinations.—These recommendations shall be determined by competitive examinations; the dates of these examinations shall be as follows: For the University of South Carolina, Clemson Agricultural College and The Citadel, the Military College of South Carolina, the second Friday in July of each year; for Winthrop College (The South Carolina College for Women), the first Friday in July of each year.

Civ. '12, § 1710; 1911, XXVII, 113; 1920, XXXI, 765.

(2556) § 25. Conditions and Methods of Examinations.—The conditions and methods of these examinations shall be as follows: No person who, during the current year, has won or holds a scholarship at one State institution shall be eligible to stand an examination for a scholarship in any other State institution. No applicant for a scholarship shall be eligible to stand an examination for a scholarship if such applicant has already attended the institution for which the scholarship is intended, or any other institution of higher learning known as college or university: *Provided*, That this condition shall not apply where there is no other applicant. No student who has forfeited a free scholarship, because of failure to maintain himself, shall be eligible to compete for reappointment at the same institution, or appointment in any other institution. No applicant shall be debarred from any of these examinations by reason of the fact that he or she has not obtained a permit to stand. The questions for these examinations shall be prepared under the direction of the presiding officers of the several institutions, and shall be forwarded to the respective County Superintendents of Education ten days before the dates appointed for the respective examinations. The said County Superintendents of Education shall hold the said examinations under such rules as may be prescribed by the respective institutions and approved by the State Board of Educa-

tion, and the County Superintendents of Education shall forward the papers to the presiding officers of the several institutions. The papers shall be examined under the direction of the presiding officers of the respective institutions, and the faculty of each institution, or such committee as the Board of Trustees thereof may appoint for that purpose, shall make recommendations as to the award of the scholarships to the State Board of Education. Each institution shall have the right to reject any applicant who, in respect of age, of examination papers, or in any respect, fails to meet its requirements for admission: *Provided, however*, No scholarship shall be awarded to any boy or girl by any State College of this State when such boy or girl has resided less than six months in the county from which said boy or girl applies for such scholarship: *Provided*, That the provisions of this Section shall not apply to boys or girls of ministers of gospel of this State.

Civ. '12, § 1711; 1911, XXVII, 113; 1918, XXX, 652.

(2557) § 26. **Vacancies—How Filled.**—If a vacancy shall occur in a scholarship for which there is no eligible applicant from the county to which that scholarship belongs, the faculty of the institution in which that vacancy occurs, or the committee to which this duty has been entrusted by the Board of Trustees, may fill the vacancy by the appointment of any applicant from the State at large: *Provided*, That when such vacancy is filled by such appointment at large the scholarship shall again become vacant at the end of the current session if there is an eligible applicant from the county to which the scholarship regularly belongs.

Civ. '12, § 1712; 1911, XXVII, 113.

(2558) § 27. **Requirement as to Scholarships.**—Those receiving scholarships in the University of South Carolina shall be required to take the regular teachers' normal course.

Civ. '12, § 1713; 1911, XXVII, 113.

(2559) § 28. **State Board of Public Welfare to Investigate Financial Status of Certain Persons**—It shall be the duty of the State Board of Public Welfare to examine into the financial condition of all persons, their parents, guardians or other persons liable in law for the support and maintenance of such persons, who hold or apply for beneficiary scholarships or obtain or apply for free tuition in any of the State institutions for higher education in this State.

1916, XXIX, 880; 1920, XXXI, 990.

(2560) § 29. **Report.**—That the said Board shall make a thorough and full investigation into the financial condition of the persons enumerated in Section 28 above, and shall report their findings with their recommendations to the Board of Trustees of each State institution for higher education in this State in so far as their findings apply to persons holding beneficiary scholarships or obtaining free tuition in the respective institutions.

1916, XXIX, 880; 1920, XXXI, 990.

(2561) § 30. **Boards to Act on Report.**—That it shall be the duty of the Board of Trustees of such institutions to act upon said report and recom-

mendations, and to revoke or allow the beneficiary scholarships or free tuition as in their judgment the justice of each case may require: *Provided, however*, That nothing herein contained shall be held to apply to free scholarships or free tuition already granted in any of the colleges of this State.

1916, XXIX, 880; 1920, XXXI, 990.

(2562) § 31. Right of Appeal.—That any person or persons who may feel himself aggrieved by any action of any Board of Trustees, done in pursuance of the terms of this Article, shall have the right to appeal to and be heard by the State Board of Education, which said Board shall, after hearing all parties interested, reverse or affirm the action appealed from in so far as the same may relate to law or fact.

1916, XXIX, 880; 1920, XXXI, 990.

(2563) § 32. Normal Scholars Deposit Notes.—All holders of normal scholarships in the University of South Carolina shall be required at the time of the receipt of any scholarship funds by them to deposit with the Treasurer of the University their notes for the amount of scholarship money received, promising to repay such money to the State Treasurer at or before the expiration of eight years after the date of such receipt, which notes and promises shall be cancelled on presentation to the Dean of the Department of Education of satisfactory evidence of the promissors having taught school in South Carolina for two years after leaving the institution.

Civ. '12, § 1714; 1911, XXVII, 113.

(2564) § 33. Enrollment Defined.—No child shall be counted in the enrollment more than once, nor in more than one school district in any one school year, and the school officer charged with the duty of enrollment willfully violating this provision shall be guilty of a misdemeanor. The teacher or principal of every school shall keep and furnish annually to the Trustees of the school district a list of all pupils that have attended the school during the preceding scholastic year, showing the names of the pupils, their respective places of residence and the number of days each pupil has attended, which list shall be certified to the County Board of Education by said Trustees on or before the first day of August in every year.

Civ. '12, § 1715; Civ. '02, § 1185; 1896, XXII, 150.

(2565) § 34. Enrollment of Night Schools to Be Counted in Apportionment.—Whenever any children of school age, as provided by law, shall attend a public night school for twenty nights in any scholastic year, they shall be deemed enrolled and their names shall be used by the County Boards of Education in making apportionments just as if they had attended day school ten days, as provided by law: *Provided*, That the said night schools shall be taught by teachers qualified by law to teach in the public schools of the State: *And provided, also*, That the course of study shall be the course approved by the State Board of Education for use in the public schools of the State.

The same children shall not be counted twice in making up the enrollment of a school district.

Civ. '12, § 1716; 1905, XXIV, 960.

(2566) § 35. County Superintendent of Education—Election—Term—Bond—To Qualify Immediately—Failure in Thirty Days Creates Vacancy—Section Not to Apply to Bamberg, Saluda and Berkeley—Not to Affect Superintendents Now in Office.—There shall be elected by the qualified electors of the county a County Superintendent of Education for each county, who shall hold his office for a term of four years and until his successor is elected and qualified. He shall before being commissioned and entering upon the duties of his office, give bond to the State, for the use of the county in which he is elected, for educational purposes, in the penal sum of one thousand dollars, except in McCormick County, where said bond shall be five thousand dollars, with good and sufficient sureties, to be approved by the County Board of Commissioners, conditioned for the faithful and impartial discharge of the duties of his office; and shall take and subscribe the oath of office prescribed in Section 26, Article III of the Constitution of this State, which he shall file in the office of the Secretary of State. When commissioned, he shall immediately enter upon the discharge of his duties. His failure to qualify within thirty days after notice of his election shall create a vacancy: *Provided*, That in any county where the term of office of the County Superintendent of Education now expires in January such term is hereby extended to July first following such expiration: *And provided, further*, That the term of office of the County Superintendent of Education shall run from July first throughout four consecutive scholastic years in each county: *Provided*, The provisions of this Section shall not apply to the county of Bamberg, where the term of office shall be two years: *Provided*, The provisions of this Section shall not apply to Berkeley County, but the term of office for the County Superintendent of Education for Berkeley County shall remain two years: *Provided*, That this Section shall not be construed to extend to four years the term of office of any Superintendent already elected for two years.

Civ. '12, § 1717; Civ. '02, § 1186; 1896, XXII, 150; 1903, XXIV, 58; 1907, XXV, 652; 1908, XXV, 1350; 1909, XXVI, 124, 180; 1910, XXVI, 698, 699, 700; 1911, XXVII, 62; 1912, XXVII, 683, 684; 1914, XXVIII, 494, 497, 647; 1915, XXIX, 185, 515; 1919, XXXI, 75; 1920, XXXI, 1068; 1921, XXXII, 104, 180.

(2567) § 36. Vacancies.—The State Board of Education shall fill all vacancies in the office of County Superintendent of Education for the unexpired term.

Civ. '12, § 1718; Civ. '02, § 1187; 1896, XXII, 150.

(2568) § 37. Duty to Visit Schools, Etc.—It shall be the duty of each County Superintendent of Education to visit the schools in his county at least once in each year, and oftener if practicable, and to note the course and method of instruction and the branches taught, and to give such recommendation in the art of teaching and the method thereof in each school

as shall be necessary, so that uniformity in the course of studies and method of instruction employed shall be secured as far as practicable in the schools of the several grades, respectively. He shall acquaint himself as far as practicable with the character and condition of each school, noting any deficiencies that may exist, either in the government of the school or the classification of its pupils or the method of instruction employed in the several branches, and shall make such suggestions in private to the teachers as to him shall appear necessary to the good order of the school and the progress of the pupils. He shall note the character and condition of the schoolhouses, the sufficiency or insufficiency of the furniture, and shall make such suggestions to the several Boards of Trustees as in his opinion shall seem conducive to the comfort and progress of the several schools. It shall be the duty of each County Superintendent of Education to aid the teachers in all proper efforts to improve themselves in their profession. For this purpose he shall encourage the formation of associations of teachers for common improvement and conduct teachers' institutes. He shall attend the meetings of such associations and give such advice and instruction in regard to their conduct and management as in his judgment will contribute to their greater efficiency.

Civ. '12, § 1719; Civ. '02, § 1188; 1896, XXII, 150.

(2569) § 38. County Superintendent to Attend Annual Settlement of County Treasurer—Apportionment of School Funds.—The County Superintendent of Education shall attend the annual settlement of the County Treasurer with the Comptroller General. Within ten days after the County Treasurer makes his monthly report to the County Superintendent of Education, showing the amount of money collected by him since his last monthly report, it shall be the duty of the County Superintendent of Education to apportion the money arising from a tax on property as shown by the Treasurer's report among the school districts of his county, and to certify such apportionment to the County Treasurer, together with the poll tax belonging to each district as shown by said report; and it shall be the duty of the County Treasurer to enter upon his book to the credit of each school district the amount due each district, according to such certificate of apportionment, and the County Treasurer shall pay out the money belonging to the respective districts, upon the school warrants of such districts, duly signed and countersigned by the school authorities, for that scholastic year in the order of their presentation: *Provided*, That there be no outstanding claims of the previous scholastic year; and the Comptroller General shall receive the warrants thus paid as proper vouchers in the hands of the County Treasurer.

Civ. '12, § 1720; Civ. '02, § 1189; 1896, XXII, 150; 1898, XXII, 761.

(2570) § 39. Reports of County Superintendent—What to Contain.—The annual report of the County Superintendent of Education shall contain the complete statistics of all schools within his county supported in whole or in part from the public funds, as may be required of him by the State Superintendent of Education.

Civ. '12, § 1721; Civ. '02, § 1190; 1896, XXII, 150.

(2571) § 40. **Annual Report, Etc., of County Superintendent.**—The County Superintendent of Education shall make an annual report of all claims filed, audited and allowed and ordered paid by him during each fiscal year to the presiding Judge at the third term of the Court of General Sessions for his county, which shall be held after the first day of January in each year, to be submitted by said Judge to the Grand Jury for their examination. After examination, the Grand Jury shall report thereon to the presiding Judge any matter growing out of or pertaining to said annual report which to them may seem worthy of the attention of the Court. The said report shall thereupon be filed by the Clerk of said Court, and kept as papers of said Court, for inspection by any citizen desirous of examining the same.

Civ. '12, § 1722; Civ. '02, § 1191; 1896, XXII, 158; 1897, XXII, 509.

(2572) § 41. **County to Furnish Certain Things.**—The County Board of Commissioners of each county are authorized and required to furnish the County Board of Education of their county with a comfortable and convenient office and suitable office furniture, and to supply said office with fuel, lights, stationery, postage and such other incidentals as are necessary to the proper transaction of the legitimate business of his office.

Civ. '12, § 1723; Civ. '02, § 1192; 1896, XXII, 158.

(2573) § 42. **Report to County Treasurer All Claims Approved.**—It shall be the duty of the County Superintendent of Education, on or before the fifteenth day of July in each year, to report to the County Treasurer, by school districts, all school claims approved by him for the school year last preceding, and the County Treasurer shall thereupon close the school accounts for that year, carrying over any balance to the credit of each school district of the then current fiscal year.

Civ. '12, § 1724; Civ. '02, § 1193; 1896, XXII, 158.

(2574) § 43. **Register to Be Kept.**—The County Superintendent of Education shall keep a register of all claims approved by him and of such other matters as the State Superintendent of Education shall require of him, and in the form prescribed by the State Superintendent.

Civ. § 12, § 1725; Civ. '02, § 1194; 1896, XXII, 158.

(2575) § 44. **Superintendent of Education of Chesterfield County to Keep Record of School Fund.**—That the County Superintendent of Education of Chesterfield County shall also keep in his office a book in which he shall keep, subject to public inspection, an account of the money on hand for each school district in said county.

1912, XXVII, 695.

(2576) § 45. **What to Furnish the Trustees.**—The County Superintendent of Education shall furnish the School Trustees of his county with copies of the reports made to him by the County Auditor and County Treasurer as to the persons listed and paying poll tax, and shall aid the Trustees in making all proper corrections.

Civ. '12, § 1726; Civ. '02, § 1195; 1896, XXII, 158.

(2577) § 46. **Seal of County Superintendent.**—The County Superintendent of Education shall keep in their office a die, in a circular form, upon the center of which shall be engraved, in capital letters, the word "Seal," and on the circumference the proper words indicating the office, which shall be regarded as the seal of the office, and which the County Superintendent of Education shall be required to impress upon all papers issued from his office, and affix his name to such paper. And it shall be the duty of the County Board of Commissioners in each county to furnish the County Superintendent of Education of their respective counties with such seal.

Civ. '12, § 1727; Civ. '02, § 1196; 1896, XXII, 158.

It is not necessary that claims approved by him be also under his official seal. *State v. Morton*, 51 S. C. 323, 28 S. E. 945.

(2578) § 47. **Salaries of County Superintendents of Education Fixed.**—Unless otherwise provided by law, in Abbeville, Marlboro, Chester, Lexington and Union Counties they shall receive annually, in addition to the salaries provided, one hundred dollars, and in Laurens County, fifty dollars, for traveling expenses; and in every other county of the State they shall receive annually, in addition to their salaries, such sum as may be necessary to pay the actual expenses incurred by them in attending meetings called for the purpose of advancing the educational interests, and for the purpose of visiting schools in other counties in order to become familiar with their management and mode of teaching: *Provided, however*, The amount allowed the Superintendent of Education of Saluda County shall not exceed the sum of fifty dollars, and he shall further give his entire time to the duties of his office, and visit each school district within his county at least twice yearly with a view to placing said schools upon a uniform system of training: *Provided*, That no such account shall be approved in favor of any County Superintendent of Education until such Superintendent of Education shall have furnished the County Board of Education with an itemized statement, under oath, of the expenses incurred: *And provided, further*, That in no case shall the expenses exceed one hundred dollars, to be paid on the warrant of the County Board of Education. His claim for services and expenses shall be presented in the form of an account against the County Board of Education, and shall be verified by affidavit to the effect that said account is just and true; that the service therein named was honestly and faithfully rendered, and that the sum therein claimed is rightfully due and remains unpaid. When said account shall have been duly audited and approved by the County Board of Education, it shall be filed with the County Treasurer, who shall pay the same ratably out of the funds apportioned to the several school districts in proportion to the average number of children attending the free public schools in each school district.

Civ. '12, § 1728; Civ. '02, § 1198; 1883, XXIII, 535; 1891, XX, 1114, 1391, 1268; 1893, XXI, 492; 1899, XXIII, 1057; 1905, XXIV, 836; 1917, XXX, 125.

The Act of 1899, Section 1197, held not to repeal Section 1057 of the revised Statutes of 1893, contained in this Section. *Houser v. Orangeburg Co.*, 59 S. C. 265.

(2579) § 48. **Provision for Assistant Superintendent of Education in Certain Counties.**—The County Superintendent of Education in every county of this State having a population under the United States census

of 1910, of between eighty-two thousand and eighty-five thousand, is authorized and required to appoint some suitable and competent person, who shall be known as the Assistant Superintendent of Education for such county, and who shall be paid for his services at the rate of six hundred dollars per annum, to be paid to him in the same way and out of the same funds as is the salary of the County Superintendent of Education. He shall hold such position at the pleasure of the County Superintendent not to exceed six months in any year, and shall perform such duties in assisting the County Superintendent as shall be designated from time to time by him. If required by the Superintendent, he shall give bond in such sum as may be designated, conditioned for the faithful discharge of his duties as such Assistant Superintendent of Education, and to indemnify the County Superintendent against any loss which he may sustain by any act of the said Assistant Superintendent while performing any duties placed upon him by the County Superintendent.

1912, XXVII, 688.

(2580) § 49. Duties.—It shall be the special duty of such Assistant Superintendent to attend in the office of the County Superintendent of Education, and answer all inquiries and give all necessary information while the County Superintendent is absent, visiting the schools and performing other duties required of him by law. He may, also, if he be so empowered by the County Superintendent (after he has given bond as above provided) pass upon and sign teachers' pay certificates in the name of the County Superintendent, and likewise sign pay warrants and other necessary paper in connection with the same, in the absence or inability to act, of the County Superintendent. He shall also perform such clerical services as may be required of him.

1912, XXVII, 688.

(2581) § 50. Office of Assistant Superintendent of Education for Jasper County Created—Salary.—There shall be established and created in Jasper County the office of Assistant Superintendent of Education, the salary of said office to be fixed by the County Board of Education, in an amount not exceeding twenty-five hundred dollars. That the County Board of Education for Jasper County is hereby authorized and required to appoint an Assistant Superintendent of Education, whose term of office shall begin on June 30, 1920.

1920, XXXI, 1133.

(2582) § 51. Qualifications—Duties.—That the said Assistant Superintendent of Education so appointed by the said County Board of Education shall be an A. B. or B. S. graduate of some accredited college or university of the United States, and shall have had at least three years' experience as teacher in or superintendent of some school or schools in this State. It shall be the duty of said Assistant Superintendent of Education to devote his entire time to the management and supervision of all the schools in Jasper County, and his office shall be in the office of the Superintendent of Education of said county.

1920, XXXI, 1133.

(2583) § 52. **Removal.**—The County Board of Education shall have the power and authority to remove the said Assistant Superintendent of Education from office when at any time, for any reason, they should deem it to the best interests of the schools of Jasper County so to do.

1920, XXXI, 1133.

(2584) § 53. **Supervision of Rural Schools for Dillon County.**—The County Board of Education for Dillon County and the Superintendent of Education for Dillon County be, and they are hereby, authorized and directed to appoint a Supervisor of Rural Schools for Dillon County.

1914, XXVIII, 753.

(2585) § 54. **Duties.**—The duty of the Supervisor of Rural Schools for Dillon County shall be to visit the public schools of the county, by and with the consent of the County Superintendent of Education, as his assistant, for the purpose of encouraging and inspiring greater interest in rural school work.

1914, XXVIII, 753.

(2586) § 55. **Salary.**—The salary of the Supervisor of the Rural Schools for Dillon County shall be seven hundred and thirty (\$730.00) dollars per annum.

1914, XXVIII, 753.

(2587) § 56. **Office of Rural School Supervisor Lexington County Abolished.**—The office of Rural School Supervisor of Lexington County is abolished, and the duties now devolving upon that officer shall be performed by the Superintendent of Education of said county. He shall be required to give his whole time and attention to said office. He shall not be allowed to engage in any other business or avocation while such Superintendent of Education, and in case he should so engage he shall forfeit to the county his salary for the time so engaged.

1914, XXVIII, 744.

(2588) § 57. **County Board of Education—Of Whom Composed, Etc.**—There shall be a County Board of Education in each county, composed of three members, one of whom shall be the County Superintendent of Education, and the other two shall be appointed by the State Board of Education at its regular meeting in June, 1921, and every four years thereafter, who shall hold their office for a term of four years from the time of their appointment and until their successors shall be appointed and qualified, unless sooner removed by the State Board of Education.

Civ. '12, § 1729; Civ. '02, § 1199; 1897, XXII, 516; 1920, XXXI, 958, 1068; 1921, XXXII, 130.

(2589) § 58. **What Shall Be Taught.**—It shall be the duty of the County Board of Education and the Boards of Trustees hereinafter provided for to see that in every school under their care there shall be taught, as far as practicable, orthography, reading, writing, arithmetic, geography, English grammar, the elements of agriculture, history of the United States

and this State, the principles of the Constitution of the United States and this State, morals and good behavior, algebra, physiology and hygiene, and especially as to the effects of alcoholic liquors and narcotics upon the human system, English literature, and such other branches as the State Board may from time to time direct.

Civ. '12, § 1731; Civ. '02, § 1201; 1896, XXII, 161.

(2590) § 59. Physiology and Hygiene to Be Taught in Public Schools—Nature of Alcoholic Drinks and Narcotics.—The nature of alcoholic drinks and narcotics and special instruction as to their effect upon the human system, in connection with the several divisions of the subject of Physiology and Hygiene, shall be included in the branches of study taught in common or public schools in the State of South Carolina, and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools, by the use of textbooks in the hands of pupils where other branches are thus studied in said schools, and orally in the case of pupils unable to read, and shall be taught by all teachers and studied by all pupils in all said schools supported wholly or in part by public money.

Civ. '12, § 1732; 1908, XXV, 1054.

(2591) § 60. Textbooks—Relating to Alcoholic Drinks and Narcotics.—The textbooks used for the instruction required to be given by the preceding Section in primary and intermediate grades, shall give at least one-fourth of their space to the consideration of the nature and effects of alcoholic drinks and narcotics, and the books used in the highest grade of graded schools shall contain at least twenty pages of matter relating to this matter.

Civ. '12, § 1733; 1908, XXV, 1054.

(2592) § 61. Penalty to Enforce Provisions.—It shall be the duty of the proper officers in control of any school described in the foregoing Section to enforce the provisions of the last two Sections; and any such officer, School Director, Committee, Superintendent or Teacher who shall refuse or neglect to comply with the requirements of the last two Sections, or shall neglect or fail to make proper provisions for the instruction required and in the manner specified by Section 59, for all pupils in each and every school under his jurisdiction, shall be removed from office and the vacancy filled as in other cases.

Civ. '12, § 1734; 1908, XXV, 1054.

(2593) § 62. One Mill School Tax Levy.—That a tax of one mill is hereby levied on all the real and personal property of the State, the proceeds of which shall be used exclusively for the free public schools and expended as hereinafter stated.

1913, XXVIII, 194.

(2594) § 63. Distribution of Proceeds.—Of the proceeds of this one mill tax levy fifty per cent. shall be retained in the county in which collected, to be known as the "County Board Fund," and shall be used by

the several County Boards of Education for the aid of the free schools in the respective counties in the discretion of the said Boards; fifty per cent. of the proceeds shall be deposited with the State Treasurer and disbursed by him on the warrant of the Chairman and Secretary of the State Board of Education as other State funds are disbursed, to be used by the said State Board, as follows: For high schools, under Sections 190-202 of this Chapter, \$60,000; for extension of public schools, under the Act of 1910, \$60,000; for consolidated graded schools, under Act 1912, No. 497, \$20,000; for rural librarians, \$5,000. Any additional funds at the disposal of the State Board of Education under the provisions of the preceding Section shall be used for the lengthening of the school term under Sections 134-146 of this Chapter.

1913, XXVIII, 194.

(2595) § 64. Three Mill Tax.—The County Board of Education of the several counties of this State, or such officer or officers as may be vested with the same or similar powers or duties shall levy an annual tax of three mills on the dollar upon all the taxable property in their respective counties, which tax shall be collected at the same time and by the same officers as the other taxes for the same year, and shall be held in the County Treasury of the respective counties, and on the first day of July of each year, or as soon as practicable thereafter, the said fund shall be apportioned by the said County Boards, respectively, among the school districts of their respective counties in proportion to the number of pupils enrolled in the public schools of such school districts; and the said County Boards shall ascertain the amount of poll taxes collected in and for each school district of their respective counties, and shall notify the County Treasurer and the trustees of each school district of the amount of poll taxes, as well as of the amount of the aforesaid fund apportioned by them to each school district.

HOW SCHOOL FUNDS ARE DISTRIBUTED AND EXPENDED.—The school funds of each district shall be distributed and expended by the Board of Trustees for the best interests of the school district, according to the judgment of the Board of Trustees, on their warrant approved by the County Superintendent of Education. For the purpose of said apportionment pupils shall not be deemed enrolled until after an attendance of at least ten school days during the preceding scholastic year.

Civ. '12, § 1735; Civ. '02, § 1202; 1896, XXII, 161.

Mandamus will not issue to compel approval of warrant where the funds in treasury are insufficient to pay it. *State ex rel. Williams v. Hiers*, 51 S. C. 388, 29 S. E. 89; *State ex rel. Bryson v. Daniel*, 52 S. C. 201, 29 S. E. 633. The power of the County Superintendent is also discretionary, and mandamus, therefore, is not the proper remedy. The remedy is given in next Section. *State v. Hiers, supra*. See Constitution of 1895, Article XI, Section 6.

(2596) § 65. Schools in Textile Communities Aided from Three Mill Tax on Eight Grades—Discretion of County Board.—All schools organized and being conducted in industrial textile communities that receive State or county aid from appropriations from the constitutional three mill tax, shall put on at least eight grades for their pupils: *Provided*, That the County Board of Education of each county shall determine the necessity

for such grades in excess of six now being used, and shall establish such additional grades when in their judgment the necessity of the situation so requires.

1918, XXXI, 1.

(2597) § 66. Advisory Board to County Superintendent—Powers in Case of Appeal.—The County Board of Education shall constitute an advisory body with whom the County Superintendent of Education shall have the right to consult when he is in doubt as to his official duty, and also a tribunal for determining any matter of local controversy in reference to the construction or administration of the school laws, with the power to summon witnesses and take testimony, if necessary, and when they have made a decision said decision shall be binding upon the parties to the controversy: *Provided*, That either of the parties shall have the right to appeal to the State Board of Education, and said appeal shall be made through the County Board of Education, in writing, and shall distinctly set forth the question in dispute, the decision of the County Board and the testimony as agreed upon by the parties to the controversy, or, if they fail to agree, upon the testimony as reported by the County Board.

Civ. '12, § 1736; Civ. '02, § 1203; 1896, XXII, 161.

Williams v. Hiers, 51 S. C. 388, 29 S. E. 89.

Action by school teacher for damages for breach of contract to teach school is not "matter of local controversy in reference to construction or administration of school laws." *Hughes v. School District*, 66 S. C. 259, 276, 44 S. E. 784.

Mandamus to require County Board of Education to issue teacher's certificate to graduate of Greenville College for Women on its diploma is not proper remedy, but appeal to State Board of Education. *Ex parte Greenville College*, 75 S. C. 93, 55 S. E. 132.

(2598) § 67. Meetings and Duties of Board of Education.—The County Board of Education shall meet for the purpose of examining applicants for teachers' certificates, and the transaction of other business, at least twice a year, at such times as the State Board of Education shall appoint. The County Superintendent shall be Chairman and Clerk of the Board, and shall keep a fair record of their proceedings, and register of the name, age, sex, color, residence and date of certificate of each person to whom a certificate is issued, and in case the certificate be cancelled shall make a proper entry of the same. The Board shall have power to revoke any certificate granted by them, for immoral or improper conduct, or evident unfitness for teaching. The Board shall hold as many additional meetings during the year as the interest of the free public schools of the county may require, subject to regulations prescribed by the State Board of Education.

Civ. '12, § 1737; Civ. '02, § 1204; 1896, XXII, 161.

(2599) § 68. Counties to Be Divided Into School Districts—By Whom, Size of, Etc.—The County Boards of Education shall divide their counties into convenient school districts, as compact in form as practicable; having regard to natural boundaries, and not to exceed forty-nine nor be less than nine square miles in area, and shall alter the lines thereof, and create additional school districts from time to time as the interests of the schools may, in their judgment, demand: *Provided*, That no new school district shall be erected by the said County Board of Education, except upon the petition of at least one-third of the qualified electors embraced within the limits of such proposed school district: *Provided, further*, That no school district shall be

consolidated except upon a petition of at least one-third of the qualified voters of the school district proposed to be consolidated: *Provided, further*, Whenever territory embraced in two or more counties is proposed to be formed into one school district, the same may be formed by the joint action of the Board of Education of the respective counties as herein provided for the formation of school districts in a county: *Provided*, That in cities of ten thousand inhabitants and over, this limitation of area shall not apply: *Provided, further*, That when any school district laid out under this Section shall embrace cities or towns already organized into special school districts, in which graded school buildings have been erected by the issue of bonds, or by special taxation, or by donation, all the territory included in said school district shall bear its just proportion of any tax that may be levied to liquidate such bonds or support the public schools therein: *Provided, further*, That the area of school districts in the Counties of Spartanburg and Greenville shall be such as may be prescribed by the County Board of Education in said counties as each occasion may arise: *Provided*, That the area in any particular instance shall not be less than six square miles in Spartanburg County and not less than one square mile in Greenville County. The present division of the counties into school districts shall remain until changed by the County Boards of Education. The County Boards of Education are authorized and empowered to make contracts for the purpose of dividing their counties into proper school districts, and to provide for the payment of the expenses thereof out of the school funds of the county. Every school district now organized, or to be hereafter organized in pursuance of this Section, is and shall be a body politic and corporate, by the name and style of School District No. (such number as may be designated by the County Board of Education), of County (the name of the county in which the district is situated), the State of South Carolina; and in that name may sue and be sued, and be capable of contracting and being contracted with to the extent of their school fund, and holding such real and personal estate as it may come into possession of, by will or otherwise, or as is authorized by law to be purchased, all of which shall be used exclusively for school purposes.

Civ. '12, § 1738; Civ. '02, § 1205; 1896, XXII, 161; 1900, XXIII, 360; 1920, XXXI, 727, 1134.

As to authority of Trustees, see *State v. Bacon*, 31 S. C. 120, 9 S. E. 765. School District not necessary party to suit on County Treasurer's bond for misappropriating school funds. *Aiken County v. Murray*, 35 S. C. 508, 14 S. E. 954.

Circuit Court has jurisdiction of action by teacher against school district for damages for breach of contract to teach school, and complaint need not state that he held certificate at time of contract. *Hughes v. School District*, 66 S. C. 259, 276, 44 S. E. 784.

Gallishaw v. Jackson, 99 S. C. 342, 83 S. E. 454.

(2600) § 69. Dissolution of School Districts in Adjoining Counties.—Any school district formed of parts of two or more counties under the provisions of this Section, may be dissolved in the same manner as that by which the same may have been formed, as above provided.

Civ. '12, § 1739; 1910, XXVI, 694.

(2601) § 70. Board of Trustees—Each school district shall be under the management and control of the Board of Trustees hereinafter provided for, subject to the supervision of the County Board of Edu-

cation: *Provided*, That for the County of Clarendon, upon the recommendation of the County Superintendent of Education, County Auditor and County Supervisor, the Governor shall appoint three men in each of the several school districts of said county, who shall be known as the Board of District Commissioners, and who shall serve for a term of two years from the date of their commission or until their successors shall have been appointed and qualified; and upon them shall devolve all of the duties now prescribed by law for School Trustees and Boards of Assessors of their respective districts. Each member of the Board of District Commissioners shall receive twenty (\$20.00) dollars per year for their services within their respective district, and the Chairman three (\$3.00) dollars per day and five cents mileage for each mile of necessary travel in their attendance upon the Board of County Commissioners.

Civ. '12, § 1740; Civ. '02, § 1206; 1896, XXII, 162; 1919, XXXI, 78.

Words "management and control" do not import any power beyond that demanded from their ordinary meaning. *Young v. Trustees*, 64 S. C. 131, 138, 41 S. E. 824.

(2602) § 71. School Districts Made Tax Districts.—The school districts of the several counties of the State are hereby made and declared to be the divisions of the counties for taxation for all school purposes.

Civ. '12, § 1741; Civ. '02, § 1207; 1896, XXII, 162.

Gallishaw v. Jackson, 99 S. C. 342, 83 S. E. 454.

(2603) § 72. How School Districts May Levy Special School Tax—How Collected and Paid.—The voters or electors of any school district, who return real or personal property for taxation, are authorized to levy and collect an annual tax to supplement any special or other constitutional or other tax for like purposes in the following manner: Upon the written petition or request of at least one-third of the resident electors and a like proportion of the resident freeholders of the age of twenty-one years, being filed with the County Board of Education, asking for the same and stating the rate of tax levy proposed, which shall not exceed fifteen mills, the said County Board of Education shall order the Board of Trustees of said school district to hold an election at some place within the district, after giving notice of the time and place thereof for at least two weeks in some newspaper published within the county, and by posting notice thereof in at least three public places within such school district, for such length of time, unless there be no newspaper published within the county, in which event the posting of the notices as above shall suffice; at which said election only such electors as return real or personal property for taxation, and who exhibit their tax receipts and registration certificates, as required in general elections, shall be allowed to vote. At the said election the Board of Trustees shall act as managers, and the election shall be conducted as is provided by law for the conduct of general elections. At the said election each elector favoring the proposed levy shall cast a ballot containing the word "Yes," printed or written thereon, and each elector opposed to said levy shall cast a ballot containing the word "No," printed or written thereon. Within ten days after such election, if the majority of those voting shall vote for such levy, the Board of Trustees shall furnish the County Auditor with a statement of the amount so levied and the Auditor shall enter the same in the tax duplicates, and he shall annually, each year thereafter, enter said amount in

the tax duplicates until the same is increased, decreased, or repealed by said taxpayers, at an election called for that purpose, and he is notified that the same has been increased, decreased or repealed; and if increased or decreased, he shall annually enter it as so increased or decreased; which election shall be called and notice given in the same way and manner as is herein provided for the calling of meetings to make the levy and the giving of the notice that it has been made, and the County Treasurer shall collect the same as other county and State taxes: *Provided*, That any tax which may be levied, increased, decreased or repealed, after October 1st in any fiscal year, shall not take effect until the next succeeding year, except in the County of Horry, where the Auditor is authorized and permitted to enter the increased tax on the tax duplicate and the Treasurer collect same for the current year. Such levy shall be a lien on the property in such school district, which shall be subject thereto in case of default of payment. Said tax so collected shall be paid out by the County Treasurer upon warrants drawn by the Board of Trustees, countersigned by the County Superintendent of Education: *Provided*, That any surplus of such levy remaining in the hands of the County Treasurer at the expiration of any fiscal year shall be paid out as other school funds of the district. Each taxpayer, when he pays any tax for school purposes voted under the provisions of this Section, shall have the right to designate to which school district he wishes the money paid by him to go; and the Treasurer shall keep a note of such designation, and the money be applied as thus designated. When no designation is made by the taxpayer at the time of such payment, the money shall be expended as other school funds in such district: *Provided*, That nothing herein contained shall be construed to change the manner now provided by law for the collection and paying out of special taxes in any school district now established by any Act of the General Assembly and organized thereunder: *Provided, further*, Nothing herein contained shall be construed to repeal any Act of the General Assembly allowing the school districts of any county or any particular school districts within the State to vote and levy a greater number of mills for school purposes than herein provided.

Civ. '12, § 1742; Civ. '02, § 1208; 1896, XXII, 162; 1900, XXIII, 364; 1903, XXIV, 64; 1906, XXV, 111; 1907, XXV, 631; 1910, XXVI, 742; 1915, XXIX, 100; 1917, XXX, 382; 1920, XXXI, 727, 1084.

Proceedings to levy tax; taxpayer participating estopped to deny regularity, etc. *Martin v. School District of Laurens*, 57 S. C. 125, 35 S. E. 517.

Provision that "only such electors as return real or personal property for taxation," etc., shall be allowed to vote, does not apply to election under § (2606). *McLaurin v. Tatum*, 85 S. C. 444, 448, 67 S. E. 560.

(2604) § 73. How Unnecessary High Special School Levies May Be Reduced.—That whenever in any school district in the State of South Carolina where special levies and taxes have been authorized, levied and are being collected, or may hereafter be authorized, levied and collected, the assessed valuation of the property shall have so increased since the authorization of the special levy as to provide an amount of taxes in excess of that contemplated at the time of the authorization of said levy, or in excess of the amount collected the first year under such authorization, then and in that event, upon the written petition of the trustees of such school district, approved by the County Board of Education, and upon the petition of

three-fourths of the residents subject to such tax, the Auditor of the county in which the said school district is situate and the tax being collected shall reduce the levy for such school district to such an amount as will produce the total amount of taxes originally intended to be collected.

1919, XXXI, 243.

(2605) § 74. Special School Levies May Be Discontinued When Purpose Is Satisfied—Section Not to Apply to Certain Counties.—That whenever the special levy in any school district shall have provided sufficient funds to pay and satisfy the purposes and obligations for which the said special levy was authorized, then, upon the written petition of the Board of Trustees of such school district or upon the written petition of three-fourths of the residents in said school district subject to such levy and taxes, the Auditor of the county in which such school district is located shall discontinue the assessment authorized. The provisions of this and the preceding Section shall not apply to Chesterfield, Sumter and Charleston, Aiken, Hampton, Jasper, Williamsburg, Richland, Oconee, Horry, Lexington, Allendale, Dorchester, Lee York, Florence.

1919, XXXI, 243.

(2606) § 75. School Districts May Issue Bonds—Elections.—The Trustees of any public school district in the State of South Carolina are hereby authorized and empowered to issue and sell coupon bonds of the said school district, payable to bearer, in such denominations and amount as they may deem necessary, not to exceed eight per cent. of the assessed valuation of the property of such school district for taxation, and bearing a rate of interest not exceeding six per cent. per annum, payable annually or semi-annually and at such times as they may deem best: *Provided*, That bonds issued by Clover School District No. 37 may bear not exceeding seven per cent: *Provided, further*, That the question of issuing the bonds authorized in this Section shall be first submitted to the qualified voters of such school district at an election to be held upon the written petition or request of at least one-third of the resident electors and a like proportion of the resident freeholders of the age of twenty-one years, to determine whether said bonds shall be issued or not, as herein provided: *Provided, further*, That before any election is held hereunder it shall be the duty of the Trustees of the school district to have a survey of said school district made by some competent surveyor, and a plat thereof made and filed in the office of the Clerk of Court: *Provided, further*, That the trustees of any school district of Fairfield County are hereby authorized and empowered to issue and sell coupon bonds of the said school district under the provisions of this Section and the laws of the State for not exceeding fifteen per cent. of the assessed valuation of the real and personal property of said district: *Provided, further*, That nothing contained shall be construed to repeal any Acts of the General Assembly heretofore passed fixing a higher maximum percentage of assessed valuation, upon which

bonds may be issued by any particular school district, or districts, named in said Acts.

Civ. '12, § 1743; 1907, XXV, 523; 1909, XXVI, 89; 1913, XXVIII, 1; 1914, XXVIII, 466, 509; 1915, XXIX, 149; 1917, XXX, 75, 341; 1918, XXX, 828, 849; 1919, XXXI, 69, 154; 1920, XXXI, 750, 771, 779, 813, 1031, 1043, 1047, 1144; 1921, XXXII, 63.

Term "Qualified voter" means same as "qualified elector" in Constitution and general election statutes. *McLaurin v. Tatum*, 85 S. C. 444, 448, 67 S. E. 560.

Burris et al v. Brock et al, 95 S. C. 104, 79 S. E. 193.

(2607) § 76. How Election Shall Be Held.—For the purpose of determining the issue of bonds authorized in the preceding Section, such Trustees of school district shall order an election to be held at such place in such school district as may be designated by such Trustees of such school district on the question of whether such bonds shall be issued or not, in which election only qualified voters residing in such school district shall be allowed to vote, and such Trustees shall give notice of such election for ten days in a newspaper published in such district, or by posting such notice in three public places in such school district; shall designate the time and place and appoint the managers of such election, and receive the returns of the managers and declare the results.

Civ. '12, § 1744; 1907, XXV, 523.

(2608) § 77. Ballots.—The ballot cast must have written or printed on it the words "For Bonds," or "Against Bonds."

Civ. '12, § 1745; 1907, XXV, 523.

(2609) § 78. How Bonds Shall Be Sold—Special Tax Levy.—If a majority of the votes cast at such election shall be for the issuing of bonds, such Trustees shall issue such bonds, which shall run not longer than twenty years from date of issue thereof, which shall be sold by such Trustees at not less than par, and the proceeds of which shall be used by such Trustees for the purpose of erecting buildings, and for equipment for maintaining public schools in such school district, or for paying indebtedness of such school district; and such bonds and coupons of same shall constitute a lien upon the property of such school district; it shall be the duty of the county officers, charged with the assessment and collection of taxes, to levy and collect annually from all the property, real and personal, within the limits of such school district, a sum sufficient to pay the interest on such bonds, and also a sum sufficient to provide a sinking fund for the payment of such bonds when due, and the coupons thereof shall be received for school taxes upon property within such school district: *Provided*, That the limitation contained in the following words of this Section, to wit, which shall be sold by said Trustees at not less than par shall not apply to school bonds voted and proposed to be issued by the Trustees of the school district of the city of Greenville under Act No. 773, approved February 20, 1920, 31st Statutes 1496, but that said Trustees be, and they are hereby, authorized to sell said bonds at such discount as will realize to the purchaser not more than six per cent. interest per annum upon his investment, and that said limitation shall not apply to school bonds voted and proposed to be issued by the school Trustees of School District 3-B under Act No. 774, approved March 12, 1920, 31st Statute 1498, but that said Trustees be,

and they are hereby, authorized to sell said bonds at such discount as will realize to the purchaser not more than seven per cent. interest per annum upon his investment.

Civ. '12, § 1746; 1907, XXV, 523; 1921, XXXII, 14.

(2610) § 79. How Bonds Shall Be Signed.—All bonds issued under and in pursuance of the provisions herein shall be signed by the Trustees of such school district: *Provided*, That the signatures of such Trustees shall be lithographed or engraved upon the coupons attached to such bonds, and such lithographed or engraved signatures shall be sufficient signing thereof.

Civ. '12, § 1747; 1907, XXV, 523.

(2611) § 80. Proceeds—How Disposed of.—The proceeds of such bonds as are contemplated hereinabove shall be deposited with the County Treasurer of the county in which such school district is located, and shall be receipted for by such County Treasurer, and shall be paid out by him only upon the warrant of such Board of Trustees, as provided by law for the handling, expending and accounting for all other public funds: *Provided*, That nothing in the above Sections shall be construed as affecting any bonds already issued or voted in any school district of the State or bonds authorized by special Acts of the Legislature.

Civ. '12, § 1748; 1907, XXV, 523.

(2612) § 81. How Money Shall Be Deposited.—That the Treasurers of the counties in which said school districts are situated, are directed and required to deposit all moneys in their hands belonging to the sinking fund which may accumulate under the provisions of this Article in some savings institution or bank approved by the Board of Trustees of said school district, at the best rate of interest that can be obtained until the said bonds mature, and that the said Treasurers shall, at the direction of the Board of Trustees, change the place of deposit at any time: *Provided*, That in making such deposit preference shall be given to a bank, or banks, located within the township or county, in which said school district is situated: *And provided*, That the sinking fund belonging to Hartsville School District No. 32, in Darlington County, or which may accumulate under the provisions of this Article, shall be under the control and management of the Board of Trustees of said school district, and shall be applied to the bonds issued by them, or be invested by them to meet the payment of same when due.

Civ. '12, § 1749; 1907, XXV, 523; 1912, XXVII, 631; 1913, XXVIII, 59.

(2613) § 82. Special School Districts in Adjoining Counties.—Whenever it shall happen that by reason of the location of special school districts, portions of two adjacent counties should for convenience be included in one school district, the County Boards of Education of such counties are hereby authorized and directed in joint conference to make such regulations as will enable such sections to be established into a separate school district. The provisions of this Section shall apply in all respects to the school districts of Marion County and Dillon County which have been cut by the lines separating said counties.

Civ. '12, § 1750; Civ. '02, § 1209; 1896, XXII, 164; 1910, XXVI, 640.

(2614) § 83. **School Bonds Exempt from Taxation.**—All bonds hereafter issued or sold, or to be hereafter issued or sold, by the Trustees of any school district or school districts pursuant to the vote of the majority of the qualified voters of such school district, or school districts, voting at an election heretofore or hereafter held for the erection of buildings, for equipment, for maintaining public schools in such district or districts, or for paying indebtedness of such district or districts, shall be exempt from all taxation for State, county, municipal or school purposes.

Civ. '12, § 1751; 1908, XXV, 1051.

(2615) § 84. **Appointment of School Trustees—Terms—Duties—Graded Schools—Districts of Five Thousand Inhabitants.**—Each County Board of Education on the first Tuesday of July, 1906, and on the first Tuesday in July every two years thereafter, shall appoint for each school district in their county three School Trustees, from the qualified electors and taxpayers residing in the district, who shall hold their office for two years, and until their successors are appointed and qualified, unless sooner removed by the County Board of Education: *Provided*, That no School Trustee shall be removed by the County Board of Education except for cause, and after said Trustee shall have had a hearing before said County Board of Education, and the said Trustee shall have the right of appeal to the State Board of Education. The County Board of Education shall have power to fill, from time to time, all vacancies in the Board of Trustees. The School Trustees shall meet as a Board as soon and as often as practicable, and after having been appointed and qualified, at such place as may be most convenient in the district. At their first meeting they shall organize by electing one of their number Chairman of the Board, who shall preside at the official meetings of the Board, and another Clerk of the Board, who shall record their proceedings in a book provided for that purpose. Each member of the Board of Trustees shall be duly notified of all meetings of the Board by the Clerk of the Board: *Provided*, That the foregoing provisions of this Section shall not apply to special and graded school districts created by special Acts; but that the Trustees and School Commissioners of all special and graded school districts shall remain the same in number, and shall be elected or appointed in the same manner, and shall hold the office for the same time as is provided for in the respective special Acts; except that in the special school districts where the Trustees, or their successors, are appointed by the State Superintendent of Education under the provisions of the special Acts, the Trustees shall hold office until they are appointed by the State Superintendent of Education under the first Tuesday in July, 1906, on which day and on the same day every two years thereafter, the Trustees shall be elected by the qualified electors of such school district: *Provided*, That special school districts having a population of not less than five thousand inhabitants, and in which the Boards are not fixed by special or specific legislation, may elect on the second Tuesday in January, 1904, or on the second Tuesday in January of any alternate year thereafter, nine Trustees to constitute a Board in their respective districts: *Provided, further*, That three of the said Trustees, to be elected at said election, shall serve for a term of two years, three for a term of four years, and

three for a term of six years; the term of each Trustee to be determined by lot, in the presence of the County Board of Education, and on the second Tuesday in January every two years thereafter, three Trustees shall be elected to serve for a term of six years. The election of all Trustees for all such school districts shall be by ballot, and shall be conducted under the supervision of three qualified electors residing within the district, who shall be appointed by the County Board of Education, at least ten days prior to the holding of the election. The managers shall report the result of the election to the County Board of Education within ten days thereafter, which Board shall commission the Trustees so elected. The Board of Trustees of each special or graded school district shall elect from their number a Chairman, who shall preside at their meetings, and a Secretary or Secretary and Treasurer, who shall record the proceedings of the Board, and who shall keep a full and accurate account of all moneys received and expended showing the source and disposition of each item, and who shall make a complete itemized report of the receipts and disbursements of each scholastic year to the County Superintendent of Education on or before the fifteenth day of July of each year. The books and vouchers of the Secretary and Treasurer shall be open at all times to inspection by the public: *Provided, further,* That upon the petition of one-third of the qualified electors of School District No. 13, in Abbeville County, filed with the County Superintendent of Education, on or before the first day of June in any year, when School Trustees are to be appointed, the County Board of Education shall order an election to elect the Trustees for School District No. 13, in the manner herein provided for in the election of Trustees of special school districts: *Provided, further,* That upon the petition of one-third of the qualified electors of any school district in Chesterfield and Oconee Counties, except special and graded school districts, created by special Acts, filed with the Superintendent of Education of said county, on or before the first day of June in any year when School Trustees are to be appointed, the County Board of Education shall order an election to elect the Trustees for such school district in the manner herein provided for the election of Trustees of special school districts: *Provided, further,* That nothing herein contained shall be construed to repeal any Act or Acts of the General Assembly heretofore passed providing for a different number of Trustees than the number herein mentioned nor for a different method of selection or the election of School Trustees of any particular school district or the school districts of any particular county of the State: *Provided, further,* That in the County of Saluda the County Board of Education, upon petition of a majority of the qualified electors in any school district shall order a special election for Trustees.

Civ. '12, § 1752; Civ. '02, § 1210; 1903, XXIV, 64; 1904, XXIV, 528; 1906, XXV, 31; 1914, XXVIII, 480, 567; 1915, XXIX, 106; 1917, XXX, 306; 1918, XXX, 3; 1919, XXXI, 209, 212, 653; 1920, XXXI, 837; 1921, XXXII, 93.

(2616) § 85. Duty of Board of Trustees.—The Board of Trustees in each school district shall take the management and control of the local educational interests of the same, and shall visit each school district at least once

in every school term, and shall be subject to the supervision and orders of the County Board of Education.

Civ. '12, § 1753; Civ. '02, § 1211; 1896, XXII, 165.

Bryson v. Daniel, 52 S. C. 201, 29 S. E. 633; *Young v. Trustees*, 64 S. C. 131, 135, 41 S. E. 824.

(2617) § 86. Regular Session of Board of Trustees.—The Board of Trustees shall hold a regular session in their school districts at least two weeks before the commencement of any or every school term for the transaction of any and all business necessary to the prosperity of the schools, with power to adjourn from time to time and to hold special meetings at any time or place when called upon by the Chairman or any two members of the Board.

Civ. '12, § 1754; Civ. '02, § 1212; 1896, XXII, 165.

(2618) § 87. Power to Sell School Property.—The School Trustees of the several school districts are authorized and empowered to sell school property, real or personal, in their school districts whenever they deem it expedient to do so, and to apply the proceeds of sale or sales to the school fund of the district wherein such sale is made: *Provided*, That the consent of the County Board of Education be first obtained by the Trustees desiring to make such sale. That it shall be the duty of the said Board of Trustees, within thirty days after said sale, to enclose a report of the same to the County Board of Education, setting forth the terms and amount of said sale.

Civ. '12 § 1755; Civ. '02, § 1213; 1896, XXII, 165.

(2619) § 88. Transfer of Pupils—When and How Made.—When it shall so happen that persons are so situated as to be better accommodated at the school of an adjoining school district, whether special or otherwise, the Board of Trustees of the school district in which such persons reside may transfer such persons for education to the school district in which such school is located; and the Trustees of the school district where the school is located shall receive such persons into the school as though they resided within the district: *Provided*, That children shall not be transferred from one school district to another without the consent of the Board of Trustees of the school district to which the transfer is made: *And further provided*, That whenever pupils are transferred to a school district which has a special tax for the support of its schools, each and every pupil so received may be required by the Trustees to pay, as tuition, an amount not exceeding the per capita portion of operating and maintenance costs of the school to which the transfer is made, as paid by the patrons of the district from special school tax.

Civ. '12, § 1756; Civ. '02, § 1214; 1896, XXII, 165; 1912, XXVII, 619; 1919, XXXI, 63. 1921, XXXII, 128.

For directions as to enrollment, see ante, § (2564).

(2620) § 89. County Board of Education May Order Transfer—Condition—Provisos—Tuition Fees in City of Sumter.—That where a transfer of pupils from one district to another is sought, and the Trustees of the latter district do not consent, the County Board of Education of the county in which the districts are located shall have the right, after hear-

ing, to make the transfer; but only on condition that each pupil so transferred pay semi-annually, in advance, if financially able to do so, in the opinion of the Board of Trustees, as tuition, an amount not less than the per capita expenditure from the special tax for operating the school to which the pupils are to be transferred, together with all other charges paid by the patrons of such district for any special course or courses: *Provided*, That if any taxpayer pays taxes in two or more counties, he shall have the right to send his children to the school of any one of said counties: *Provided*, This Article shall not operate so as to reduce the tuition fees now or hereafter of force in School District No. 17, comprising the city of Sumter, in the County of Sumter, in which district the tuition fees shall be fixed by the School Board of said district, and in fixing tuition for said district the School Board may avail itself of the provisions of this Article.

1921, XXXII, 128.

(2621) § 90. Reports of Teachers—How and to Whom Made.—Each school teacher shall make out and file with the Clerk of the Board of Trustees, at the expiration of each school month, a full and complete report of the whole number of pupils admitted to the school during each month, distinguishing between male and female, the average attendance, the branches taught, the number of pupils engaged in studying each of said branches, and such statistics as he or she may be required to make by the County Board of Education: *Provided*, That whenever a teacher is unavoidably prevented from filing said report at the expiration of any school month, the Board of School Trustees may have authority to receive the report within a reasonable time thereafter, if, in their opinion, the reasons for the delay are good and sufficient. On the filing of the teacher's report and its approval by the Board of Trustees, their Clerk shall draw an order in duplicate on the County Treasurer for the amount due such teacher, which shall be signed by the Board, which order, if accompanied by a copy of said monthly report and approved by the County Superintendent of Education, shall be countersigned by him and the duplicate filed in his office.

Civ. '12, § 1757; Civ. '02, § 1215; 1896, XXII, 165.

(2622) § 91. Teachers, Principals and Superintendents Required to File Reports.—Any teacher, principal or superintendent employed in the schools of this State, supported in whole or in part at public expense, shall file within two weeks after the close of the session of such school a full and accurate report, as now required by law. Any person neglecting, refusing or omitting to file such report when requested by the County Superintendent of Education shall be liable to the cancellation of his or her certificate to teach, and to a fine of not more than twenty-five dollars, to be imposed at the discretion of the County Board of Education.

1913, XXVIII, 191.

(2623) § 92. Report to County Superintendents of Education.—Any and all private schools shall report to the County Superintendent of Education upon request therefor of the county wherein such school is located, the number of pupils receiving instruction, the number in regular attend-

ance, the number of teachers employed, and such other facts as will show the grade and amount of educational work actually done in such private school. The management of such other private school neglecting, refusing or omitting to file such report within two weeks after the close of the regular session shall be subject to a fine of not more than twenty-five dollars.

1913, XXVIII, 191.

(2624) § 93. County Superintendents to File Reports With State Superintendent of Education.—It shall be the duty of each County Superintendent of Education to file with the State Superintendent of Education within two months after the close of the scholastic year a full and accurate report of all the schools under his supervision. Any County Superintendent failing to make such report shall be guilty of a misdemeanor, and, upon conviction thereof in a Court of competent jurisdiction, shall be fined in the discretion of the Court in a sum not exceeding fifty dollars.

1913, XXVIII, 191.

(2625) § 94. Cancellation of Certificates.—The cancellation of any certificate hereunder shall be reported to the State Board of Education, and may be reviewed on appeal taken within ten days after the decision of the County Board.

1913, XXVIII, 191.

(2626) § 95. County Board Fund.—Any and all moneys collected under the provisions of Section 93 herein shall be paid into the County Treasury, to be disbursed as a part of the County Board Fund, now authorized by law.

1913, XXVIII, 191.

(2627) § 96. Claims Against Fund—How and by Whom Signed.—All claims, of every description whatsoever, which are chargeable against the fund raised for the support of the free public schools of the State, except such as are otherwise provided for by law, must be signed by at least a majority of the Board of Trustees of the school district against which the claims are chargeable; and the correctness and legality of the same shall be sworn to and subscribed by the person presenting such claim before it shall be approved by the person or persons authorized by law to give such approval. School Trustees and County Superintendents of Education shall, free of charge, administer oaths to persons presenting the claims contemplated by this Section.

Civ. '12, § 1758; Civ. '02, § 1216; 1896, XXII, 165.

Williams v. Hiers, 51 S. C. 388, 29 S. E. 89, 90; State v. Morton, 51 S. C. 323, 28 S. E. 945.

(2628) § 97. All School Warrants to Be Approved by County Superintendent of Education.—Any and all school warrants issued by any Board of School Trustees against any public school fund shall not be paid by the County Treasurer or other officer having the custody of such fund until the warrant has been approved by the County Superintendent of Education of the county in which said warrant is drawn.

Civ. '12, § 1759; 1909, XXVI, 132.

(2629) § 98. **Trustees Not to Receive Pay as Teachers.**—It shall be unlawful for a School Trustee to receive pay as a teacher of a free public school.

Civ. '12, § 1760; Civ. '02, § 1217; 1896, XXII, 165.

(2630) § 99. **Powers and Duties of School Trustees.**—The Board of Trustees shall also have authority, and it shall be their duty:

1. **TO PROVIDE SCHOOLHOUSES.**—To provide suitable schoolhouses in their districts, and to make the same comfortable, paying due regard to any schoolhouse already built or site procured, as well as to all other circumstances proper to be considered so as best to promote the educational interests of their district.*

2. **TO EMPLOY AND DISCHARGE TEACHERS.**—To employ teachers from those having certificates from their County Board of Examiners or from the State Board of Education, and fix their salaries, and to discharge the same when good and sufficient reasons for so doing present themselves, subject to the supervision of the County Board of Education.†

QUALIFICATIONS OF TEACHER.—No general or special School Trustee shall hereafter employ any teacher who has not a certificate to teach in the free public schools of the State. This provision, however, not to affect the employment of any teacher now teaching in any of the schools of the special school districts: *Provided, further*, That the Trustees of any such school shall always have the right and power to impose any additional examinations and qualifications they may deem proper before or after employing any teachers: *Provided, also*, That all funds of the free public schools of this State other than those arising from the special levy of special school districts shall be paid out of the County Treasury upon warrants duly vouched by the School Trustees of the respective schools or school districts or otherwise as provided by the laws governing any special school district.

3. **TO SUSPEND OR DISMISS PUPILS.**—To suspend or dismiss pupils when the best interest of the schools make it necessary.

4. **TO CALL MEETINGS FOR CONSULTATION.**—To call meetings of the qualified electors of the district for consultation in regard to the school interests thereof; at which meetings the Chairman or other member of the Board shall preside, if present.

5. **TO CONTROL SCHOOL PROPERTY.**—To take care of, manage and control the school property of the district.

6. **TO VISIT THE SCHOOLS.**—To visit the free public schools within their district from time to time, and to take care that they are conducted according to law and with the utmost efficiency.

7. **FERRIAGE OF TRUSTEES.**—They shall be allowed to cross all bridges or ferries free of charge when they are traveling on official business.

*The trustees of graded school run under General Free School Law of 1896 (22 Stat. 150) have no authority to charge pupils incidental fees, either under §§ (2601), (2616), or this section. *Young v. Trustees*, 64 S. C. 131, 41 S. E. 824.

†Location of school houses site by trustees. *Sligh v. Bowers*, 62 S. C. 409, 40 S. E. 885.

‡Construed in connection with § (2616) to mean "subject to the supervision and orders of the County Board of Education." *Bryson v. Daniel*, 52 S. C. 201, 29 S. E. 633.

8. **MATRICULATION AND INCIDENTAL FEES.**—To charge and collect matriculation and incidental fees from the pupils when allowed by any special Act of the General Assembly.

9. **ANNUAL PHYSICAL EXAMINATION REQUIRED OF PUBLIC SCHOOL PUPILS—RESULTS CONFIDENTIAL—EXPENSE.**—The Board of Trustees of any school district of this State be, and hereby are, authorized and empowered to arrange for, and shall require annually, a medical and dental inspection of all pupils attending the public schools of said district during first month of attendance, to ascertain the presence of any contagious or infectious disease, or any disease or defect of the eye, ear, nose, mouth, throat, lungs, or skin, detrimental to the welfare of any child affected therewith: *Provided*, That an inspection by any licensed physician and dentist, or by any competent health officer or trained nurse approved by the State Board of Health, and a report made by them in standard form adopted by such Board, giving the result of their inspection, shall be deemed a sufficient inspection, and no further inspection shall be required of any child so inspected: *Provided, further*, That the results of the inspection of any child not be made public, but shall be considered confidential by the school authorities of said district, except that the same may be communicated to the parents or any person in charge of such child, for their information, and any case of any infectious or contagious disease shall be promptly reported to the proper Board of Health: *Provided*, That not over ten cents (10c) per child shall be charged each for dental or medical inspection, same to be paid out of the school funds of the respective school district.

10. **PENALTY FOR PARENT REFUSING TO ALLOW EXAMINATION OF CHILD.**—Any parent of child refusing to allow the medical and dental inspection, as provided for in the preceding Section, shall be subject to a fine of five dollars or ten days in jail for each offense.

Civ. '12, § 1761; Civ. '02, § 1218; 1896, XXII, 165; 1920, XXXI, 1046.

State v. Elliott, 94 S. C. 35, 77 S. E. 728; Tucker v. Blease et al, State Board of Education, 97 S. C. 303, 81 S. E. 668; Sarratt et al v. Cash et al, Board of School Trustees, 103, S. C. 531, 88 S. E. 256; Ex parte Sarratt et al; Sparks et al v. Cash et al, Board of School Trustees, 103 S. C. 525; 88 S. E. 259.

(2631) § 100. **Fund for Public School Buildings.**—The County Boards of Education of the various counties of this State are authorized to annually set aside an amount equal to five per cent. of the entire public funds of their respective counties, which said amounts shall be used by the said County Boards of Education for the purpose of encouraging and aiding in the construction of adequate public school buildings in their respective counties.

Civ. '12, § 1762; 1905, XXIV, 905; 1910, XXVI, 628.

(2632) § 101. **State Aid for Erection of School Buildings—Terms and Limits—Plans.**—That whenever the friends, patrons, or Trustees of any public school in any school district of any county in this State shall raise, by private subscription, special tax, regular tax, sale of old building, issuing bonds, or otherwise, funds for building a schoolhouse in such district, the State Board of Education shall, upon application duly endorsed by the County Board of Education of the county in which the public school is

located, turn over to the Trustees of such school fifty (\$50.00) dollars for each one hundred (\$100.00) dollars so raised by such friends, patrons, or Trustees for constructing such school building. No one school shall receive more than one-fourth of the cost of the building when completed, equipped and ready for occupancy. A school of one classroom shall not receive more than four hundred (\$400.00) dollars; a school of two classrooms shall not receive more than six hundred (\$600.00) dollars; a school of three classrooms shall not receive more than eight hundred (\$800.00) dollars, and a school of four classrooms or more shall not receive above one thousand (\$1,000.00) dollars. A second allotment of State aid, on the basis herein provided, may be granted any school whenever, in the judgment of the State Board of Education, the growth of the school or the needs of the situation justify and require further accommodations. Only one school in any one district may be granted aid during any one year, unless the circumstances and conditions of such district shall, in the judgment of the State Board of Education, justify the acceptance and approval of two or more buildings. In case of the consolidation of two or more schools, an additional bonus of fifty (\$50.00) dollars may be granted, and the State Board of Education shall give the preference to school districts which have combined and consolidated two or more school buildings. Any school district availing itself of the provisions of this Article shall comply with plans and specifications approved by the State Board of Education.

Civ. '12, § 1763, 1764; 1905, XXIV, 905; 1910, XXVI, 628; 1920, XXXI, 1132.

(2633) § 102. Approval of County Board of Education — Sites — No school shall receive aid under the provisions of the preceding Section without the approval of the County Board of Education of the county in which said school shall be situated. In no case shall the amount of State aid exceed the amount of extra county aid. All buildings thus aided shall be erected on land owned unconditionally by public school authorities, and such school site shall contain four acres or more except where, for special reasons approved by the State Board of Education, a site of four acres can not be procured.

Civ. '12, § 1766; 1905, XXIV, 905; 1920, XXXI, 1132.

(2634) § 103. Appropriation—Disbursement.—To carry out the purpose of Section 101 above the sum of sixty thousand (\$60,000.00) dollars is hereby appropriated. All disbursements shall be made upon duly itemized vouchers, filed with the Comptroller General. A full statement of such disbursements shall be included by the State Superintendent of Education in his annual report to the General Assembly.

1920, XXXI, 1132.

(2635) § 104. How Funds Paid Out.—The funds provided for herein above shall be paid out by the County Treasurer only upon the warrant of the County Board of Education, countersigned by the County Superintendent of Education, and any funds not used by the end of the year shall revert back to the general school fund of the respective counties.

Civ. '12, § 1767; 1905, XXIV, 905.

(2636) § 105. **Tax Returns.**—The County Auditor shall require each taxpayer to return the number and names of the school district in which he resides when he makes his tax return, and the Auditor shall state the name in a separate column in the tax duplicates.

Civ. '12, § 1768; Civ. '02, § 1219; 1896, XXII, 165.

(2637) § 106. **Poll Tax, Etc., to Be Reported.**—The County Auditor when he has completed the tax duplicates, shall report to the County Superintendent of Education, by school districts, the names listed for poll tax, and the amount of taxable property where there is a special levy.

Civ. '12, § 1769; Civ. '02, § 1220; 1896, XXII, 165.

(2638) § 107. **Poll Tax Retained in the County.**—The several County Treasurers shall retain the poll tax collected in their respective counties; and it is hereby made the duty of the said Treasurer in collecting the poll tax to keep an account of the exact amount of said tax collected in each school district in his county, and the poll tax collected therein shall be expended for school purposes in the school district from which it was collected; and any violation of this Section by the County Treasurer shall constitute, and is hereby declared, a misdemeanor, and on conviction thereof, the said County Treasurer shall pay a fine of not more than five hundred dollars, to be used for school purposes in the county suffering from such violation, or imprisonment, in the discretion of the Court.

Civ. '12, § 1770; Civ. '02, § 1221; 1896, XXII, 165.

(2639) § 108. **County Treasurer to Report Who Have Paid Poll Tax.**—Each County Treasurer, when he has finished the collection of taxes for his county, shall report to the County Superintendent of Education the names of the persons in the respective school districts who have paid their poll tax.

Civ. '12, § 1771; Civ. '02, § 1222; 1896, XXII, 165.

(2640) § 109. **Treasurer to Make Monthly Reports to County Superintendent of Education.**—It shall be the duty of each County Treasurer to report monthly, on the fifteenth day of each month, to the County Superintendent of Education of his county the amount of collections and disbursements made by him for the month on account of school tax and all other school funds; and it shall be a misdemeanor on the part of any County Treasurer to neglect, fail or refuse to make such report, and on conviction thereof, he shall pay a fine of not more than five hundred dollars, the same to be used for school purposes in his county.

Civ. '12, § 1772; Civ. '02, § 1223; 1896, XXII, 165.

(2641) § 110. **Moneys—How Disbursed.**—All moneys disbursed by any County Treasurer on account of school funds, taxes, or other school funds shall be paid on the order of the Board of School Trustees, countersigned by the County Superintendent of Education, or as otherwise directed by law: *Provided*, That in School District No. 1, of Chester County, the Board of Trustees may, monthly, or from time to time, as they see fit, meet, and by resolution, approve valid claims against said district, and direct the

Secretary of said Board to issue warrants therefor; each such resolution shall specify the payee, amount and nature of each claim, and shall be executed in triplicate and signed by a majority of the members of said Board, and when duplicate originals thereof shall have been filed with the County Superintendent of Education and Treasurer of said county, warrants issued by the Secretary of said Board in conformity with such resolution, shall be approved by the County Superintendent and paid by the Treasurer, as if such warrants had been signed by a majority of said Board.

Civ. '12, § 1773; Civ. '02, § 1224; 1896, XXII, 165; 1917, XXX, 342.

Ex parte Board of Commissioners Florence Graded School, *in re* McDuffie, School Commissioner, 43 S. C. 11, 20 S. E. 794.

(2642) § 111. County Treasurer to Make a Report to State Superintendent.—Each County Treasurer shall make out and forward to the State Superintendent of Education annually, on the first day of November, a certified statement showing (by school districts) the amount of poll tax and the amount of all other school taxes collected by him for the fiscal year ending on the 31st day of December next preceding; and should any County Treasurer fail or neglect or refuse to make and forward the statement as herein required, the State Superintendent of Education shall make a written complaint to the Circuit Solicitor for the county in which the said Treasurer resides, who shall prosecute the said County Treasurer for the same, and on conviction thereof, he shall be subject to a fine of not more than five hundred dollars, the same to be used for free public school purposes in his county.

Civ. '12, § 1774; Civ. '02, § 1225; 1896, XXII, 165.

(2643) § 112. Unexpected Balances to Be Carried Forward.—The County Treasurer shall carry forward all sums in his hands collected for any previous year or years for school purposes, and unexpended, to the next fiscal year, and credit the same to the school district respectively for which it was apportioned, and he shall report the same to the County Superintendent of Education.

Civ. '12, § 1775; Civ. '02, § 1226; 1896, XXII, 165.

(2644) § 113. Unlawful for Certain Officers to Discount Teachers' Pay Certificates.—It shall be unlawful for any County Treasurer, County Auditor, member of County Board of Education, or School Trustee, to buy, discount or share, directly or indirectly, or be in any way interested in any teacher's pay certificate or other order on school fund, except such as are payable to him for his own services, or for any School Trustee to make any contract, or be pecuniarily interested, directly, in any contract with any school district of which he is Trustee.

Civ. '12, § 1776; Civ. '02, § 1227; 1900, XXIII, 366.

See Criminal Code for penalty for violation of this provision.

(2645) § 114. Trustees to Regulate the School Terms — Contracts of Trustees.—The County Board of Education shall regulate the opening and closing of the school terms so as best to promote and subserve the educational interest of the different sections of their counties: *Provided*, That all contracts which Boards of Trustees may make in excess of the funds appor-

tioned to their districts shall be void. And no teacher shall be employed by a Board of Trustees of any school district who is related to a member of the Board by consanguinity or affinity within the second degree, without the written approval of the Board of Education of the county, nor unless a majority of the parents or guardians of the children attending the school for which such teacher is employed requests such employment in writing.

Civ. '12, § 1777; Civ. '02, § 1228; 1900, XXIII, 366.

(2646) § 115. Age of Attendance.—It shall not be lawful for any person who is less than six or more than twenty-one years of age to attend any of the free public schools of this State: *Provided, however,* That the maximum limit of twenty-one years shall not apply to night schools, and persons over that age may attend such night schools.

Civ. '12, § 1778; Civ. '02, § 1229; 1896, XXII, 170; 1917, XXX, 51.

(2647) § 116. State and County Boards and Trustees Exempted from Militia Duty.—The members of the State Board of Education appointed by the Governor, members of the County Boards of Education appointed by the State Board of Education and members of the Board of Trustees shall be exempt from militia duty.

Civ. '12, § 1779; Civ. '02, § 1230; 1896, XXII, 170; 1901, XXIII, 638.

See Criminal Code for penalty for members of County Boards of Education and School Trustees attempting to act after expiration of their term, or removal from office; and for teachers acting as agents for school books.

(2648) § 117. Mixed Schools Unlawful.—It shall be unlawful for pupils of one race to attend the schools provided by Boards of Trustees for persons of another race.

Civ. '12, § 1780; Civ. '02, § 1231; 1896, XXII, 170.

Flood v. News, etc., Co., 71 S. C. 112, 118, 50 S. E. 637, 4 Am. & Eng. Ann. Cas. 685.
Tucker v. Blease et al, State Board of Education, 97 S. C. 303, 81 S. E. 668.

(2649) § 118. Kindergarten Schools Established.—Any County Board of Education throughout the State, upon recommendation of District Trustees, whether known by that name or another, whether created by general or special Act, shall have power to establish and provide for kindergartens for the education of the children of not less than four years of age within their respective jurisdictions, but no child under the age of six years shall be counted in the average attendance of any public school district when public school funds are to be apportioned to the several school districts.

1913, XXVIII, 195.

(2650) § 119. Part of Common School System.—That said kindergartens, when so established, shall be a part of the free common school system of this State and all funds now available, or which may hereafter become available, for the maintenance of said system, and all other funds which may come into the hands of said Boards of Education for educational purposes shall be available, in due proportion, for the establishment and maintenance of said kindergartens.

1913, XXVIII, 195.

(2651) § 120. Equipment of Teachers.—That no teacher or instructor shall be employed to teach in the kindergartens of this State who has not

taken at least a two years' course in kindergarten training and received a certificate or diploma from a recognized kindergarten normal training school approved by the State Board of Education.

1913, XXVIII, 195.

(2652) § 121. Counties Excepted.—*Provided, however,* That the terms of the three preceding Sections shall not apply to the Counties of Sumter, York, Greenwood, Bamberg, Abbeville, Saluda, Lee, Aiken, Jasper, Chesterfield and Williamsburg.

1913, XXVIII, 195.

(2653) § 122. Scholastic Year.—The scholastic year shall begin on the first day of July of each year and end on the thirtieth day of June following.

Civ. '12, § 1781; Civ. '02, § 1232; 1896, XXII, 170.

(2654) § 123. Public Schools to Be Kept Open Three Months.—The free public schools of the State shall be kept open and the exercises thereof continued, in each school district in the State, for a period of at least three months in each and every year.

Civ. '12, § 1782; Civ. '02, § 1233; 1899, XXIII, 112.

(2655) § 124. County Board of Education of Richland County—Election—Vacancies—Primary Elections.—That the County Board of Education of Richland County shall consist of its present members and each until his successor is elected and qualified. And, at each general election hereafter, the qualified electors of each township for which the term of a member on said Board expires shall elect from among the electors of such township a member of said Board to serve for a term of six years and until his successor is elected and qualified. Any vacancy on said Board at any time shall be filled by a majority vote of the remaining members of said Board until the next general election, at which general election a successor shall be elected for the remainder of the unexpired term or for full term as the case may be: *Provided*, That if any political party provides a party primary nomination of a candidate for membership on said Board, no person otherwise qualified for such nomination shall be required to pay any assessment or other fee as a condition to such candidacy or for any purpose: *Provided, further*, That no member of said Board shall be employed in the county school system as a teacher or otherwise.

1921, XXXII, 353.

(2656) § 125. Powers of County Board.—That the said County Board of Education shall exercise the powers and duties now devolved by law upon the County Board of Education, and shall have full power and authority to perform the several duties of administration and supervision of the schools of the county as it may deem best through the agency of its Chairman, except as hereinafter provided.

1921, XXXII, 353.

(2657) § 126. County Superintendent of Education—Election—Term—Bond—Oath—Powers—Salary.—That there shall be elected at the gen-

eral election for 1920 by the qualified electors of the County of Richland a County Superintendent of Education, who shall hold his office for the term of four years and until his successor is elected and qualified. He shall, before being commissioned by the Secretary of State, as now provided by law for other State and county officers, and entering upon the duties of his office, give bond to the State for the use of the county for educational purposes in the penal sum of two thousand (\$2,000.00) dollars with good and sufficient sureties, to be approved by the County Board of Commissioners, conditioned for the faithful and impartial discharge of the duties of his office. And shall take and subscribe the oath of office prescribed in Section 26, Article III, of the Constitution of this State. When commissioned, he shall immediately enter upon the discharge of his duties. That when the said County Superintendent of Education is elected and qualified, he shall thereupon become *ex officio* Chairman of the said County Board of Education. He shall have full power and authority to approve all claims for teachers' salaries, but no other claims exceeding one hundred dollars. All claims in excess of one hundred dollars, except claims for teachers' salaries, shall first be authorized for approval by the said County Board of Education. The salary of the said county Superintendent of Education shall not be less than twenty-four hundred dollars (\$2,400.00) a year, payable in monthly installments from the school funds. The County Board of Education may fill a vacancy in said office until the next succeeding general election.

1921, XXXII, 353.

(2658) § 127. Supervisors—Clerk—Courses of Study.—That the said County Board of Education may, in its discretion, employ supervisors for the schools in the county and such other agents as, in its judgment, it may deem necessary for the proper administration of the schools of the county, and shall employ a stenographer to act as clerk to the County Superintendent of Education and the Board, and to keep the office open in the absence of the County Superintendent of Education, which office shall be known and designated as the office of the County Superintendent of Education: *Provided*, That no employee of the Board shall be related within the sixth degree by blood or marriage to any member of the said Board. The County Board shall have authority to define and prescribe a course of study for the schools of the county, using the textbooks prescribed by the State Board of Education and adding such other studies and textbooks as, in its judgment, may be necessary.

1921, XXXII, 353.

(2659) § 128. Nomination of School Trustees—Terms—Vacancies.—That the County Board of Education shall, before July 1, 1921, and before July 1 each year thereafter, call a meeting of the electors of each school district in the county, which said meeting shall be duly advertised, and at such meeting the electors attending shall organize as a mass meeting and consider their school needs, and shall nominate and recommend to the County Board of Education, at the first mass meeting, three of the qualified electors in their district to be appointed by the County Board

as a District Board of Trustees, and it shall be the duty of the County Board of Education to appoint such nominees or other electors of such district as Trustees of such district on or before July 1, 1921, to serve from said date for terms of one, two and three years, respectively, as designated by the said Board; and thereafter one Trustee shall be appointed annually for each district for a term of three years and until his successor is appointed and qualifies; and electors in each district at each annual mass meeting nominating an elector for appointment as Trustee and the County Board always appointing the nominee or nominees of the mass meeting unless, in its judgment, there be some valid reason to the contrary: *Provided*, That the County Board may, at any time, fill a vacancy in a Board of Trustees: *And provided, further*, That the County Board may, at any time, remove a District Trustee for cause: *Provided, further*, That the present Trustees of the county schools remain in office until their present term expires.

1921, XXXII, 353.

(2660) § 129. **Reports of Trustees.**—That at such annual mass meeting in each district the Trustees shall make a report to the meeting of the financial affairs of the district; together with such recommendations as they may deem proper, which report, together with the minutes of the mass meeting of electors, shall be forwarded by the Secretary of the meeting to the County Board and filed for record in its office.

1921, XXXII, 353.

(2661) § 130. **Annual Meeting of Trustees.**—That the County Board shall, annually, call a meeting of all the School Trustees of the county for conference on school interests, at which meeting the Chairman of the County Board shall preside. Each Trustee shall receive, for actual attendance upon such meeting, four dollars per diem and five cents for each mile of distance of his residence from the Courthouse.

1921, XXXII, 353.

(2662) § 131. **Compensation of County Board—Of Employees.**—That each member of the County Board shall receive four dollars per diem and five cents for each mile of distance of residence from the Courthouse for actual attendance upon any meeting of the Board, and may be allowed the actual expenses of other necessary travel in the interest of the schools of the county, as may be directed and required by the County Board, such per diem, mileage and expenses to be paid out of the ordinary funds of the county; and the Board shall have authority to fix the salaries of all its employees and to provide any necessary traveling expenses or conveyance for them and to pay the same out of the school funds of the county.

1921, XXXII, 353.

(2663) § 132. **Tax Books to Be Kept by School Districts.**—It shall be the duty of the County Auditor to make up the books of assessments by school districts, and it shall be the duty of the County Treasurer to collect the taxes and keep the accounts by school districts, so as to show the poll tax,

the dog tax and the proceeds of any extra levy, and of any levy for bond issue in each school district.

1921, XXXII, 353.

(2664) § 133. Not to Interfere With Columbia School District.—That nothing herein shall interfere with the Special Act and amendments thereto relating to the Columbia School District.

1921, XXXII, 353.

State Aid for Rural Schools.

(2665) § 134. Appropriation for Rural School Aid.—Not less than one hundred eighty-seven thousand five hundred (\$187,500.00) dollars shall be appropriated annually for the purpose of assisting rural school districts in the establishment, maintenance, and improvement of rural graded schools under the conditions and provisions of the following Sections of this Article.

Civ. '12, § 1783; 1910, XXVI, 791; 1912, XXVII, 924; 1917, XXX, 100.

(2666) § 135. Conditions Precedent to Receiving Aid Hereunder—Two Hundred Dollar Class.—When any rural school district shall levy and collect a special school tax of not less than four (4) mills, and when a school in such district employs two certified teachers for a school term of not less than six months, or twenty-four weeks, and when such school has a legal enrollment of not fewer than fifty pupils by December 15th, and an average daily attendance for the session of not fewer than thirty pupils, and when such school is taught in a comfortable and sanitary building, provided with the minimum equipment prescribed by the State Board of Education, and when it uses a course of study and classification approved by the State Board of Education, it shall be entitled to receive State aid under this Article to the amount of \$200.00 per year.

Civ. '12, § 1784; 1910, XXVI, 791; 1912, XXVII, 924; 1917, XXX, 100.

(2667) § 136. Same—Three Hundred Dollar Class.—When any rural school district shall levy and collect a special school tax of not less than four (4) mills, and when such school employs three or more certified teachers for a school term of not less than seven months, or twenty-eight weeks, and such school has a legal enrollment of not fewer than seventy-five pupils by December 15th, and an average daily attendance for the session of not fewer than forty pupils, and when such school is taught in a comfortable and sanitary building, provided with the minimum equipment prescribed by the State Board of Education, and when it uses a course of study and classification approved by the State Board of Education, it shall be entitled to receive State aid under this Article to the amount of \$300.00 per year.

Civ. '12, § 1785; 1910, XXVI, 791; 1912, XXVII, 924; 1917, XXX, 100.

(2668) § 137. Same—Four Hundred Dollar Class.—When any rural school district shall levy and collect a special school tax of not less than four (4) mills, and when such school employs four certified teachers for a school term of not less than seven months, or twenty-eight weeks, and when such school has a legal enrollment of not fewer than one hundred pupils by December 15th, and an average daily attendance for the session of not

fewer than sixty pupils, and when such school is taught in a comfortable building containing not fewer than four classrooms, provided with the minimum equipment prescribed by the State Board of Education, and when it uses a course of study and classification approved by the State Board of Education, it shall be entitled to receive State aid under this Article to the amount of \$400.00 per year.

1912, XXVII, 924; 1917, XXX, 100.

(2669) § 138. Same—Five Hundred Dollar Class.—When any rural school district shall levy and collect a special tax of not less than four (4) mills, and when such school employs five certified teachers for a school term of not less than seven months, or twenty-eight weeks, and when such school has a legal enrollment of not fewer than one hundred and twenty-five pupils by December 15th, and an average daily attendance for the session of not fewer than seventy-five pupils, and when such school is taught in a comfortable and sanitary building, containing not fewer than five classrooms, provided with the minimum equipment prescribed by the State Board of Education, and when it uses a course of study and classification approved by the State Board of Education, it shall be entitled to receive State aid under this Article to the amount of \$500.00 per year.

1912, XXVII, 924; 1917, XXX, 100.

(2670) § 139. Terms of State Aid for Rural Graded Schools—Proviso.—That any rural graded school whose enrollment is forty (40) and whose average attendance up to December 15 is thirty (30) shall be entitled to receive State aid as now provided by law: *Provided*, Said school or schools comply with the other requirements of the rural graded school law: *And provided*, No district which receives State aid under the provisions of the High School Act or of the Term Extension Act shall receive aid under the provisions of this Article. No district which contains an incorporated town with more than four hundred inhabitants shall receive aid under the provisions of this Article.

1912, XXVII, 924; 1916, XXIX, 712; 1919, XXXI, 236.

(2671) § 140. Application—Program of Work to Accompany—Time of Filing—To Be Approved by County Superintendent.—The State Superintendent of Education shall prescribe and furnish to the County Superintendents all necessary forms and blanks for making application for State aid, and every such application, accompanied by a full, clear and legible program of each teacher's daily classroom work, shall be filed with the State Superintendent of Education not later than December 31st. Each application and each accompanying program shall be examined and approved in writing by the County Superintendent before State aid is granted.

Civ. '12, § 1786; 1910, XXVI, 791; 1912, XXVII, 924; 1916, XXIX, 712; 1919, XXXI, 336.

(2672) § 141. Annual Report to Be Filed Before Application Can Be Approved.—The annual report of any rural graded school receiving State aid shall be filed with the State Superintendent of Education and a dupli-

cate copy thereof with the County Superintendent in accordance with Act No. 128, page 191, Statutes 1913, before the application of such school for further aid is approved or paid.

1912, XXVII, 924; 1917, XXX, 100.

(2673) § 142. When Aid May Be Refused.—The State Superintendent of Education may refuse aid under the provisions of this Article if it is made to appear to him that the expenditure would be unwise and detrimental to the interest of free school education in said district.

Civ. '12, § 1787; 1910, XXVI, 791; 1912, XXVII, 924; 1917, XXX, 100.

(2674) § 143. Rules and Regulations.—The State Superintendent of Education, with the State Board of Education, shall provide rules and regulations for the distribution of this fund, and shall publish such regulations to the various County Superintendents of Education, who, in turn, shall publish them to the various Trustees.

Civ. '12, § 1788; 1910, XXVI, 791; 1912, XXVII, 924; 1917, XXX, 100.

(2675) § 144. Transportation of Children Permissible.—It shall be lawful for the School Trustees of a district to use the State aid obtained under the provisions of this Article to furnish public conveyance of children to the school, when, in the opinion of the Trustees and the County Superintendent, such action is wise and expedient.

1912, XXVII, 924; 1917, XXX, 100.

(2676) § 145. Disbursement by Voucher.—All disbursements under this Article shall be made on duly itemized vouchers, approved by the Comptroller General.

1912, XXVII, 924; 1917, XXX, 100.

(2677) § 146. Same.—Applications must be filed in order of their receipt, and paid or refused in the same order.

Civ. '12, § 1789; 1910, XXVI, 791.

State Aid for Needy Schools.

(2678) § 147. State Aid for Needy Schools—Conditions.—A minimum school term of not less than seven months is hereby guaranteed in any public school district voting an eight mill tax for current expenses, employing one certificated teacher to instruct not fewer than twenty-five nor more than fifty pupils, maintaining under each teacher in each classroom an average monthly attendance of at least fifteen pupils, and paying to each teacher the minimum salary hereinafter provided. Any school district voting for current expenses a local tax of less than eight mills, or enrolling under any one teacher fewer than twenty-five or more than fifty pupils, or maintaining in any classroom an average monthly attendance of fewer than fifteen pupils, or paying teachers from regular or special funds salaries in excess of those hereinafter stipulated, shall not be entitled to share in the benefits of this Article. Neither district taxes on account of school bonds, nor taxes in excess of eight mills for current expenses, shall affect the status of any school district applying for aid hereunder, to run a term of seven months.

1917, XXX, 97; 1919, XXXI, 52; 1920, XXXI, 1137.

(2679) § 148. **Salaries of Teachers.**—In any school district applying for aid hereunder the schedule of teachers' salaries to be paid from regular or special funds shall be as follows: The principal of a one-teacher or of a two-teacher school shall be paid during the first year not more than one hundred dollars per month; the principal of a three-teacher school shall be paid not more than one hundred and ten dollars per month; the principal of a four-teacher school shall be paid not more than one hundred and twenty dollars per month, and the principal of a school employing five or more teachers shall be paid not more than one hundred and thirty dollars per month. Principals receiving these salaries shall hold first grade certificates. An assistant teacher holding a first grade certificate shall be paid not more than ninety dollars per month; an assistant teacher holding a second grade certificate shall be paid not more than seventy-five dollars per month; and an assistant teacher holding a third grade certificate shall be paid not more than sixty dollars per month. Any principal or any assistant returning to his or her classroom may be paid during the second year an additional stipend of five dollars per month, and during the third year a further stipend of five dollars per month. The State Board of Education shall determine the equivalence of all other certificates. In any district the Board of Trustees may pay lower salaries, in their discretion; but such lower salaries always constitute the basis for calculating any deficiency to be made up from the funds provided for herein. If the salaries paid teachers in any district exceed the salaries herein authorized, the total amount of the excess must be applied by the Board of School District Trustees, either by private subscription or by a higher rate of local taxation. Any district running its school longer than seven months must also pay the cost of the eighth month, or of the ninth month, by private subscription, or by a higher rate of local taxation.

1917, XXX, 97; 1919, XXXI, 52; 1920, XXXI, 1137.

(2680) § 149. **Annual Appropriation — Disbursement.** — The sum of \$140,000.00 is hereby appropriated annually to carry out the purposes of this Article. The State Superintendent of Education shall prescribe all necessary forms and blanks to be used by school districts applying for aid hereunder. The decision of the State Superintendent regarding any application shall be subject to review on appeal by the State Board of Education. All moneys shall be paid out on duly itemized vouchers filed with the Comptroller General, and a detailed report of all expenditures shall be included by the State Superintendent in his annual report to the General Assembly.

1917, XXX, 97; 1919, XXXI, 52; 1920, XXXI, 1137.

(2681) § 150. **Printing.**—The State Superintendent of Education may advertise for bids for all printing required under this Chapter, and shall let the same to the lowest bidder therefor, who shall be required to file with his bid a bond in double the amount of his bid for the faithful performance of the contract.

Civ. '12, § 1791; Civ. '02, § 1237; 1896, XXII, 172.

(2682) § 151. **Acts Creating Special Graded School Districts Not Repealed — Annual Reports — Special Tax and Tuition.** — Nothing con-

tained in this Article shall be construed to repeal the Acts of the General Assembly creating special and graded school districts, and the provisions of said Acts shall apply to said school districts: *Provided*, That the Trustees of said school districts and Commissioners of the city schools of Charleston shall make annual reports to the State Superintendent of Education in such form and at such time as he shall prescribe: *Provided, further*, Whenever under the provisions of law any school district or municipal corporation is authorized to levy a special tax for the support of public schools therein, any person not a resident of said school district or municipal corporation shall be entitled to a credit upon fees for the tuition of his or her children by the amount of such special tax paid by such person.

Civ. '12, § 1792; Civ. '02, § 1238; 1899, XXII, 514.

Rights of Special School Districts. *Holler v. Rock Hill School District et al.*, 60 S. C. 41, 38 S. E. 220; *Martin v. School District of Laurens*, 57 S. C. 125, 35 S. E. 517.

(2683) § 152. Textbooks Provided at Cost—Funds—Depositories, Etc.—

The County Boards of Education of the several counties of this State are hereby authorized and required to set aside from the public school funds of their respective counties an amount, not exceeding five hundred dollars, for the purpose of providing the pupils attending the free public schools of their counties with school textbooks at actual cost or exchange prices. The amount so set aside from the school funds shall be paid to the County Superintendent of Education by the County Treasurer out of the unappropriated general school funds in his hands, on the warrant of the said County Board of Education, and shall be and remain a permanent fund in the hands of the County Superintendent of Education, to be used in purchasing and keeping on hand school textbooks for sale to pupils attending the free public schools of his county for cash, at actual cost or exchange prices, and to be used for no other purpose and in no other manner; and the places where said school textbooks are kept and sold, shall be deemed depositories, under control of the State as provided in the Seventh Article, or provision in the Seventh Article, or provision in the contract made in 1893, with the publishers of school textbooks. That the County Superintendent of Education in every county in the State be, and is hereby, required to keep his office open each day of the week prior to the time appointed for school to open in his county, and for one week immediately thereafter, and for at least one day in each week during the remainder of the school term, for the convenience of those wishing to purchase books: *Provided*, That in the Counties of Charleston, Chesterfield, Edgefield, Kershaw, Lancaster, Laurens, Greenwood, Lexington, Richland and Abbeville, the County Board of Education are hereby authorized and empowered, but not required, to carry out the provisions of this Section: *Provided, however*, That nothing herein shall prevent the keeping of said depository in some other place than the office of the Superintendent of Education, if in his judgment it is best to do so.

Civ. '12, § 1793; Civ. '02, § 1239; 1897, XXII, 428; 1898, XXII, 762; 1902, XXIII, 1020; 1903, XXIV, 64; 1905, XXIV, 837; 1907, XXV, 481; 1908, XXV, 1123; 1918, XXX, 757.

Provision as to depositories does not signify that State Board of Education may not require agency performing larger function in distribution and sale of books which would also be in its nature and functions legal depository. *Duncan v. State Board*, 74 S. C. 560, 566, 54 S. E. 760, affirmed in 78 S. C. 227, 58 S. E. 1095.

(2684) § 153. School Trustees May Purchase Books for Certain Pupils.—

Whenever it shall be made to appear to the satisfaction of the Trustees of any school district that any patron of such school is unable by reason of poverty to purchase the necessary books for the use of his or her child or children, then in such case the Trustees of such school district may, in their discretion, purchase such necessary books for such pupils, and furnish the same to pupils under such regulations as the Trustees may prescribe: *Provided*, The sum so expended for the purchase of said books shall not exceed the sum of 5 per cent. of all the school fund of said district in any one year: *And provided, further*, That the books so purchased shall be the property of such public school district and must be returned to the Board of Trustees at the end of each term.

Civ. '12, § 1794; 1902, XXIII, 1020.

(2685) § 154. School Book Depositories.—

The County Superintendents of Education in the several counties of this State are hereby authorized and required to select and secure a reliable merchant, postmaster or other reliable person in each township in each county, with whom there shall be deposited a sufficient number of school books for sale for schools in the township, at not exceeding ten per cent. above first cost; and that accurate accounts thereof shall be kept by the said County Superintendent with each depository.

Civ. '12, § 1795; 1905, XXIV, 877.

Duncan v. State Board, 74 S. C. 560, 564, 54 S. E. 760, affirmed in 78 S. C. 227, 243, 58 S. E. 1095.

(2686) § 155. State and County Aid for School Libraries.—

Whenever the friends and patrons of a public school raise, from public subscription or otherwise, a sum of not less than five (\$5.00) dollars nor more than twenty-five (\$25.00) dollars, and deposit same with the County Treasurer to the credit of their school district, the County Board of Education, through the County Superintendent of Education, shall credit such district with an equal amount, to be drawn from the County Board fund, or if the said County Board fund has been exhausted, to be drawn from the general school fund of the county. The County Superintendent shall then make application to the State Superintendent for an amount equal to the sum raised, by private subscription or otherwise, and deposit with the County Treasurer. All the money resulting from private subscription or otherwise, from county funds, or from State funds, shall be held in the County Treasury to the credit of the school district and shall be paid out upon the warrant of the Board of School District Trustees, duly approved and countersigned by the County Superintendent of Education: *Provided*, That nothing herein shall prevent other funds greater than those mentioned herein being raised by private subscription and applied by the County Superintendent of Education to the purposes as herein set forth.

Civ. '12, § 1796; 1904, XXIV, 391; 1905, XXIV, 877; 1908, XXV, 1024; 1913, XXVIII, 190; 1914, XXVIII, 752; 1919, XXXI, 150.

(2687) § 156. Disbursement of Funds.—

The funds provided under the above Section shall be expended only for the establishment of a library, for the enlargement of a library, or for the purchase of supplementary

readers to be kept in the school library. Any free public school in this State shall be entitled to participate in this fund not more than once during any fiscal year. The State Board of Education shall select and publish a list of library books, and also a list of supplementary readers, and shall make all necessary rules and regulations concerning the use and care of libraries. The Trustees or teacher of any school receiving the benefits of this Article shall file, both with the County Superintendent of Education and with the State Superintendent of Education, a correct and legible list of books purchased.

Civ. '12, § 1797; 1904, XXIV, 391; 1905, XXIV, 877; 1919, XXXI, 150.

(2688) § 157. State Aid for Purchase of Bookcases.—Any school planning to establish a library and needing a bookcase, may secure twelve and 50-100 (\$12.50) dollars from the State for the purchase of said bookcase, whenever the friends and patrons of such a school raise, from private subscription or otherwise, and deposit with the County Treasurer twelve and 50-100 (\$12.50) dollars to the credit of their school district. But no school shall be entitled to a second payment of State aid for the purchase of bookcases except after a full and satisfactory showing, in writing, has been made to the State Superintendent.

1919, XXXI, 150.

(2689) § 158. Appropriation.—To carry out the purpose of this Article the sum of five thousand (\$5,000.00) dollars is hereby annually appropriated.

Civ. '12, § 1801; 1904, XXIV, 391; 1905, XXIV, 877; 1919, XXXI, 150.

(2690) § 159. Unlawful to Use Condemned Books.—In all schools and colleges within this State which are supported in whole or in part from the free school funds, it shall be unlawful to use any textbook which has been condemned or disapproved by the State Board of Education.

Civ. '12, § 1804; Civ. '02, § 1240; 1898, XXII, 763.

(2691) § 160. Old School Claims Paid.—All persons holding school claims against any county of this State which are unpaid are hereby permitted and allowed to prove and establish the same before the County Superintendent of Education, the County Treasurer and County Auditor of said county. If said claims are declared valid and binding obligations by said County Superintendent of Education, Auditor and Treasurer against the school district for which they were issued, the County Treasurer of said county is hereby authorized and directed to pay any of said claims declared valid out of the first money coming in his hands as Treasurer belonging to the school district against which said claim or claims are established.

Civ. '12, § 1805; Civ. '02, § 1241; 1894, XXI, 786; 1896, XXII, 122.

See Acts 1901, XXIII, 826, as to payment of claims in Clarendon, Laurens, Marion, Newberry and Sumter Counties.

(2692) § 161. Officers Authorized to Borrow Money to Pay School Claims — Amount, Interest and Disbursement.—The County Treasurers and the County Supervisors of the several counties in this State be, and

they are hereby, authorized and required, upon the application of the County Boards of Education of the respective counties, to borrow, from time to time during any fiscal year, such sums of money as may be necessary to pay the school claims of such counties, not to exceed seventy-five per cent. of the amount reported by the County Auditors for schools for said fiscal year, at a rate of interest not exceeding the rate of seven per centum per annum, and to pledge the taxes to be collected for that purpose for the payment of the money so borrowed, and the interest thereon: *Provided*, That all money borrowed shall be held and paid out by the County Treasurer as school funds, and without extra commission: *Provided, further*, That in Dorchester County the rate of interest shall not exceed eight per cent. per annum.

Civ. '12, § 1806; 1902, XXIII, 1019; 1914, XXVIII, 9.

(2693) § 162. Reserve Fund to Place Schools on Cash Basis.—In any county in this State where the schools have not funds sufficient to pay all claims in cash, the County Board of Education may, at its discretion, direct the County Superintendent of Education to set aside from the school funds of the county, or any of the school districts, an amount annually of not exceeding ten per cent. of such funds, for so many years as may be necessary to create a sufficient fund to put the schools of such county of any of the school districts on a cash basis.

Civ. '12, § 1807; 1902, XXIII, 1019.

(2694) § 163. Reserve Fund—How Used and Maintained.—Whenever said reserve fund reaches an amount sufficient to put said county or school district, as the case may be, on a cash basis, then said fund may be used for said purpose: *Provided*, That in each year during the time necessary to create such reserve fund, the County Superintendent of Education shall use the fund accumulated as a loan, without interest, to pay claims held by teachers to whom the pay certificates were originally issued, the funds so used to be replaced annually from taxes collected for school purposes.

Civ. '12, § 1808; 1902, XXIII, 1020.

(2695) § 164. Certain Fees in Chester County to Constitute a County Board Fund.—That all the shool funds in Chester County arising from marriage license fees and hunters' license fees shall constitute a "County Board Fund," under the control and direction of the County Board of Education for educational purposes in said county. And among other educational purposes the said Board may apply the said funds in the support of the Home Demonstration Work in the county; and all acts of the said Board in applying said funds heretofore in support of said Demonstration Work is hereby ratified and approved.

1918, XXX, 704.

(2696) § 165. Students of Public Schools to Observe Arbor Day.—The free public schools of this State shall observe the third Friday in November of each year as Arbor Day, and on that day the school officers and teachers shall conduct such exercises and engage in the planting of such

shrubs, plants and trees as will impress on the minds of the pupils the proper value and appreciation to be placed on flowers, ornamental shrubbery and shade trees.

Civ. '12, § 1809; Civ. '02, § 1242; 1898, XXII, 760.

(2697) § 166. South Carolina Day to Be Observed.—The public schools of this State shall observe Calhoun's birthday, the 18th of March, of each year, as "South Carolina Day," and on that day the school officers and teachers shall conduct such exercises as will conduce to a more general knowledge and appreciation of the history, resources and possibilities of this State: *Provided*, That if said day shall fall on Saturday or Sunday, that the Friday nearest to March 18th shall be selected: *Provided, further*, That if any school shall not be in session on the said date, that the celebration may be held before the close of the term. That the State Superintendent of Education shall suggest such topics or programs as he may deem appropriate for the celebration of South Carolina Day.

Civ. '12, § 1810; 1906, XXV, 22.

(2698) § 167. Fourth Friday in October to Be Observed in Public Schools as Frances Willard Day.—That the fourth Friday in October in each year shall be set apart and designated in the public schools of this State as Frances Willard Day, and in each public school in this State it shall be the duty of such school to prepare and render a suitable program on said day to the end that the children of the State may be taught the evils of intemperance.

1918, XXX, 791.

(2699) § 168. Officers and Trustees of Certain Institutions to Report to State Superintendent.—The Trustees, officers or persons in charge of all literary, scientific or professional institutions of learning incorporated, supported or aided by the State, of all schools or private educational institutions, shall, on or before the 15th day of July in each year, make a report in writing to the State Superintendent of Education, of such statistics as the Superintendent shall prescribe relating to the number of pupils and instructors, courses of study, cost of tuition and the general condition of the institution or school under their charge.

BLANK FORMS OF INQUIRY.—The Superintendent shall prepare blank forms of inquiry for such statistics, and shall send the same to every such institution or school on or before the 10th day of May in each year; and so much of said information, as he may deem proper, be incorporated in his annual report.

Civ. '12, § 1811; Civ. '02, § 1243; 1896, XXII, 172.

(2700) § 169. County Superintendents of Education Charged With Schools, Etc., Outside City of Charleston, Allowed Mileage.—The County Superintendent of Education of Charleston County shall have jurisdiction only over the schools and other educational interests outside of the corporate limits of the City of Charleston. He shall organize in all those districts outside of the city, formerly known as parishes, a suitable number of schools, and shall visit them as often as may be practicable during each

year, and perform such other duties as are prescribed for County Superintendent of Education in this Chapter. He shall be paid a stated salary of twelve hundred dollars per annum, payable by the County Treasurer in equal monthly installments, which salary shall cover also all traveling expenses that may be incurred.

Civ. '12, § 1812; Civ. '02, § 1244; G. S. 1025; R. S. 1090; 1878, XVI, 584; 1879, XVII, 62; 1891, XX, 1268.

(2701) § 170. Division of City of Charleston Into Six School Districts—School Board—How Constituted.—The City of Charleston is hereby divided into six school districts; the First District to comprise Wards One (1) and Two (2), the Second District to comprise Wards Three (3) and Four (4), the Third District to comprise Wards Five (5) and Six (6), the Fourth District to comprise Wards Seven (7) and Eight (8), the Fifth District to comprise Wards Nine (9) and Ten (10), the Sixth District to comprise Wards Eleven (11) and Twelve (12) of said city. At every general municipal election in the City of Charleston there shall be elected by the legal voters of each of the said school districts, respectively, one School Commissioner, and the six School Commissioners so elected, together with the two School Commissioners to be appointed for the same term by the Governor, upon the recommendation of the Board of Trustees of the High School of Charleston, and two School Commissioners to be appointed for the same term by the Governor, upon the recommendation of the Board of Trustees of the College of Charleston, shall constitute the School Board for the City of Charleston, and shall be invested with all the powers and perform all the duties, and in every respect be governed by the laws now existing respecting the School Board of the City of Charleston as heretofore constituted.

The Commissioners so elected and appointed may assemble at any time and elect a Chairman, a Clerk and a Superintendent of City Schools, whose term of office, duties and compensation shall be prescribed by said Board; but their terms of office shall not exceed that of the Board electing them.

Civ. '12, § 1813; Civ. '02, § 1245; G. S. 1026; R. S. 1091; 1882, XVIII, 27, § 1; 1883, XVIII, 301.

(2702) § 171. Powers and Duties of School Board of City of Charleston.—The said Board shall have the following powers and duties: To discharge the same duties in the city which are required of School Trustees in the counties; (2) to determine the studies and classbooks to be used in the city schools; (3) to cause examinations to be made of teachers for the city schools; (4) to elect and dismiss teachers, prescribe their duties and term of office, and to make rules for the government of the schools; (5) to fill vacancies occurring in the Board by death, resignation, departure from the State or refusal to qualify; the said vacancies to be filled from the same wards in which they occur; (6) to grant diplomas in the normal school department, which shall entitle the parties holding the same to become teachers in the public schools; (7) to make an annual report to the Superintendent of Education as to the city schools, as is required of Commissioners of County Schools; (8) to take in charge and keep in

order all buildings and other property belonging to or used for the city; (9) for the purposes of this Section, and in order to carry into effect the provisions of the Constitution relating to the school tax, the City of Charleston shall be deemed a school district, and the City Treasurer shall annually levy and collect, at the same time as the city taxes, a tax of two mills on the dollar on all the taxable property in the said city, and the County Treasurer shall pay over to the City Treasurer the portion of the constitutional school tax and of the poll tax to which the Charleston School District is entitled; and all the said taxes shall be in the City Treasury as public money, protected by the official bond of the City Treasurer, and shall be paid out on the warrant of the City Board of School Commissioners; the said amount to be applied to the support of the city schools, and the balance to the repairs of city school buildings. The City Treasurer shall receive out of this fund annually, for his compensation for all services in receiving and disbursing the school fund, the sum of five hundred dollars.

Civ. '12, § 1814; Civ. '02, § 1246; G. S. 1026; R. S. 1092; 1878, XVI, 585; 1892, XXI, 110; 1908, XXV, 1042.

(2703) § 172. Additional School Tax in City of Charleston.—That in addition to the tax of two mills on the dollar now required by law to be annually levied and collected by the City Treasurer of the City of Charleston, as provided by the preceding Section, the said City Treasurer of the City of Charleston shall annually levy and collect, at the same time as the city taxes of said city, a tax of eight mills on the dollar on all taxable property in the said city, which said tax shall be in the City Treasury as public money, protected by the official bond of the said City Treasurer, and shall be paid by the City Treasurer to the City Board of Public School Commissioners for the City of Charleston upon the warrant of the said Board, and be held by the said Board as a fund to be applied by said Board from time to time, or at such time or times as said Board shall deem expedient to the purchase of property and the erection, improvement or alteration of buildings and their equipment, to furnish additional school facilities and for educational purposes in the City of Charleston, or any one or more of said purposes.

1913, XXVIII, 186; 1916, XXIX, 882; 1919, XXXI, 32; 1920, XXXI, 769.

(2704) § 173. Boys' Night School Incorporated.—The Boys' Night School is hereby incorporated into the public school system of the City of Charleston, to be maintained, supported and conducted for and during the scholastic year of the public schools with a competent principal and corps of competent teachers.

1913, XXVIII, 186.

(2705) § 174. Provision for the Higher Education of Meritorious Boys—Power and Duty of Board.—It shall be the duty of the said School Board, and they are hereby authorized and empowered, to select from the public schools, the school of the German Association of Charleston, South Carolina, and the Central School, by competitive examination, such meritorious boys as may desire to secure the privilege of a more liberal education and are otherwise unable to secure the same, and recommend them to

be received into the High School of Charleston, under such rules and regulations as may be prescribed by the said Board of Trustees of the High School of Charleston. And the said School Board is further authorized and empowered to pay the regular annual tuition fees, and no more, for such pupils so recommended as may be received into said High School and maintain such a standard as is required of them, which said tuition fees shall be paid out of the fund to which the Charleston School District is entitled out of the amount raised by the City of Charleston, and not out of the constitutional two-mill tax.

Such pupils so admitted into the High School of Charleston as shall, upon graduation, be recommended by the School Board of the City of Charleston for proficiency therein, shall be entitled to the free honorary scholarships in the College of Charleston provided for such purpose by the Board of Trustees of the College of Charleston, such scholarships to be held under the rules and regulations prescribed by the Trustees of the College of Charleston.

Civ. '12, § 1815; Civ. '02, § 1247; R. S. 1093; 1882, XVIII, 27, §§ 2, 3.

(2706) § 175. Board to Appoint Beneficiaries in State University.—For the further promotion of the liberal education of the youth of the State, the said School Board is hereby authorized and empowered to appoint the beneficiaries of the scholarships to which the County of Charleston may be entitled in either branch of the State University.

Civ. '12, § 1816; Civ. '02, § 1248; 1882, XVIII, 27, § 4.

See ante, § (2630), as to restrictions on power of School Trustees in the employment of teachers.

(2707) § 176. Power to Establish Public School Teachers' Retirement Fund for City of Charleston.—The City Board of Public School Commissioners for the City of Charleston shall have the power to establish what shall be known as the Public School Teachers' Retirement Fund, which fund shall be administered by the Board of Trustees hereinafter provided for. Said fund shall consist of:

1. All moneys and other property received from donations, legacies, devises, gifts, bequests or otherwise for and on account of the said fund.

2. The said City Board of School Commissioners shall annually reserve and turn over to the Board of Trustees as provided for in the next Section, for the said fund, ten per cent. for the first five years and thereafter four per cent. of the gross income of the special school fund paid by the City of Charleston.

3. All interest or income derived from the above moneys.

Civ. '12, § 1817; Civ. '02, § 1249; 1898, XXII, 875.

(2708) § 177. Board of Trustees for Fund — Of Whom to Consist — Duties, Etc.—The Chairman of the City Board of Public School Commissioners, together with two other Commissioners chosen by the said Board, the Superintendent of the Public Schools, who shall be *ex officio* the Treasurer of the said Board, and a representative to be elected every four years by the teachers of the public schools of the City of Charleston, at the same time the School Commissioners are elected, shall form a Board of

Trustees, who shall have charge of and administer the said fund; and said Board of Trustees shall invest the same in stock of this State, or of the United States, or in bonds of the City of Charleston, and shall make payment, from said fund, of annuities granted in pursuance of this Article, and shall from time to time make and establish such rules and regulations for the administration of the said funds as they shall deem best.

Civ. '12, § 1818; Civ. '02, § 1250; 1898, XXII, 875.

(2709) § 178. What Teachers May Become Beneficiaries of Fund.—

Every teacher in the public schools of the City of Charleston who is over the age of 65 years, and shall have taught in the public schools for the period of twenty-five years next preceding the time of retirement, may be retired and shall have the right voluntarily to retire from such service, and upon the certificate of the City Board of School Commissioners that he or she stands in need of maintenance, become a beneficiary under this Article, and every such teacher so retired or retiring shall be entitled to such annuity for the remainder of his or her life as shall be determined on by the City Board of School Commissioners upon consultation with the Board of Trustees of the Teachers' Retirement Fund, to be paid by the said Board of Trustees out of the said fund at the same times and in the same proportions as the salaries of the teachers are paid: *Provided*, That the annuity so paid shall in no case exceed six hundred dollars in any one year.

Civ. '12, § 1819; Civ. '02, § 1251; 1898, XXII, 875; 1918, XXX, 756; 1919, XXXI, 128.

(2710) § 179. Same.—Every teacher in the public schools in the City of Charleston who shall have taught continuously therein not less than twenty years, and has become, without the fault of such teacher, mentally or physically incapacitated for such service, may retire or be retired therefrom and become a beneficiary of said fund in the same manner and to the same extent as provided in the preceding Section: *Provided*, That such annuity shall cease when such incapacity ceases.

Civ. '12, § 1820; Civ. '02, § 1252; 1898, XXII, 875.

(2711) § 180. If Fund Insufficient for Purpose to Be Paid Out Pro Rata.—In case the fund shall be insufficient to pay the annuities provided for in Section 178, the Board of Trustees shall make a ratable distribution among the teachers who may be entitled to the annuities under the provisions of this Article: *Provided, however*, That in case of such insufficiency, the City Board of Public School Commissioners for the City of Charleston is authorized and empowered in their discretion to make up such insufficiency out of any funds under their control applicable to the current expenses of the schools under their charge.

Civ. '12, § 1821; Civ. '02, § 1253; 1898, XXII, 875; 1916, XXIX, 881.

(2712) § 181. Disposition of Surplus School Funds in Charleston County.—The surplus of all moneys derived from the annual tax of three mills for educational purposes remaining after supplying the requirements of the schools of the County of Charleston, outside of the limits of the City

of Charleston, shall be paid by the County Treasurer to the City Board of School Commissioners for the purposes of the schools under their charge. Civ. '12, § 1822; Civ. '02, § 1254; 1898, XXII, 877.

(2713) § 182. How Surplus to Be Ascertained.—In order to ascertain what are the requirements in each fiscal year, respectively, of each of the school districts in said county outside of the City of Charleston, one or more of the School Trustees of each of such school districts separately shall meet and confer with the County Board of Education of said county annually (at such place and time as the County Superintendent of Education of said county shall name), ten days' previous notice of such meeting being given in writing by said County Superintendent of Education to each of said Trustees, and such Trustee or Trustees and such County Board of Education shall sit as a special Board to fix the amount of such requirements of each of such school districts. And when the amount of such requirements of each of such school districts shall have been fixed as hereinbefore provided, the County Superintendent of Education of said county shall report to the County Treasurer of said county such amounts, respectively, and separately, whereupon the County Treasurer shall aggregate the amounts so reported to him and ascertain the surplus (if any) remaining from the proceeds of the levy for school purposes after deducting such aggregate.

AMOUNT OF SURPLUS TO BE REPORTED TO CITY BOARD OF SCHOOL COMMISSIONERS.—Having thus ascertained the amount of said surplus, the County Treasurer shall, as soon as practicable, report said amount to the City Board of School Commissioners, and shall pay over the same to said Board upon its warrant.

Civ. '12, § 1823; Civ. '02, § 1255; 1898, XXII, 877.

(2714) § 183. How Said Funds Are to Be Used.—The said City Board of School Commissioners shall use said funds exclusively in the education of pupils, and shall account annually therefor in the mode provided by law.

Civ. '12, § 1824; Civ. '02, § 1256; 1898, XXII, 877.

(2715) § 184. Special School Tax in Charleston County.—That in addition to all taxes now required by law to be annually levied and collected in the County of Charleston for educational purposes, there shall be annually levied and collected a tax of three mills on the dollar on all taxable property in the County of Charleston, which tax shall be used for the increase of salaries of principals, teachers and other employees of the public schools and for educational purposes in the County of Charleston: *Provided*, That all taxes authorized to be levied under the provisions of this Article on taxable property within the Charleston School District, comprised within the present limits of the City of Charleston, shall be annually levied and collected by the City Treasurer of the City of Charleston at the same time as the city taxes of the said city, which said tax shall be in the City Treasury as public money, protected by the official bond of the City Treasurer, and shall be paid by the City Treasurer to the City

Board of Public School Commissioners for the City of Charleston upon the warrant of the said Board, and expended by said Board for increase of salaries and for educational purposes, and that the annual levy provided for by this Section upon all taxable property in the County of Charleston, outside of the limits of the City of Charleston, shall be levied and collected by the County Treasurer as other school taxes are levied and collected, and by him paid over to the Superintendent of Education of the County of Charleston to be used by the County Board of Education for increase of salaries and for educational purposes in the County of Charleston outside the limits of the City of Charleston: *Provided*, That none of the money raised by this tax shall be expended in any school district that does not levy a special tax of at least four (4) mills in such district for school purposes.

1920, XXXI, 770.

High Schools.

(2716) § 185. Establishment of High Schools.—That the Board of Trustees of any school district, acting singly or in cooperation with the Boards of Trustees of adjoining school districts, may establish and maintain a high school, with the privileges herein granted: *Provided*, That such high school meets all the requirements of this Article and the regulations of the State Board of Education.

Civ. '12, § 1825; 1907, XXV, 518; 1908, XXV, 1119; 1909, XXVI, 86; 1910, XXVI, 743; 1916, XXIX, 875; 1919, XXXI, 248.

(2717) § 186. Membership of High School Boards of Trustees.—That if a single school district establish a high school, the Board of Trustees of such district shall be the High School Board of Trustees; and if any two or more districts establish a high school, the Board of Trustees of the district wherein the high school is located, together with the Chairman of each of the cooperating districts, shall constitute the High School Board of Trustees.

Civ. '12, § 1831; 1907, XXV, 520; 1916, XXIX, 875; 1919, XXXI, 248.

(2718) § 187. Trustees of Centralized High Schools.—That if three or more adjoining school districts, none of which contain an incorporated town of five hundred inhabitants according to the last preceding census, shall cooperate to establish a centralized high school, the Chairman of the several cooperating districts shall constitute the Board of Trustees for the centralized high school.

1916, XXIX, 875; 1919, XXXI, 248.

(2719) § 188. When High Schools Already Established May Claim Privileges of This Article—Proviso.—That any public high school already established may claim the privileges of this Article: *Provided*, That it conforms to the requirements of this Article and the regulations of the State Board of Education: *Provided, further*, That nothing in this Article shall be construed to repeal any of the privileges granted special legislative districts in the special Acts of the General Assembly.

Civ. '12, § 1828; 1907, XXV, 520; 1916, XXIX, 875; 1919, XXXI, 248.

(2720) § 189. **State Board of Education to Make Regulations—May Pay a High School Inspector.**—That the State Board of Education shall have full authority to prescribe all such regulations as may not be inconsistent with this Article and with the General School Law, to provide for the inspection and classification of the high schools under this Article, to make regulations for the apportionment and disbursement of the State appropriation under this Article, and to pay out of the State appropriation the salary and traveling expenses of a high school inspector.

Civ. '12, § 1881; 1907, XXV, 520; 1916, XXIX, 875; 1919, XXXI, 248.

(2721) § 190. **Number of Teachers Required to Secure State Aid—Amounts.**—That no high school shall receive an appropriation under this Article unless it has as many as two teachers in the high school department, and an enrollment of at least twenty-five high school pupils: *Provided*, That not more than nine hundred dollars annually may be given to a high school with two teachers, nor more than one thousand one hundred fifty dollars to a high school with three teachers, nor more than one thousand four hundred dollars to a high school with four teachers or more: *Provided, further*, That an additional stipend of five dollars per month may be paid any high school teacher returning for a second year's service, and a further additional stipend of five dollars per month for a third year's service: *Provided, further*, That the apportionment to a centralized high school, organized under Section 185 above, may be doubled in the discretion of the State Board of Education: *Provided, further*, The County Board of Education in any county without a high school may designate and recommend to the State State Board of Education one school in their territory which shall be accepted for State aid with not fewer than two full-time high school teachers.

1916, XXIX, 875; 1919, XXXI, 248; 1920, XXXI, 857; 1921, XXXII, 231.

(2722) § 191. **Further Conditions of State Aid.**—That any high school receiving aid under this Article shall first levy for current support a special tax of not less than four mills, which tax may be in addition to the fifteen mill tax allowed under Section 72 of this Chapter; and shall enroll any eligible high school pupil, the child or ward of any citizen of the State; that any pupil enrolled from outside the high school district shall be liable to no fee or charge; that if the enrollment in any high school exceeds fifteen pupils per teacher, such high school district may be paid by the State Board of Education three dollars per month to cover all tuition and other charges for any pupil attending such high school, but not residing within the high school district: *Provided*, That there is no high school in the district wherein such pupil resides.

1916, XXIX, 875; 1919, XXXI, 248.

(2723) § 192. **Teacher Training High Schools.**—That the State Board of Education is hereby authorized to establish and maintain not more than ten teacher training courses of one year in length in as many approved high schools, for the purpose of giving training to elementary teachers: *Provided*, That not more than one such course may be established in any

one county, and not more than twelve hundred dollars may be expended in any one school for such course: *Provided, further*, That no such training course shall be maintained with an enrollment of fewer than ten persons, none of whom shall be less than seventeen years of age, and no tuition fees shall be charged any teacher from any county.

1916, XXIX, 875; 1918, XXX, 705; 1919, XXXI, 248.

(2724) § 193. Appropriation.—That to carry out the purposes of this Article, the sum of one hundred thirty thousand dollars be, and the same is hereby, annually appropriated; and any and all payments shall be made upon the warrant of the Comptroller General, and all disbursements shall be in accordance with the order of the State Board of Education, approved and countersigned by the State Superintendent of Education.

Civ. '12, § 1834; 1907, XXV, 520; 1908, XXV, 1120; 1909, XXV, 87; 1916, XXIX, 875; 1918, XXX, 705; 1919, XXXI, 248.

(2725) § 194. Certain High School Districts Created Bodies Corporate. That in any case where, pursuant to or under color of authority of any general Act or any special Act, or any Act making a special provision in or about the subject matter of a general Act, a High School shall hereafter be, or shall heretofore have been, established by the Boards of Trustees of two or more adjoining school districts located in the same county of this State or the Boards of Trustees of two or more such school districts, by the adoption of resolutions, authorization of contracts for erection or in any other way jointly or as separate Boards of Trustees, shall evidence or shall have evidenced an intention to establish a High School District, that is to say, a body corporate, shall be, and hereby is, created, and shall be, and hereby is deemed to be, and to have been, created at and from the time of the first joint or separate action in any such case and for such purpose by two or more Boards of Trustees of school districts.

1921, XXXII, 45.

(2726) § 195. Area of District.—That such High School District shall be coterminous with and equal in area to the two or more school districts by action of whose Boards of Trustees it shall be created, but shall not in any way prevent the continued corporate existence as separate entities of such school districts: *Provided*, That this Act shall not be deemed or held to intend or purport to authorize the creation of any such High School District which shall be greater in area than may be permitted by the Constitution of this State, and, in case any districts shall be found to exceed such permitted area, the Boards of Trustees thereof shall be vested with power to designate a portion thereof not greater in area than is permitted by the Constitution, which portion shall thereafter be deemed to constitute such district.

1921, XXXII, 45.

(2727) § 196. High School Board of Trustees.—That the governing body of each such district shall be a Board known as a High School Board of Trustees, which shall be constituted, in any case where the Boards of

Trustees of two or more school districts shall act or shall have acted in establishing or evidencing an intention to establish a High School pursuant to or under color of authority of any special Act or any Act making a special provision in or about the subject matter of a general Act, in the manner provided in such Act, and in any other case in the manner provided in an Act entitled "An Act to establish and maintain High Schools and to repeal Act No. 501, page 875 of the Acts of 1916," approved the 10th day of March, A. D. 1919, being Act No. 164 of 1919.

1921, XXXII, 45.

(2728) § 197. Corporate Name of District—Clerk.—That the corporate name of each such High School District shall be such as shall be adopted by resolution of the High School Board of Trustees and the High School Board of Trustees as may likewise adopt a corporate seal and may elect from time to time one of their number as Clerk, both to hold office during their term of office as Trustee or for a shorter period if the Board shall so determine.

1921, XXXII, 45.

(2729) § 198. Proceedings for Erection of Certain District Validated.—That all acts heretofore done by any High School Board of Trustees or any such persons as would constitute a High School Board of Trustees under Section 196 hereof, or any two or more Boards of Trustees of school districts acting jointly or as separate Boards in purchasing land, establishing a High School, erecting and equipping a High School building, entering into contracts for any of such purposes, levying taxes pursuant to or under color of authority of any general or special Act providing for High Schools, or any such Act making a special provision in or about the subject matter of a general Act, be, and hereby are, validated as the acts of a High School District vested with corporate powers hereunder, notwithstanding any irregularity in or want of authority for such acts.

1921, XXXII, 45.

(2730) § 199. Method of Tax Levy.—That all such districts shall be, and hereby are, authorized to levy taxes for current support, as provided in an Act entitled "An Act to establish and maintain High Schools and to repeal Act No. 501, page 873 of the Acts of 1916," approved the 10th day of March, A. D. 1919, being Act No. 164 of 1919, and shall have the other privileges and benefits provided by said Act and shall be subject to the regulations of the State Board of Education as therein provided.

1921, XXXII, 45.

(2731) § 200. State Aid for High Schools—Ten-Mill Local Levy for Expenses Required.—Every State aided high school approved and accepted by the State Board of Education is hereby guaranteed an adequate teaching corps and a fixed schedule of salaries: *Provided*, Such district is voting and paying for current expenses a local school tax of not less than ten mills.

1920, XXXI, 870.

(2732) § 201. Enrollment — Salaries — The enrollment in any one classroom under any one teacher shall not be less than twenty-five nor more than fifty pupils. The salary of an assistant holding a first grade certificate or its equivalent shall not be less than ninety (\$90) dollars per month; the salary of an assistant holding a second grade certificate or its equivalent shall not be less than seventy-five (\$75) dollars per month; the salary of an assistant holding a third grade certificate or its equivalent shall not be less than sixty (\$60) dollars per month. Salaries in excess of this schedule shall be paid from regular or local funds belonging to the district. The term of every such school shall be regulated by the Board of Trustees of the district. An additional stipend of five (\$5) dollars per month may be added for a second year's service of the same teacher with the same or the next grade, and a further stipend of five (\$5) dollars per month may be added for a third year's service of the same teacher with the same or the next grade. In each instance the same stipend may be allowed for the teacher promoted to a higher grade along with the pupils previously taught.

1920, XXXI, 870.

(2733) § 202. Application for Aid to Be Approved by County Superintendent of Education.—All disbursements shall be made in accordance with written applications from the Trustees of the district, duly approved by the County Superintendent of Education. All blanks, forms and reports shall be prescribed and distributed by the State Superintendent of Education.

1920, XXXI, 870.

(2734) § 203. Appropriation—Powers of State Board of Education.—To carry out the purposes of this Article, the sum of one hundred thousand (\$100,000) dollars shall be annually appropriated. The State Board of Education is authorized to make all rules and regulations governing this fund.

1920, XXXI, 870.

(2735) § 204. Annual Appropriation for Vocational Education.—That there shall be appropriated annually, out of the State Treasury, for the promotion of vocational education in agricultural subjects, industrial subjects, and home economic subjects, a sum not less than the amount which may be apportioned to the State of South Carolina from the funds appropriated by the Congress of the United States in an Act entitled "An Act to provide for the promotion of vocational education; to provide for cooperation with the States in the promotion of such education in agriculture and the trades and industries; to provide for cooperation with the States in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure," approved February twenty-third, nineteen hundred seventeen.

1919, XXXI, 49.

(2736) § 205. How Moneys Disbursed Under This Article.—Moneys appropriated under the terms of this Article shall be paid out upon the order of the State Board of Education duly countersigned and approved

by the Secretary of the State Board of Education, and itemized vouchers shall be filed with Comptroller General as in the case of other funds.

1919, XXXI, 49.

(2737) § 206. Use of Funds.—The State Board of Education May Use the funds appropriated by this Article for the payment of the salaries of teachers, supervisors or directors of vocational subjects, or for the purchase of supplies and equipment to be used by vocational classes, or for the maintenance of classes training teachers of vocational subjects, or for the administration of vocational education, including necessary supervision and clerical help.

1919, XXXI, 49.

(2738) § 207. State Board of Education to Promulgate Rules and Regulations.—The State Board of Education shall adopt rules and regulations governing the expenditures of moneys appropriated by this Article, and shall make the same known to the various school districts of the State, in order that they may know the conditions under which they are entitled to share in the funds available for vocational education.

1919, XXXI, 49.

Compulsory School Attendance.

(2739) § 1. Ages for Compulsory School Attendance—Term of Attendance.—That every parent, guardian, or other person having charge of any child between eight and fourteen years of age, must send such child to a public, private or parochial, or to a competent tutor, subject to the approval of the County Superintendent of Education, school for four consecutive months, or eighty days during the scholastic year, the school attended is in session: *Provided*, That in case the term of any school is less than four months or eighty days attendance for the full term of such school shall be sufficient to meet the requirements of this Article, except as hereinafter provided.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2740) § 2. Attendance for Full Term of School May Be Required on Petition.—Upon the written petition of a majority of the qualified electors residing in any school district requesting the attendance of pupils on school throughout the full term, the County Board of Education shall order such attendance hereunder. This Article shall not shorten the period of school attendance in any district where a longer school term than four months is now maintained and attendance is required under the local option law.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2741) § 3. Unfit Children Exempt.—That any child whose physical mental or moral condition unfits it for attendance at school is exempt from the requirements of Section 1 above; that such child must be designated as unfit by a person competent to judge and appointed to do so by the Board appointing the attendance officer for that territory.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2742) § 4. Children Residing What Distance from School May Claim Exemption.—That any child living more than two and one-half miles from any public, private or parochial school, and any child under twelve years of age living more than two miles from such a school, may claim exemption from the requirements of Section 1 above: *Provided*, That any pupil living within one mile of any regular route of a school wagon may not claim exemption.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2743) § 5. Private Schools.—That any private or parochial school attended by any child between eight and fourteen years of age shall be first approved by the State Board of Education. Such school must give its instruction in the English language, and it must teach such subjects as are required in a similar public school in South Carolina, and be supervised by the County Superintendent of Education or Superintendent or Supervisor of Public Schools.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2744) § 6. Duties of School Trustees—Reports from Parents and Guardians—Of Trustees—Attendance Officers.—It shall be the duty of the Board of Trustees of each school district to determine at what time the period of compulsory attendance shall start in their respective districts, and to post due notice thereof in at least three public places or by publishing in a newspaper circulating in their said district at least thirty days before the time so fixed for the period of compulsory attendance to begin. Every parent or guardian having charge of a child or children between the ages of seven and fourteen years, inclusive, unless an Attendance Officer is maintained in their district, shall make a report to the Chairman of the Board of Trustees of his or her district on the last Friday in July of each year, showing the names of all such children in their charge, the age, sex and race, and name and local address of the parent or guardian of each such child; and any parent or guardian having charge of such child or children who shall fail to make such report at the time aforesaid, or shall wilfully make an incorrect report, shall be subject to such fine or imprisonment as is hereinafter imposed for nonattendance. It shall be the duty of the Chairman of the Board of Trustees of each school district to make a report of such children and to send a copy of the said report to the County Superintendent of Education of their respective counties not later than the 15th day of August of each year, and also to supply a list of the names of such children to the respective teachers of the schools which the said children should attend: *Provided*, That the Board of Trustees or School Commissioners of any school district or group of districts may nominate to the County Board of Education, or in case of a special independent school district, as in the larger towns and cities, to the Superintendent or Supervisor of Public Schools for such district, an Attendance Officer for such district or districts, whose duty it shall be to take a census during the months of July and August of each year of all children in his or her district affected by this Article and make such reports as is hereinabove required to be made by Trustees in districts where no such Attendance Officer is maintained,

and such other duties as are hereinafter imposed. Any child ineligible to attend the public schools shall be reported by the Attendance Officer or Board of Trustees, as the case may be, to the County Superintendent of Education, who shall transmit such report to the executive head of the proper State school for such special child: *Provided*, That the County Board of Education of any county, with the written approval of the County Superintendent of Education and a majority of the County Legislative Delegation, may employ for such period as they deem necessary, a County Attendance Officer to perform the services herein devolved upon the District Attendance Officers, for all the districts of the county; and the expense of such Attendance Officer shall be prorated among the districts of the county in proportion to the funds available for the support of the respective school districts.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2745) § 7. Report of County Superintendent of Education—Of Teachers.—The various County Superintendents of Education shall, at the time of making their regular annual report to the State Superintendent of Education, make a report of the number of children in their respective counties within the ages prescribed by this statute, the average attendance of such children, the total number of absences during the period of compulsory attendance showing number excused and the number of convictions under this statute and amount of revenue derived from penalties under this statute. It shall be the duty of each teacher to make a monthly report of all absences, together with the excuses for such absences, if any excuse be given, showing which have been previously reported according to provisions hereinafter made in this statute, and which have been excused by the teacher, and no teacher's pay warrant shall be approved by the Trustees unless such report is attached. The Trustees shall then consider the absences excused by the teacher, and if, in their opinion, the excuse is not sufficient, shall so report to the Superintendent of Education, who shall proceed as in cases of unexcused absences. No County Superintendent of Education shall approve any teacher's pay warrant unless such report is attached, and in case of violation of this provision the County Superintendent of Education shall become liable on his official bond for the amount of any teacher's pay warrant or warrants approved by him receiving the said report.

1921, XXXII, 754.

(2746) § 8. Duties of Attendance Officers—Reports.—That it shall be the further duty of each Attendance Officer to receive from the Superintendent or Principal of any school within the district or territory the name of every child between eight and fourteen years of age absent from school, and to ascertain from the parent or guardian of such child the reason for such absence. If such absence is due to any other than providential cause or causes, or to such cause or causes as would seriously endanger the health of the child, such parent or guardian must be notified to appear before the nearest Magistrate at a special time to show why he or she should not be punished for his or her neglect: *Provided*, That the

Attendance Officer may, in his or her discretion, excuse any absence. A full record of such excused absences, together with the reason therefor, shall be filed monthly with the County Superintendent of Education.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2747) § 9. Powers of Attendance Officers—Records.—That all Attendance Officers shall have the right to require a birth certificate or an affidavit as to the age of any child in his or her district or territory. They shall have the further right to visit any place of employment to ascertain if any child between eight and fourteen years of age is employed. These officers shall keep a record of all notices served and cases prosecuted, and shall make a full report of them once a month to the County Board of Education.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2748) § 10. Violation of Article by Parent or Guardian a Misdemeanor.—That any parent, guardian or other person having charge of any child subject to the provisions of this Article who wilfully neglects or refuses to comply with these provisions, or any person, firm or corporation who shall induce such child to violate same shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any Magistrate, be fined not less than five nor more than ten dollars, or be imprisoned not less than five nor more than ten days. All fines collected under this Article are to be paid into the school fund for such district in which said offense was committed.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2749) § 11. Teacher to Report Absences—Penalty for Failure—Certificate of Attendance.—It shall be the duty of each teacher, principal or superintendent of any school to notify at once the Attendance Officer, or the County Superintendent of Education, in case there be no Attendance Officer in the said district, of the absence, unless within a week of such absence, written excuse is made which is, in the opinion of the teacher, sufficient, during the period of compulsory attendance, of any child between eight and fourteen years of age from school, and the teacher, principal or superintendent wilfully neglecting or refusing to report any absence to the Attendance Officer or to the Superintendent of Education, in case no Attendance Officer is employed, shall have deducted from his or her salary for the current month five (\$5.00) dollars for each offense, the same to be deducted by the Superintendent of Education: *Provided*, That when any child within the ages specified in this Chapter shall have completed four months, or eighty school days, of consecutive attendance, it shall be given a certificate by the teacher showing such fact, and no further absence shall be reported against the said child, regardless of whether the period of attendance commenced at the time prescribed by the Trustees or prior thereto.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2750) § 12. Certain Children May Be Excused — School Books. — In the case of a widowed mother or of a crippled father any child above twelve

years of age whose labor may be necessary for the support, in whole or in part, of any person, may be excused. The children of parents unable to purchase the necessary books for attendance upon a public school shall, upon the order of the County Board of Education, be furnished these books out of the public funds of their district. The County Boards of Education shall be the competent judges of such cases.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

(2751) § 13. Prosecution for Violation.—It shall be the duty of the Superintendent of Education upon receiving reports of unexcused absences, to turn the said report over to the Rural Police force in the district in which the absence occurred, or in case no Rural Police is maintained, to the nearest Constable, whose duty it shall be to immediately apprehend the parent or guardian of the absent child before the nearest Magistrate and prefer charges against said person in accordance with this Article, and to summons such persons as are necessary to prove said charge. It shall be the duty of the Magistrate hearing any case under this Article to make a report to the Superintendent of Education, showing the result of the said trial, and any Magistrate failing to make such report, or any Constable or Rural Police, to whom such report of unexcused absence is turned over, as hereinbefore provided for, who shall fail to apprehend the responsible parties or to report to the Superintendent of Education why such parties cannot be apprehended, within thirty days, shall be guilty of a breach of their official duty and on proof thereof be subject to removal from office.

1921, XXXII, 754.

(2752) § 14. Child Labor During School Hours Prohibited, Except Upon Certificate.—No child under fourteen years of age shall be employed in any factory, work shop or mercantile establishments, or in any place or manner, during the usual school hours in said district, unless the person employing such child shall first procure a certificate from the superintendent or teacher of the school said child last attended, stating that the child attended school for such current year for the period required by law, or has been excused from attendance as provided by the third Section hereof, and it shall be the duty of said superintendent or teacher to furnish such certificate on application of the parent, guardian or other person having control of such child entitled to same.

1915, XXIX, 108; 1919, XXXI, 205; 1921, XXXII, 754.

Teachers' Employment Bureau.

(2753) § 1. Teachers' Employment Bureau Established.—A bureau for the registration and employment of teachers is hereby created.

1918, XXX, 832; 1919, XXXI, 139.

(2754) § 2. Enrollment—Use of Records.—Any person legally qualified to teach in the free schools of this State and eligible to be employed by any Board of School Trustees shall, upon written application in proper form and payment of one (\$1.00) dollar, be entitled to enrollment in this Bureau. The said one dollar to be applied to the support of the Bureau. Any Board

of School Trustees, any superintendent or principal of a system of schools, or any County Superintendent of Schools, shall have access, free of charge, to all papers and records in said Bureau, except such as may be of a personal or confidential nature.

1918, XXX, 832; 1919, XXXI, 139.

(2755) § 3. Registrar, Election, Term of Office, Duties, Compensation.—The executive officer of the Bureau shall be a Registrar, elected by the State Board of Education, whose term of office shall be for four years, unless sooner removed by the Board for cause. He shall maintain an office and shall seek to assist teachers in getting schools and to assist schools in getting teachers. He shall make an annual report which shall be printed in the report of the State Superintendent of Education. The Registrar's salary shall be eighteen hundred (\$1,800.00) dollars per annum, payable monthly upon warrant of the Comptroller General. He may employ a stenographer, at a salary of nine hundred (\$900.00) dollars, payable monthly. A contingent fund of one thousand (\$1,000.00) dollars, to meet the contingent expenses of the office, if so much be necessary, is hereby provided.

1918, XXX, 832; 1919, XXXI, 139.

(2756) § 4. No Charge to Teachers Except Registration Fee.—No fee other than the one (\$1.00) dollar registration fee shall be charged any teacher for the services of the Bureau, and the Bureau shall serve the public schools free of charge.

1918, XXX, 832; 1919, XXXI, 139.

John De La Howe Industrial School.

(2757) § 1. Dr. John De La Howe Industrial School Established.—That there shall be, and is hereby, established under the provisions of this Article an institution to be known as the "Dr. John De La Howe Industrial School."

1918, XXX, 803.

(2758) § 2. Body Corporate—Powers.—That the Dr. John De La Howe Industrial School is hereby declared to be a body corporate and, as such, may sue and be sued, plead and be impleaded, in its corporate name; may have and use a proper seal, which it may alter at its pleasure; and shall have the right to acquire by purchase, deed, devise, lease for a term of years, bequest, or otherwise, such property, real and personal, in fee simple without limitations, as may be necessary or proper for carrying out the purposes of its organization as herein declared.

1918, XXX, 803.

(2759) § 3. Appointment of Trustees—Term of Office.—That the business, property and affairs of the said Industrial School shall be under the control of a Board of Trustees, consisting of seven members, who shall be appointed by the Governor, subject to confirmation by the Senate. The terms of the members of the said Board first appointed shall be one, two, three, four and five years, respectively, commencing on the first day of April, nineteen hundred and eighteen, and thereafter upon the expiration of the term of a member of the said Board his successor shall be appointed

for a term of five (5) years; appointments to fill vacancies caused by death, resignation, or removal before the expiration of such terms shall be made for the residue of such terms in the same manner as herein provided for original appointments: *Provided*, That the term of office of the two members last appointed shall be for a term of five years each, and until their successors are appointed. The members of the said Board may at any time be removed by the Governor for good cause. The failure of any member of the said Board to attend at least one meeting thereof in any year, unless excused by formal vote of the Board, may be construed by the Governor as the resignation of such nonattending member. The said Board shall meet quarterly and oftener as may be required, at least one meeting each year being held at the said Industrial School. The said Board shall appoint an advisory committee of three women, for such terms as the said Board may determine, who shall visit the said Industrial School at least quarterly, and shall advise with the said Board as to its management and any other pertinent matters. All members of said Board and of the advisory committee of women shall serve without compensation, but their necessary traveling and other expenses shall be paid.

1918, XXX, 803; 1920, XXXI, 723.

(2760) § 4. Election and Powers of Superintendent.—That the said Board shall elect a Superintendent for said Industrial School, at such salary and for such term as they may fix. Thereafter, the Superintendent shall employ and discharge all employees of the said Industrial School, subject to the approval of the said Board.

1918, XXX, 803.

(2761) § 5. Oath of Trustees and Superintendent.—That all the members of the said Board and the Superintendent of the said Industrial School, shall, before entering upon the discharge of their duties, take an oath faithfully to perform any and all duties imposed upon them under this Article and amendments thereto. The Superintendent shall execute a bond payable to the State in such sum as shall be required by the said Board, with sufficient security, which bond shall be filed in the office of the Secretary of State.

1918, XXX, 803.

(2762) § 6. Purpose of School.—That in establishing the Dr. John De La Howe Industrial School, it is hereby declared to be the purpose and policy of the State to take over the property, now in McCormick, but formerly in Abbeville County, left by Dr. John De La Howe, and to maintain and develop same in accordance with the purposes of the will of the said Dr. John De La Howe as interpreted by the Supreme Court of South Carolina, *Mars v. Gibert*, 93 South Carolina, pages 455-467, namely: "First, The establishment and maintenance of an agricultural and mechanical school as an institution in Abbeville County, stimulating and improving the industrial life of the entire community; second, the training, free of charge, of twenty-four boys and girls, not as college men and women, but in the beginning of school life; and, third, the like training of the children of the neighborhood not supported by the fund." It is hereby declared, however, that

the terms "Abbeville County" shall be understood to mean that portion of South Carolina known as "Abbeville County" at the time this will of Dr. John De La Howe was dated, namely, January 2, 1797.

1918, XXX, 803.

(2763) § 7. Trustees to Make Rules — Admission of Pupils.—That in accordance with the purposes of the said Industrial School as herein defined, the said Board of Trustees shall make such rules and regulations for their own government and for the management of the said Industrial School as they may deem necessary, consistent with the laws of this State and with the terms of the will of Dr. John De La Howe: *Provided*, That all applications for admission as boarding pupils shall be submitted by the said Board of Trustees to the State Board of Public Welfare before being granted. Thereupon, the State Board of Public Welfare shall investigate the applications and report their findings with their recommendations to the said Board of Trustees, who shall then, in accordance with such rules as they may make, determine which of these applications for admission shall be granted and in what order: *Provided, further*, That it is hereby declared to be the policy of the State that pupils at the said Industrial School, whose estates are sufficient, or the relatives of said pupils liable in law for their support, whose estates are sufficient, shall be required to pay for the maintenance of such pupils in said Industrial School in whole or in part; the manner and method of determining such financial ability and the collecting of the amounts required to be paid shall be similar to that now in force with regard to the students in the State colleges.

1918, XXX, 803.

(2764) § 8. Appropriation for Building—Certain Funds to Be Delivered to Trustees.—That for the purpose of erecting an adequate building for the use of said Industrial School and for further carrying out the provisions of this Article, the sum of thirty thousand (\$30,000.00) dollars is hereby appropriated out of the funds of the State not otherwise appropriated, fifteen thousand (\$15,000.00) dollars to be paid during the year 1918, and fifteen thousand (\$15,000.00) dollars during the year 1919, to be expended from the public treasury on order of the Treasurer of said Industrial School, approved by the Chairman of the Board of Trustees: *Provided*, That all of the money now or hereafter in the hands of the Trustees of the estate of Dr. John De La Howe shall by them be delivered to the Board of Trustees created by this Article when so requested to do by the said Board of Trustees; and that thereafter all amounts received from said estate and its operation shall be appropriated for the support and development of said Industrial School, in the discretion of the said Board of Trustees.

1918, XXX, 803.

CHAPTER XXV.**Colleges and Universities.**

ARTICLE 1. State Colleges and Universities, 812.

ARTICLE 2. The University of South Carolina, 814.

ARTICLE 3. The Citadel, the Military College of South Carolina, 818.

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ARTICLE 6. The Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina, 825.

ARTICLE I.**State Colleges and Universities.**

(2765) § 1. **State Colleges and Universities.**—There shall be universities and colleges as follows: One located in the City of Columbia, styled The University of South Carolina; another in or near the Town of Orangeburg, styled the Colored Normal, Agricultural and Mechanical College of South Carolina; another known as Winthrop College (the South Carolina College for Women); another styled The Citadel, The Military College of South Carolina; and the Medical College of the State of South Carolina. They shall be separate and distinct institutions, each under its separate Board of Trustees or Visitors.

Civ. '12 § 1836; 1906, XXV, 16; 1913, XXVIII, 188; 1920, XXXI, 968.

(2766) § 2. **Degree of Licentiate of Instruction.**—The universities and colleges of this State may provide a course of study, to be approved by the State Board of Education, the completion of which by a student will entitle him or her to the degree of Licentiate of Instruction, and they may issue a diploma showing the degree has been conferred; and the holder of such diploma, upon its presentation to a County Board of Education, shall be entitled to a first grade teachers' county certificate to teach in the public schools of the county.

Civ. '12, § 1837; Civ. '02, § 1258; 1898, XXII, 764.

(2767) § 3. **Greek Letter Fraternities Prohibited in State Institutions.**—The governing Boards of all institutions of higher learning in South Carolina supported in whole or in part by public funds are required to forbid and disallow in their respective institutions secret Greek letter fraternities or all organizations of a similar nature: *Provided*, Nothing herein contained shall interfere with the literary societies in such institutions.

Civ. '12, § 1838; Civ. '02, § 1259; 1897, XXII, 508.

(2768) § 4. **State Colleges Shall Suspend Exercises for Ten Days at Christmas.**—All State colleges and universities shall suspend exercises for a period of not exceeding ten days, including the time required for going from and returning to said colleges, said period to include Christmas Day and New Year's Day.

Civ. '12, § 1839; 1906, XXV, 42.

(2769) § 5. Naval or Military Appointment Relieves Beneficiary of Duty to Teach in Public Schools.—That any beneficiary student who is in actual attendance, or may have graduated from any State college or institution of learning, and may thereby be obliged to teach for a term of years in the common or other schools of the State, for any and all moneys expended in his education by the State, shall be released and absolved from such obligations by receiving an appointment to the Naval or Military Academy of the United States, or to a position in the Army or Navy, or other Government service of the United States, or by becoming a regularly ordained or licensed minister of the gospel.

Civ. '12, § 1840; 1909, XXVI, 150; 1912, XXVII, 590.

(2770) § 6. Institutions Receiving Support from State to Report Names of Beneficiary Students, Etc.—The authorities of all colleges or institutions of learning supported in whole or in part by the State, shall report to the General Assembly at its annual meeting the names of all students, with the postoffice address of each, and whether such students are pay, beneficiary or scholarship students.

Civ. '12, § 1841; 1906, XXV, 110.

(2771) § 7. Auditors to Keep and File Affidavits of Inability to Pay Tuition.—The Auditors of the several counties of this State are required to keep a record and file of all affidavits made before them, as now required by law, of inability on the part of parent, guardian or trustee to pay tuition

Civ. '12, § 1842; 1906, XXV, 110.

(2772) § 8. State Flag to Be Displayed on Certain Buildings.—The State flag shall be displayed daily, except in rainy weather, from a staff upon the State House, and every Court House, one building of the State University and of each State college, and upon every public school building, except when the school is closed during vacation.

Civ. '12, § 1843; 1910, XXVI, 753.

(2773) § 9. Expense of Flags.—It shall be the duty of the officer or officers in charge of said buildings to purchase suitable flags and cause them to be displayed, the expense to be borne out of the funds provided for maintenance.

Civ. '12, § 1844; 1910, XXVI, 753.

(2774) § 10. Clemson College to Make and Sell Flags.—It shall be the duty of Clemson College to manufacture in its textile department and sell at approximate cost flags of suitable sizes and of correct design, which shall consist of blue with white crescent in the upper flagstaff corner, and white palmetto tree in the centre, as prescribed in the Resolution adopted by the General Assembly, January 28, 1861, to be approved by the Secretary of the Historical Commission.

Civ. '12, § 1845; 1910, XXVI, 753.

(2775) § 11. Free Tuition in State Colleges for Persons in Military Service of the United States During European War.—That any and all citizens of the State of South Carolina who were enlisted in any branch of the

military service of the United States during the period and for the purpose of the late European War, whether enlisted voluntarily or by selective draft, shall, upon complying with the ordinary entrance requirements, and upon the production of an honorable discharge from such service or other satisfactory evidence, be admitted to any of the State colleges or institutions of learning of this State to which such citizen shall apply for admission without being required to pay tuition: *Provided*, That the provisions of this Section shall not apply to students being educated under auspices of the Federal Board of Vocational Education and where tuition is paid by the United States.

1920, XXXI, 915.

(2776) § 12. Colleges and Other Institutions Receiving State Support Not to Give Enrollment to Applicants Without the State in Preference to Residents of State—Proviso.—That the colleges and other institutions of learning of this State, supported in whole or in part by the State, shall receive as students those applicants residing within the State in preference to those residing without: *Provided*, That the applications of those residing within the State shall be filed with the president or secretary of such college or institution of learning thirty days before the opening of the said college or institution.

1917, XXX, 339.

ARTICLE II.

The University of South Carolina.

(2777) § 1. Trustees of University of South Carolina—Terms of Office—Compensation.—The Board of Trustees of the University of South Carolina shall be composed of the Governor of the State, the Superintendent of Education and the Chairman of the Committees on Education of the Senate and House of Representatives, who shall be members *ex officio* of said Board, and seven other members, each to be elected by the joint vote of the General Assembly, as hereinafter provided. The regular terms of office of the elective members of each of the aforesaid Board of Trustees of the University of South Carolina shall be six years, after the first election, in which the terms of office of those elected therein shall be two for two years, two for four years, and three for six years, on said Board, these terms to be determined by lot after said elections. The terms of the elected members of said Board shall date from the first day of February, A. D. 1900; and the General Assembly shall hold elections every two years to fill vacancies as they occur in any of said Boards by the expiration of terms of office. In all cases where there is a vacancy in any of said Boards of Trustees, the Governor shall be empowered to fill same by appointment until the next session of the General Assembly. Each member of the Board shall receive as compensation for his services and attendance on the meetings of the Board his actual expenses.

Civ. '12, § 1846; Civ. '02, § 1260; 1899, XXIII, 105; 1900, XXIII, 358.

(2778) § 2. Corporation and Corporate Powers.—The said Board of Trustees is a body corporate and politic, in deed and in law, by the name of the Board of Trustees of the University of South Carolina, and by said name they and their successors shall have perpetual succession, and be able and capable in law to have, receive and enjoy, to them and their successors, lands, tenements and hereditaments of any kind or value, in fee or for life, or years, and personal property of any kind whatever, and all sums of money of any amount whatsoever which may be granted, devised or bequeathed to them for the purpose of building, erecting, endowing or supporting the said University; but in receiving any such bequest no liabilities of any character shall be made binding or obligatory upon the State, except such as are accepted by the General Assembly. They shall have a common seal for themselves and their successors, with liberty to alter the same from time to time, and by their corporate name shall and may be able to plead and be impleaded, defend and be defended, in all the Courts of this State.

Civ. '12, § 1847; Civ. '02, § 1261; R. S. 1097; 1899, XXIII, 105; 1900, XXIII, 358.

(2779) § 3. Meetings of Board — President — Quorum.—The Board of Trustees shall meet in Columbia at such time and place as the Governor shall direct; and the Governor of the State shall be the President of the Board, and in his absence the Board shall select one of their number to act as President. The stated meetings of the Board shall be held at least twice a year; but the President of the Board shall have power to assemble it at any time in extra meeting, and it shall be his duty to do so whenever requested by the faculty of said University. A majority of the members of the Board shall constitute a quorum for the transaction of ordinary business, but not less than a majority vote of the whole Board shall be required for the election or removal of a President or Professor, for the creation or abolition of any professorship, or for the expulsion of a student.

Civ. '12, § 1848; Civ. '02, § 1262; R. S. 1098; 1899, XXIII, 105; 1900, XXIII, 358; 1903, XXIV, 66.

(2780) § 4. Powers of Board at Meetings.—The said Trustees, or a quorum of them, being regularly convened, shall be capable of doing or transacting all the business of said University, but more particularly of electing all the necessary officers of the said University, of removing any of them for neglect or misconduct, of prescribing the course of studies to be pursued by the students, and in general of enacting all such rules, regulations and by-laws as shall appear to them necessary and not repugnant to the laws of the State and of the United States. They shall have the power to appoint for said University a Board of Visitors of such number as they may deem expedient, whenever they may think proper. No vacancy in the offices of the said University shall be filled unless at the stated meetings of the Board of Trustees; but such vacancy may be filled at an occasional meeting until the next meeting, and no longer.

Civ. '12, § 1849; Civ. '02, § 1263; R. S. 1099; 1899, XXIII, 105; 1900, XXIII, 358.

(2781) § 5. Property Vested in University—Proviso as to the Sale of.—All and every estate and property, real or personal, tenements, heredita-

ments, leasehold estates, franchises, easements and credits of every description which have heretofore been of the South Carolina College, or of the University of South Carolina, shall vest in and shall become the property of the said University; but no sale of the property of the University shall be made without the consent of the General Assembly.

Civ. '12, § 1850; Civ. '02, § 1264; R. S. 1100; 1899, XXIII, 105; 1900, XXIII, 358.

(2782) § 6. Board to Receive and Invest Funds Offered to Found Scholarships.—The said Board of Trustees are also authorized to receive, in behalf of the State, and invest to the best advantage, in their discretion, all moneys, funds and securities which may from time to time be offered for the foundation of scholarships in said county.

Civ. '12, § 1851; Civ. '02, § 1265; R. S. 1101; 1809, XXIII, 105; 1900, XXIII, 358.

(2783) § 7. Power of Board to Procure Evidence.—In all investigations touching the affairs of the University, the said Board of Trustees are invested with full power to compel, by subpoena, rule and attachment, witnesses to appear and testify, and papers to be produced and read before the Board.

Civ. '12, § 1852; Civ. '02, § 1266; R. S. 1102; 1899, XXIII, 105; 1900, XIII, 358.

(2784) § 8. Election of President—Faculty—Powers.—The said Board shall elect a President, and the President and professors shall constitute a faculty of the University, and said faculty shall have the power of enforcing the rules, regulations and by-laws adopted by the Trustees for the government of the students, by rewarding or censuring them, and by suspending such of them as shall be disobedient and refractory until a determination of a quorum of the Trustees can be had; but it shall be in the power of a majority of the whole Board of Trustees at a stated meeting only to expel a student of the University. The faculty are required to report the whole of their proceedings against any student who shall be suspended, together with the cause of such suspension, to the Board of Trustees at their next stated meeting after such suspension, and the said Board are empowered upon a review of the case to restore any student to his standing in the University.

Civ. '12, § 1853; Civ. '02, § 1267; R. S. 1104; 1899, XXIII, 105; 1900, XXIII, 358.

(2785) § 9. President Must Not Be an Atheist or Infidel—Chaplain, Etc.—The said Board shall take care that the President of the University shall not be an atheist or infidel, and that one of the professors shall be charged with the duties of Chaplain to the University under such regulations and with such additional salary as may be fixed by the said Board.

Civ. '12, § 1854; Civ. '02, § 1268; R. S. 1105; 1899, XXIII, 105; 1900, XXIII, 358.

(2786) § 10. Appointment of Librarian—Duties—Assignment of Professors to Other Duties.—The said Board shall appoint a Librarian for said University, who shall perform such other duties and receive such salary or compensation as the Board may prescribe. The Trustees shall have authority to assign any professor to additional duties in any other school or schools without additional salary.

Civ. '12, § 1855; Civ. '02, § 1269; R. S. 1106; 1899, XXIII, 105; 1900, XXIII, 358.

(2787) § 11. Tuition Fees and Beneficiary Scholarships—Regulations as to.—The tuition fee shall be forty dollars per annum for each student, and shall go to the sustenance of the University, except that in the Law Department the Board of Trustees may fix such additional fees as they may deem necessary to make it self-sustaining as soon as possible; compensation for room rent, use of Library, and damage to property, shall be regulated by the Board; and all tuition fees in the Law Department shall be subject to the disposal of the Board for the payment of the salary of the law professor. Except in the Law Department, the faculty of the said University may grant beneficiary scholarships, without payment of any fees, to such competent and deserving youths of this State as may be unable to pay the same, and the Trustees of the said University shall prescribe such rules and regulations as may be proper to confine the enjoyment of this privilege to those whose necessities require it. And the Board of Trustees may remit all fees to teachers of the State, in both public and private schools, who take the special courses offered teachers by the University.

Civ. '12, § 1856; Civ. '02, § 1270; R. S. 1107; 1899, XXIII, 105; 1900, XXIII, 358; 1901, XXIII, 732.

(2788) § 12. Persons Entitled to Free Tuition at University of South Carolina—Scholarships.—The children of professors of the University of South Carolina shall be exempt from tuition fees; that there shall be one scholarship for each county in the Normal Department, being of the value of \$100 each, besides the remission of tuition and matriculation fees, the beneficiaries to be selected under regulations to be prescribed by the Board of Trustees on the warrant of the Comptroller General: *Provided*, That suitable courses of study are provided in the said institution for the deserving of both sexes.

Civ. '12, § 822; 1909, XXVI, 283.

(2789) § 13. College May Confer Degrees.—The said University shall have full power to confer degrees on students and on such other persons as may be qualified to receive the same.

Civ. '12, § 1857; Civ. '02, § 1271; R. S. 1108; 1899, XXIII, 105; 1900, XXIII, 358.

(2790) § 14. Discretionary Powers of Board.—The Board of Trustees shall have the power to adopt such measures and make such regulations as may in their discretion be necessary to carry out any of the provisions aforesaid in all cases where the same has not been specially provided for therein.

Civ. '12, § 1858; Civ. '02, § 1272; R. S. 1109; 1899, XXIII, 105; 1900, XXIII, 358.

(2791) § 15. Normal Students and Women Students.—The Board of Trustees shall provide for admitting as normal students, without fees for tuition or matriculation, two young men from each county; and shall provide for admitting young women to enter the University not below the Junior Class.

Civ. '12, § 1859; Civ. '02, § 1273; 1893; XXI, 471.

(2792) § 16. Corporation Empowered to Accept Money.—The said corporation is hereby empowered to accept, receive and hold all moneys or other property, real or personal, that may be given, conveyed, bequeathed or

devised to said corporation; but in case such moneys or other property so given, conveyed, bequeathed or devised be charged with any trust, that then, and in that case, such money or property shall be held and used strictly as fixed by the terms of such trust.

Civ. '12, § 1860; 1906, XXV, 16.

ARTICLE III.

The Citadel, the Military College of South Carolina.

(2793) § 1. **Board of Visitors—How Constituted—Term of Office.**—The Board of Visitors of The Citadel, the Military College of South Carolina, shall be composed of the Governor of the State, the Adjutant General, the State Superintendent of Education, and the Chairman of the Military Committees of the Senate and House of Representatives, who shall be members *ex officio* of said Board, and five others to be elected, by joint vote of the General Assembly as herein provided, who shall be graduates of said college. The regular terms of office of the elective members shall be six years after the first election. The term of those elected at the first election shall be one for two years, two for four years, and two for six years, to be determined by lot after said election, and their terms of office shall date from the first day of February, 1900. The General Assembly shall hold an election every two years to fill vacancies as they occur by the expiration of terms of office.

Civ. '12, § 1861; Civ. '02, § 1275; R. S. 1113; 1899, XXIII, 105.

(2794) § 2. **Board of Visitors of The Citadel, the Military College of South Carolina, Incorporated—Powers.**—That the Board of Visitors of The Citadel, the Military College of South Carolina, be, and they are hereby, created a body corporate and politic of the State of South Carolina, by the name and style of "The Board of Visitors of The Citadel, the Military College of South Carolina," and by said name, they and their successors in office shall have perpetual succession, and be able and capable in law to have, receive and enjoy, to them and their successors, lands, tenements and hereditaments of any kind or value, in fee or for life, or years, and perpetual property of any kind whatever, and all sums of money of any amount whatsoever which may be granted, devised or bequeathed to them for the purpose of building, erecting, endowing or supporting the said "The Citadel, the Military College of South Carolina;" but in receiving any such bequest no liabilities of any character shall be made binding or obligatory upon the State, except such as are accepted by the General Assembly. They shall have a common seal for themselves and their successors, with liberty to alter the same from time to time.

1920, XXXI, 1114.

(2795) § 3. **Powers of Board of Visitors.**—Said Board shall have the power to establish such regulations as they may deem necessary for the organization and good government of said college, and to establish such by-laws for the management thereof as shall not be inconsistent with the

laws of this State, or of the United States, to appoint professors qualified to give instruction in military science, and of other branches of knowledge which they may deem essential, to fix their salaries and the period for which said professors shall serve, and the said Board shall have full power to confer the degree of bachelor of science and the degree of civil engineer on graduates of the said college.

Civ. '12, § 1862; Civ. '02, § 1276; R. S. 1114; 1901, XXIII, 736; 1911, XXVII, 134.

(2796) § 4. Beneficiaries.—The said college is open for the free education and maintenance of as many beneficiary cadets as the appropriation annually made therefor will allow: *Provided*, That each county shall be entitled to at least one beneficiary cadet in the said college, and the Board of Visitors may also receive pay cadets without expense to the State.

PROVISION IN CASE OF NEW COUNTIES.—That in the event of the formation of new counties after the apportionment of beneficiary cadets has been made, no cadet then in the college shall be dropped in order to carry out the provisions of this law.

Civ. '12, § 1863; Civ. '02, § 1277; G. S. 1048; R. S. 1115; 1899, XXIII, 111.

(2797) § 5. Proof of Financial Standing.—Before applying for the said scholarships applicants shall make proof, under oath, to their respective County Boards of Education, as required by law for scholarships in the Citadel, of their financial inability to attend college, before they shall receive from said Board permission to stand such examination.

Civ. '12, § 1916; 1907, XXVII, 540.

(2798) § 6. Beneficiary Cadets — Appointment — Obligation to Teach After Graduation.—The beneficiary cadets to be admitted, as provided in the preceding Section, shall be appointed from the counties of the State in proportion to representation in the House of Representatives. They shall be required to teach, after graduation, for two years in the free public schools of the State.

Civ. '12, § 1864; Civ. '02, § 1278; G. S. 1049; R. S. 1116; 1899, XXIII, 728.

(2799) § 7. Copy of Matriculation Obligation to Be Filed.—Each beneficiary cadet, when he receives his appointment, shall file, in the office of the State Superintendent of Education, a copy of his matriculation obligation.

Civ. '12, § 1865; Civ. '02, § 1279; 1891, XX, 1040.

(2800) § 8. Cadets to File Bond — Amount — Condition — Violation — Infancy—Proviso.—Every beneficiary cadet of The Citadel, the Military College of South Carolina, upon reporting for duty and matriculation, shall file with the Superintendent of said college a bond payable to the said college in the penal sum sufficient to cover the maintenance and education that may be expended in his behalf and conditioned for the faithful performance by said cadet of his matriculation agreement to teach for two years after graduation in the free public schools of this State as provided by law: and if honorably discharged before the completion of his course, then to teach for a period of time proportioned to the time he has been in the college. And unless the said cadet shall fill his said obligation as aforesaid he shall be deemed to have violated his contract, and authority is hereby

given to the said college to proceed by law for the collection on said bond of such amount as may be necessary to cover so much of the maintenance and education of said cadet as may be proportionately due from his failure to teach the whole or any part of the time agreed as aforesaid. And neither the infancy of the cadet executing such bond nor the Statute of Limitation shall be permitted to be pleaded in bar of the recovery of said debt: *Provided*, That the Board of Visitors of the said college may, in their discretion, permit a beneficiary cadet to fulfill his obligation by teaching in any of the public schools or colleges of the State in which his services may be sought in like manner and under the same conditions as if he taught in the free public schools.

Civ. '12, § 1866; Civ. '02, § 1280; 1899, XXIII, 796.

(2801) § 9. Duty of Board of Visitors to Report Graduations—Superintendent of Education's Duty.—It shall be the duty of the Board of Visitors to report to the State Superintendent of Education, at least one month before the expected graduation of any beneficiary cadet, and within one month after the honorable discharge of any beneficiary cadet before graduation, the names or name of such cadet, and the Superintendent shall inform the Trustees of the free public schools throughout the State of the opportunity of securing teachers therefor, and shall assign such beneficiary graduates or undergraduates to such schools as in his judgment the interest of the State may require, preference being given in all cases to the schools in the county from which any beneficiary may have been appointed.

Civ. '12, § 1867; Civ. '02, § 1281; 1899, XXIII, 796.

(2802) § 10. Certificate of Release—Certificate of Discharge—Cancellation of Bond.—If in one month after the opening of the ensuing school year a graduate or undergraduate receive no assignment to a school, the Superintendent may issue to such graduate or undergraduate a certificate releasing him from his obligation to teach in the public schools. Upon satisfactory proof made to the State Superintendent of Education by any beneficiary graduate or undergraduate that he has fulfilled his matriculation agreement by teaching, as required, in the public schools, the said Superintendent shall grant to such graduate or undergraduate a certificate, under the seal of the State, to that effect. Upon presentation of such certificate, or either of them, to the Superintendent of The Citadel, the Military College of South Carolina, he shall cancel and deliver to such beneficiary graduate or undergraduate the bond herein required.

Civ. '12, § 1868; Civ. '02, § 1282; 1899, XXIII, 796.

(2803) § 11. Annual Report of Board.—The Board of Visitors shall make a minute and full report of the condition and management of the said college to the Superintendent of Education and to the Governor, to be by him laid before the General Assembly in each and every year.

Civ. '12, § 1869; Civ. '02, § 1283; R. S. 1117; 1842, XI, 225, § 2; 1891, XX, 1039.

ARTICLE IV.**Winthrop College (The South Carolina College for Women).**

(2804) § 1. Institution Established—Name.—There shall be established an institution for the practical training and higher education of white girls, which shall be known as “Winthrop College (The South Carolina College for Women),” and shall be located, equipped and conducted as hereinafter provided.

Civ. '12, § 1870; Civ. '02, § 1284; 1891, XX, 1102; 1920, XXXI, 968.

(2805) § 2. Trustees of Winthrop College—Terms of Office—Compensation, Etc.—The Board of Trustees of Winthrop College (The South Carolina College for Women) shall be composed of the Governor of the State, the Superintendent of Education, and the Chairman of the Committees on Education of the Senate and House of Representatives, who shall be members *ex officio* of said Board, and seven other members, each to be elected by the joint vote of the General Assembly, as hereinafter provided. The regular term of office of the elective members of the aforesaid Board of Trustees shall be six years after the first election, in which the terms of office of those elected therein shall be two for two years, two for four years, and three for six years, on said Board, these terms in said Board to be determined by lot after said elections. The terms of the elected members of said Board shall date from the first day of February, A. D. 1900; and the General Assembly shall hold elections every two years to fill vacancies as they occur in any of said Board by the expiration of terms of office. In all cases where there is a vacancy in said Board of Trustees, the Governor shall be empowered to fill same by appointment until the next session of the General Assembly. Each member of the Board shall receive as compensation for services and attendance on the meetings of the Board their actual expenses, which shall be paid out of the funds of the institution. There shall be at least two regular meetings of the Board each year.

Civ. '12, § 1871; Civ. '02, § 1285; 1891, XX, 1102; 1920, XXXI, 968.

(2806) § 3. Secretary of State to Notify Trustees—Failure to Accept.—The Secretary of State shall furnish a certificate to each Trustee within ten days after his election, notifying him that he has been so elected, and if any Trustee fail for the space of thirty days to inform the Governor of his acceptance, then his election shall be void, and his place shall be filled as heretofore provided in cases of vacancy.

Civ. '12, § 1872; Civ. '02, § 1286; 1891, XX, 1102.

(2807) § 4. Meeting of Board—Quorum—Failure to Attend—Penalty.—The first Board of Trustees shall convene within ten days after the adjournment of the Legislature for organization and for the transaction of business. A majority of said Board shall constitute a quorum. Whenever any member of the said Board has failed to attend two successive meetings of said Board without rendering an excuse which is satisfactory to and accepted by the Board, his place shall be declared vacant by the Board and shall be filled as heretofore provided.

Civ. '12, § 1873; Civ. '02, § 1287; 1891, XX, 1102.

(2808) § 5. Incorporation—Name—Corporate Powers—Property Rights—Incumbered Property—By-Laws—Object.—The Board of Trustees of Winthrop College (The South Carolina College for Women) are hereby created a body corporate by the name and style of "The Trustees of Winthrop College (The South Carolina College for Women)" and shall by said name have perpetual succession of officers and members, the right to use and keep a common seal, and the same to alter at will; and may sue and be sued, contract and be contracted with, and may own, purchase, sell and convey property, both real, personal and mixed, and are authorized and empowered to receive and hold donations, devises, bequests and legacies for the use and benefit of the said institution: *Provided*, That all property purchased under the authority of this Article shall be free from liens and incumbrances, and title to the same as well as to any donations that said Board may receive shall be taken in the name of the Trustees in their corporate capacity, and shall become the property of the State of South Carolina. They shall have full power and authority, from time to time, to make, constitute and establish such by-laws, rules and orders, not inconsistent with the laws of the land, as to them shall seem necessary and convenient for the better regulation, government, well ordering and directing of themselves as Trustees as well as for said college and all officers, teachers or other persons by them employed in and about the same, and all pupils in the said institution. They shall possess all the power necessary for the accomplishment of the trust committed to them, viz.: The establishment, conduct and maintenance of a first-class institution for the thorough education of the "white girls" of South Carolina, the main object of which shall be (1) to give to young women such education as shall fit them for teaching; (2) to give instruction to young women in stenography, typewriting, telegraphy, bookkeeping, drawing (free hand, mechanical, architectural, etc.), designing, engraving, sewing, dressmaking, millinery, art needlework, cooking, housekeeping, and such other industrial arts as may be suitable to their sex and conducive to their support, and usefulness. Said Trustees shall have authority to add, from time to time, such special features to the institution and to open such new departments of training and instruction therein as the progress of the times may require.

Civ. '12, § 1874; Civ. '02, § 1288; 1891, XX, 1102; 1920, XXXI, 968.

(2809) § 6. President, Professors and Other Officers—Salaries—Attending Meetings—Departments—Industrial Instruction of Girls.—The Board of Trustees shall appoint a President and professors of said institution, and such other officers as they may think proper to put the same in successful operation. They shall fix all salaries and wages of teachers and employees. The President selected by them shall attend every meeting of the Board for consultation and give information concerning the institution. The Board, aided by the President, shall divide the course of study and instruction into departments so as to secure thorough education and the best possible instruction. No girl shall be allowed to take a course in said institution who does not receive instruction in at least one industrial art.

Civ. '12, § 1875; Civ. '02, § 1289; 1891, XX, 1102.

(2810) § 7. **Tuition Fees.**—The tuition charge for students shall be forty (\$40) dollars a session: *Provided*, Students shall be admitted free of tuition charges who are not able to pay their tuition, as ascertained and determined by the Board of Trustees.

Civ. '12, § 1876; Civ. '02, § 1290; 1891, XX, 1102.

(2811) § 8. **Degrees—Diploma of Normal Department—Authority to Teach.**—The said Trustees are authorized and empowered to confer degrees and grant diplomas to all persons who satisfactorily complete the prescribed courses of study and training in said institution, and a diploma from the Normal Department shall entitle the holder to teach in any of the public schools of the State as first grade teacher without further examination.

Civ. '12, § 1877; Civ. '02, § 1291; 1891, XX, 1102.

(2812) § 9. **Scholarships in Winthrop Normal College.**—The Board of Trustees of Winthrop College (The South Carolina College for Women) shall have the authority to assign the scholarships provided for that institution by the General Assembly, so that there may be given to a county as many scholarships as such county is entitled to members in the House of Representatives, at one hundred dollars each. These scholarships shall be awarded upon competitive examination by the State Board of Education: *Provided, however*, That before competing for said scholarships, the applicants shall make to the Board of Trustees proof, upon certificate of Auditor and Treasurer of their respective counties, of their financial ability to attend free scholarships in Winthrop College are apportioned, at least one such college, and shall receive from said Board permission to enter the competitive examination: *Provided*, That in counties to which less than four scholarship shall be open exclusively to applicants from rural communities, and in counties having more than four such scholarships at least two shall be open exclusively to applicants from rural communities: *Provided*, That nothing herein contained shall prevent applicants from rural communities from contesting for any such scholarships: *Provided*, The said applicants from rural communities make the required entrance examination average; if they do not, then the award of the scholarship shall revert to such other applicant or applicants who make the required average.

Civ. '12, § 1878; Civ. '02, § 1292; 1896, XXII, 173; 1902, XXIII, 461; 1912, XXVII, 685; 1920, XXXI, 968.

ARTICLE V.

The Medical College of the State of South Carolina.

WHEREAS, The Trustees and faculty of "The Medical College of the State of South Carolina," a corporation created and existing by and under the laws of the State of South Carolina, located at Charleston, have offered to convey and transfer to the State of South Carolina all the property, both real and personal, of said corporation, consisting of the lot of land with the College and laboratory buildings and other buildings and improve-

ments thereon, situate on the north side of Queen Street, in the City of Charleston, measuring about feet in front on Queen Street by about feet in depth, together with the personal property, consisting of laboratory, apparatus, instruments, books, furniture and other equipments in and upon said lot and buildings.

1913, XXVIII, 188.

(2813) § 1. The Medical College of the State of South Carolina Established.—Therefore the State of South Carolina hereby expressly declares that it accepts the conveyance and transfer of the property, real and personal, of “The Medical College of the State of South Carolina,” and that the Treasurer of the State be, and he is hereby, authorized and empowered to receive and securely hold the said property, both real and personal, and to execute the necessary papers and receipts therefor as soon as the said Trustees and faculty of “The Medical College of the State of South Carolina” shall convey and transfer the said property to the said State.

1913, XXVIII, 188.

(2814) § 2. Charter Confirmed.—That the charter of the said “The Medical College of the State of South Carolina” is hereby confirmed and extended with all the rights and privileges granted heretofore by the original Act of Incorporation or by any subsequent extension of its charter.

1913, XXVIII, 188.

(2815) § 3. Board of Trustees.—That the management and control of the said college shall be vested in a Board of Trustees, to be composed as follows, to wit: The Governor of the State, the State Superintendent of Education, the Chairman of the Committee on “Medical Affairs” of the Senate, the Chairman of the Committee on “Medical Affairs” of the House of Representatives, *ex officio*, and eight (8) members to be elected by the Legislature in Joint Assembly. Four of the Trustees elected at the first election shall serve for the term of two years, and four of the said Trustees shall serve for four years from the commencement of their terms, and until their successors shall be elected, and the said eight Trustees immediately after their election shall cast lots to determine which four of the said Trustees shall serve for the term of two years and which four shall serve for the term of four years. Thereafter every two years the General Assembly shall, in Joint Assembly, elect four Trustees for said college, who shall serve for the term of four years and until their successors shall be elected and shall qualify. The Board of Trustees shall elect one of their number to be President, and elect a Secretary, and fix his salary. They shall proceed to reorganize the Medical College now in operation in Charleston, to elect professors and instructors in the Departments of Medicine and Pharmacy, and such other officers and employees as may be necessary for the proper conduct of the college, and fix their compensation, fix the fees and charges of students, and the rules for the government of the college, and make such rules and by-laws as may be proper for the business of the college: *Provided*, That nothing in this Article contained shall interrupt or interfere with the conduct of the college during the present session of the same, and

the present Trustees and faculty shall continue to have and exercise all the rights and privileges and duties now vested in them until the close of the present session.

1913, XXVIII, 188.

(2816) § 4. **Scholarships.**—The Governor of the State shall annually appoint seven students in the Department of Medicine, one from each Congressional District, and seven students in the Department of Pharmacy, one from each Congressional District, who shall have free tuition in the college.

1913, XXVIII, 188.

(2817) § 5. **Appropriations.**—That for the purpose of reorganizing the said college as provided in this Article, and carrying on the same, such amount shall be annually appropriated and paid over as shall be necessary for the maintenance of the college.

1913, XXVIII, 188.

(2818) § 6. **Trustees to Make Annual Report.**—That the Board of Trustees shall meet annually on the day of, and at such meeting shall prepare and present to the General Assembly a report on the condition of the college, and of their receipts and expenditures for the preceding year, and shall also prepare for presentation to the General Assembly an estimate of the sum required for the maintenance of the college for the next succeeding year.

1913, XXVIII, 188.

ARTICLE VI.

The Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina.

(2819) § 1. **Establishment of Colored Normal, Industrial and Mechanical College of South Carolina.**—There shall be established within this State a Normal, Industrial, Agricultural and Mechanical College for the higher education of the colored youth of the State, and the said college shall be known as the Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina.

BRANCH OF SOUTH CAROLINA UNIVERSITY—TRUSTEES, ETC.—The Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina shall be under the management and control of a Board of Trustees, composed of seven members, six of whom shall be elected by the General Assembly, whose term of office shall be six years. But the General Assembly shall at its first election elect two of said Trustees for two years, two for four years, and two for six years, so that two of them shall go out of office every two years. The Governor of the State shall be *ex officio* the seventh member of said Board of Trustees.

Civ. '12, § 1879; Civ. '02, § 1293; 1896, XXII, 174.

(2820) § 2. **Duties and Powers of Trustees.**—The Board of Trustees of the Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina are hereby fully authorized and empowered to take charge of, manage and control all of the real and personal property belonging to Claffin College, in whosoever hands or custody the same may be now or hereafter found, and shall hold the same in trust for the benefit and uses of the said Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina.

Civ. '12, § 1880; Civ. '02, § 1294; 1896, XXII, 174.

(2821) § 3. **To Separate College from Claffin University.**—The Board of Trustees of the Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina shall have and are hereby given full and ample power to do and perform any and all acts whatsoever necessary to effect a complete and final separation of the interests of the State from those of Claffin University, and in the continued management of affairs of said college whenever it is found necessary to protect or to promote the interests of the State or whenever the Trustees deem it right and proper or expedient for any reason, the authority here given shall tuthorize said Trustees to sell, purchase or exchange real estate. And the said Trustees shall fix the time and duration of all vacations to be given the students of the said institution. The Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina shall have all the rights and privileges possessed heretofore by Claffin College and be entitled to receive all the funds set apart for the support of Claffin College under the Acts of the General Assembly of this State, and the said college shall forever be, and remain, free and separate from Claffin University and all other colleges, schools or other institutions which are wholly or in part under the direction or control of any church or religious or sectarian denomination or society.

Civ. '12, § 1881; Civ. '02, § 1295; 1896, XXII, 174; 1909, XXVI, 213.

(2822) § 4. **Trustees to Provide Buildings, Establish Courses of Study, Etc.—Qualifications of Instructors.**—The Board of Trustees of the Colored Normal, Industrial, Agricultural and Mechanical College of South Carolina are authorized and empowered to provide all necessary suitable buildings upon a proper site for the purpose; to establish a course of study covering the normal, industrial, agricultural and mechanical sciences, and provide the necessary appliances for proper instruction in the same; and to select a proper corps of professors and instructors and fix their salaries. The Principal or President and corps of instructors shall be of the negro race.

Civ. '12, § 1882; Civ. '02, § 1296; 1896, XXII, 174.

(2823) § 5. **Majority for Transaction of Business.**—A majority of the Board of Trustees shall be necessary for the transaction of any business.

Civ. '12, § 1883; Civ. '02, § 1297; 1896, XXII, 174.

(2824) § 6. **One-half of Land Scrip Fund Vested in Trustees.**—One-half of the fund known as the Land Scrip Fund, to wit: Ninety-five thousand and nine hundred dollars, shall be for the benefit of the Colored Normal, Industrial Agricultural and Mechanical College of South Carolina, and

shall be a perpetual fund, which shall forever remain undiminished, and the Board of Trustees are authorized to use the income thereon, to wit: Six per cent. per annum, payable semiannually, from July 1st, 1889, for the use and maintenance of said college.

Civ. '12, § 1884; Civ. '02, § 1298; 1889, XX, 299; Const., Art. XI, § 8; 1868, XIV, 169; 1879, XVII, 86; 1896, XXII, 173.

(2825) § 7. To Have Half of Public Land Fund, Under Act of Congress—Application.—All sums which shall be received by the State from the United States Government under the provisions of the Act of Congress, approved August 30, 1890, entitled "An Act to apply a portion of the public lands to the more complete endowment and support of colleges for the benefit of agriculture and mechanical arts established under the provisions of an Act of Congress approved July second, eighteen hundred and sixty-two," shall be equally divided between the Colored Normal, Industrial, Agricultural and Mechanical College and the Clemson Agricultural College. to be applied to the purposes specified in said Acts.

Civ. '12, § 1885; Civ. '02, § 1299; 1890, XX, 704; 1896, XXII, 173.

CHAPTER XXVI.

The Clemson Agricultural College.

(2826) § 1. Acceptance of the Clemson Devise and Bequest.—The Honorable Thomas G. Clemson having departed this life on the sixth day of April, A. D. 1888, leaving of force his last will and testament, which was duly admitted to probate on the twentieth day of April, 1888, in the office of the Judge of Probate for the County of Oconee, in the State of South Carolina, wherein he devised and bequeathed to his executor, Richard W. Simpson, of Pendleton, South Carolina, a tract of land situate on Seneca River in Oconee County, in said State, containing eight hundred and fourteen acres, more or less, known as the Fort Hill plantation, as well as all his other property, both real and personal, except certain legacies in the said will mentioned and provided for, all in trust to convey to the State of South Carolina when the said State shall accept the same for the purpose of establishing and maintaining an Agricultural and Mechanical College upon the aforesaid Fort Hill plantation upon the terms and conditions of said will, the State of South Carolina hereby expressly declares that it accepts the devise and bequest of Thomas G. Clemson subject to the terms and conditions set forth in his said last will and testament, and the Treasurer of the State is hereby authorized and empowered to receive and securely hold the said property, both real and personal, and to execute all necessary papers and receipts therefor as soon as the said executor shall convey and transfer the said devise and bequest to the said State.

Civ. '12, § 1886; Civ. '02, § 1300; R. S. 1118; 1889, XX, 277.

(2827) § 2. Agricultural and Mechanical College Established—Name, Location and Studies.—The deed and transfer of said property to the State having been duly executed and made by the said executor, in accord-

ance with the provisions of said will, an Agricultural and Mechanical College is hereby established in connection with the aforesaid devise and bequest, to be styled "The Clemson Agricultural College of South Carolina," and situated at Fort Hill, in Oconee County, on the plantation so devised; in which college shall be taught all branches of study pertaining to practical and scientific agricultural and other industries connected therewith, and such other studies as are not inconsistent with the terms of the said will.

Civ. '12, § 1887; Civ. '02, § 1301; R. S. 1119; 1889, XX, 278, § 2.

(2828) § 3. Board of Trustees — Election — Term — Compensation — Powers and Duties—Tuition.—The said college shall be under the management and control of a Board of thirteen Trustees, composed of the seven members nominated by the said will and their successors, and six members to be elected by the Legislature in Joint Assembly. Three of the Trustees elected in 1898 shall serve for the term of two years, and three of said Trustees shall serve for the term of four years, from the commencement of their terms and until their successors shall be elected, and the said six Trustees, immediately after their election, shall cast lots to determine which three of said Trustees shall serve for the term of two years and which three shall serve for the term of four years. Hereafter every two years the General Assembly shall elect in Joint Assembly three Trustees for said college, who shall serve for the term of four years and until their successors shall be elected and shall qualify. The Board of Trustees shall elect one of their number to be President, and elect a Secretary and fix his salary. They shall organize the college and put it in operation as soon as practicable after the adoption of this Chapter; shall prescribe the course of study, shall declare the professorships, elect the professors and define their duties and fix their salaries, and make all rules and regulations for the government of the college. They may employ such superintendent, head workman, laborers for the farm, shops and grounds as may be necessary, and fix their compensation. They shall charge each student a tuition fee of forty dollars per annum: *Provided, however,* The Board of Trustees of said Clemson Agricultural College may grant, as provided by law, free tuition to such competent and deserving youths of this State as may be unable to pay the same, and the said Board of Trustees shall prescribe such rules and regulations as may be proper to confine the enjoyment of this privilege to those whose necessities require it.

Civ. '12, § 1888; Civ. '02, § 1302; R. S. 1120; 1889, XX, 277; 1897, XXII, 470; 1898, XXII, 763; 1912, XXVII, 558.

(2829) § 4. Incorporation and Powers—Property Rights—Proviso—Investment of Funds—By-Laws.—The said Board of Trustees is hereby declared to be a body politic and corporate, under the name and style of the Clemson Agricultural College of South Carolina. They shall have a corporate seal, which they may change at their discretion; and in their corporate name they may contract for, purchase and hold property, for the purposes of this Article, and may take any property or money given or conveyed by deed, devise or bequest of said college, and hold the same for its use and benefit: *Provided,* That the conditions of such gifts or conveyance

shall in no case be inconsistent with the purposes of this Chapter, and shall incur no obligation on the part of the State. They shall securely invest all funds and keep all property which may come into their possession, and may sell any of the personal property not subject to the trust, and reinvest the same in such way as they may deem best for the interest of said college. They may sue and be sued, and plead and be impleaded, in their corporate name, and may do all things necessary to carry out the provisions of this Chapter, and may make by-laws for this purpose if they deem it necessary.

Civ. '12, § 1889; Civ. '02, § 1303; R. S. 1121; 1889, XX, 279.

(2830) § 5. Expenditure of Moneys and Sale of Property.—It shall require a two-thirds vote of the said Board of Trustees to authorize the expenditure of any moneys appropriated to the said college by the State, or to authorize the sale or transfer or reinvestment of any property or moneys arising from the sale of any property under the provisions of this Chapter.

Civ. '12, § 1890; Civ. '02, § 1304; R. S. 1122; 1889, XX, 279.

(2831) § 6. Annual Report by Board.—It shall be the duty of said Board of Trustees to make to the Legislature an annual report of the college, and of all farming operations and tests and experiments, and of all receipts and expenditures, with a statement of the condition of the property and funds of said college, and of all receipts and expenditures of money appropriated thereto by the State.

Civ. '12, § 1891; Civ. '02, § 1305; R. S. 1123; 1889, XX, 279.

(2832) § 7. Investment of Clemson Bequest Fund and Payment of Interest to Board.—The State Treasurer shall securely invest and reinvest the funds now in his hands, and such as may hereafter come into his hands, derived from the Clemson bequest in such manner as shall be directed by the Governor, the Comptroller General and the Treasurer of the State, or any two of them. He is hereby authorized to collect the interest annually upon all investments made of funds of the Clemson bequest, and pay the same over to the Treasurer of the Board of Trustees of Clemson Agricultural College. It shall be his duty, under the direction of the Governor, the Comptroller General and the Treasurer of the State, or any two of them to enforce the collection of the principal or interest due on any investment made of such Clemson bequest.

Civ. '12, § 1892; Civ. '02, § 1306; R. S. 1124; 1890, XX, 662.

(2833) § 8. Collection and Investment of Moneys from Clemson Bequest Fund in Brown Consols.—The State Treasurer is hereby authorized and empowered to collect by suit or otherwise, or to sell and convert into money, all the evidences of indebtedness now held by him and which was turned over to him as a part of the Clemson bequest, and that when he shall have received the money on same that he invest the same in Brown Consols, bearing interest at six per cent. per annum. When said funds are invested in said Brown Consols, as provided for in this Section, then the State Treasurer shall issue a certificate of State stock in a sum equal to the value of said Brown Consols, bearing interest at the rate of six per centum per

annum, payable semiannually, to the Board of Trustees of the Clemson Agricultural College, to be held as a perpetual fund, the capital of which shall forever remain undiminished, the interest on same to be used by said Board of Trustees for the uses of said Clemson Agricultural College; and when the said State stock is so issued, he do then cancel the said Brown Consols in the place of which the said State stock was issued.

Civ. '12, § 1893; Civ. '02, § 1307; R. S. 1125; 1891, XX, 1054.

(2834) § 9. One-half Land Scrip Fund Vested in College Trustees—Application of Income.—One-half of the Land Scrip Fund heretofore vested by Section 1045 of the General Statutes (1882) in the Board of Trustees of the University of South Carolina is hereby vested in the six members of the Board of Trustees of the Clemson Agricultural College of South Carolina elected by the General Assembly; and the State Treasurer is authorized and required to issue a certificate of State stock in the sum of ninety-five thousand nine hundred dollars, bearing interest at the rate of six per centum per annum, payable semiannually, to the said six members of the said Board of Trustees, to be held as a perpetual fund, the capital of which shall forever remain undiminished, the income of said fund to be used by said Board of Trustees for the building and maintenance of the said Clemson Agricultural College, in accordance with the purposes for which the said Land Scrip was donated by the Act of Congress in relation thereto.

Civ. '12, § 1894; Civ. '02, § 1308; R. S. 1126; 1889, XX, 299, § 1; Con., Art. XI, § 8; 1868, XIV, 169; 1879, XVII, 86.

(2835) § 10. Hatch Fund Vested in Trustees of College for Support of Experiment Station.—The annual grant of fifteen thousand dollars, commonly known as the Hatch Bill fund, made to the State of South Carolina by the Congress of the United States according to the terms of an Act of Congress entitled "An Act to establish agricultural experiment stations in connection with the colleges established in the several States under the provisions of an Act approved July second, eighteen hundred and sixty-two, and of the Act supplementary thereto," approved March 2d, 1887, shall be, and hereby is, withdrawn from the control of the Board of Trustees of the University of South Carolina, in whom it was vested by an Act entitled "An Act to amend Chapter XX of the General Statutes, entitled 'Of the University of South Carolina,' " approved December 22, 1887; and the said grant of fifteen thousand dollars is hereby vested in the six members of the Board of Trustees of the Clemson Agricultural College of South Carolina chosen by the General Assembly; and an agricultural experiment station shall be established in connection with the said Clemson Agricultural College, and under the direction of the Board of Trustees thereof, to be supported by said grant according to the provisions of the Act of Congress hereinbefore mentioned.

Civ. '12, § 1895; Civ. '02, § 1309; R. S. 1128; 1889, XX, 300, § 2.

(2836) § 11. Experimental Stations for Farm Demonstration Work.—The Board of Trustees of Clemson Agricultural College of South Carolina are hereby authorized and empowered to establish and operate two or more

experimental stations, as in their judgment the funds of said college will justify, for the purpose of testing soil, climatic and other conditions and farm demonstration work: *Provided*, That one of such stations shall be established within the Pee Dee section of the State, one within the sand hill portion thereof, and the others wherever in the judgment of said Board will result to the best interest of the State: *And provided, further*, That due advertisement for bids in money and donations of land for the location of any such stations in any section of the State shall be made before the location thereof is determined.

Civ. '12, § 1896; 1911, XXVII, 3.

(2837) § 12. Department of Agriculture and Office of Commissioner Abolished.—The Department of Agriculture of this State, as heretofore constituted and provided for by law, is abolished, and also the office of Commissioner of Agriculture for this State.

Civ. '12, § 1897; Civ. '02, § 1310; R. S. 1129; 1890, XX, 705, § 1.

(2838) § 13. Powers and Duties Devolved Upon Trustees of Clemson College—Exception.—All the powers, duties, rights and privileges heretofore vested in and exercised by the Commissioner of Agriculture and the Department of Agriculture of this State are vested in and devolved upon the Board of Trustees of the Clemson Agricultural College of South Carolina, except that said Board shall not have any rights, powers or privileges in reference to or in connection with the management and control of the rights and interests of the State in the phosphate rock or phosphatic deposits in the navigable streams and marshes thereof.

Civ. '12, § 1898; Civ. '02, § 1311; R. S. 1130; 1890, XX, 705, § 2.

(2839) § 14. Meeting of Board—Remuneration.—For the purpose of carrying out the duties hereby devolved upon them, the said Board of Trustees shall meet at the call of the Governor, and at such time and place as he may designate. They shall receive no compensation, but shall be allowed their actual expenses, for not exceeding two meetings in one year, while engaged in the duties of the Board imposed upon them by the preceding Section.

Civ. '12, § 1899; Civ. '02, § 1312; R. S. 1131; 1890, XX, 706, § 3; 1899, XXIII, 111.

(2840) § 15. Duties and Powers of Board.—The duties and powers of the said Board of Trustees are as follows: 1. They shall regulate the returns of such county agricultural societies as may be chartered by the State, prescribe the forms of such return, and furnish all blanks necessary for securing uniform and reliable statistics of their operations. 2. They shall issue to the several County Auditors of the State, blanks, with complete instructions, for the collection of agricultural statistics and information. The Auditors shall promptly return such blanks to the Board, filled in accordance with such instructions. 3. They shall investigate all subjects relating to the improvement of the agricultural interests of the State, the inducement of immigration thereto, and the introduction of foreign capital therein, as they may deem expedient. 4. They shall have the right to promulgate and enforce rules and regulations, for the guidance of the

Veterinarian of said college, or his assistant, if one shall be appointed, in the treatment of horses, mules, cattle, hogs, or other live stock affected with any dangerous or contagious disease. 5. The said Board shall have the power to adopt rules and regulations, consistent with the laws of this State, and of the United States, to prevent the introduction into this State of any live stock, that is affected with any contagious disease, the tendency of which is to cause the death of said live stock. 6. They shall have power, in case of contagious disease among any kind of stock or animals, either to establish rules of quarantine or to have the infected animals killed and burned. 7. Said Board, or a committee thereof, appointed by them, shall supervise and enforce the execution of all laws respecting the sale of commercial fertilizers and seeds within the State, and any other duties by this Chapter devolved upon them. 8. They shall appoint a special inspector or inspectors of fertilizers, and such other persons as they may deem necessary for carrying out the duties of the Department of Agriculture, hereby devolved upon them, and fix their compensation. 9. They shall collect samples of any commercial fertilizers offered for sale in this State and cause the same to be analyzed. Such samples must be taken from at least ten per cent. of the lot analyzed. 10. They shall prepare and keep in their department books of registry in which any person may cause to be entered any tract or lot of land which he may desire to sell, stating the terms of sale. And such person may file also any plat or other descriptive paper relating to such lands as he may think proper. They shall also keep books in which shall be entered the names of persons desiring employment as laborers. The registry fee for each tract of land, or for each person seeking employment, shall be one dollar. The books shall be open to inspection free of charge. 11. They shall communicate and cooperate with the Commissioner of Agriculture of the United States, and shall receive from him seeds, plants, documents and information, and shall distribute the same as may seem to the best advantage. 12. They shall have power to hold agricultural conventions composed of delegates from each county in the State, to be apportioned to each county and elected in such manner as the Board may provide; and to conduct farmers' institutes at such times and places as may appear expedient; and they are authorized to use such parts of the funds under their control as may be necessary to meet the expense of conducting such conventions and institutes, but no compensation, per diem or mileage, shall be paid to the delegates of such conventions.* 13. The authorities of Clemson Agricultural and Mechanical College are hereby authorized and required to detail one of its scientific agriculturists to pay frequent visits to the coast section of the State, and to examine the soils, present methods of cultivation, fertilization, irrigation, etc., and to make practical tests, on some selected section, of sea island cotton, rice and truck farms, with various varieties of seeds, and to follow the same up carefully during the preparation of the land, planting of seed and cultivation and harvesting of same, and also to examine into the disease of cotton, rice, truck, etc., which have caused much trouble and loss in that section. That it shall be the duty of the planters and farmers of the section so visited to render hearty assistance and cooperation in every way in their power to the gentlemen detailed under the provisions

*See ante, §§ (960), (969), as to State Entomologist and State Board of Entomology.

of this Section. 14. That the proper authorities of Clemson College are hereby required to furnish, at cost, to citizens of this State upon request therefor, sufficient quantities of serum for treatment of hog cholera: *Provided*, That no person shall be furnished more serum than needed for treatment of hogs actually owned by the person applying therefor. That no poor person shall be charged for serum applied for when unable to pay for same.

Civ. '12, § 1900; Civ. '02, § 1313; G. S. 587, 588, 589, 591, 594; R. S. 1132; 1879, XVII, 72; 1890, XX, 706, § 4; 1901, XXIII, 737; 1913, XXVIII, 194.

(2841) § 16. Clemson College May Construct Railroad.—The Clemson Agricultural College of South Carolina is hereby authorized and empowered to construct, maintain and operate a railroad between the Clemson Agricultural College of South Carolina and Calhoun Station, on the line of the Atlanta and Charlotte Air Line Railway, with all the rights, powers, duties and privileges that are conferred and imposed by the laws of this State upon railroad companies.

POWERS AND RIGHTS OF COLLEGE AS TO RAILROAD.—The said Clemson Agricultural College of South Carolina, for the purpose of the construction of said railroad, shall be entitled to all the rights and privileges (and be subject to all the liabilities of railroad corporations) embraced in what is called the "General Railroad Law," and Acts amendatory thereof, as well as any Acts now existing, or hereafter to be passed, regulating the duties, privileges and rights of railroad companies.

Civ. '12, § 1901; Civ. '02, § 1314; 1900, XXIII, 565.

(2842) § 17. College May Lease Road.—After construction of said railroad the said Clemson Agricultural College of South Carolina, for the purpose of operating the same, is empowered to lease, in any lawful manner, the said railroad to any railroad company upon such terms as may be mutually agreed upon, or may enter into any agreement with any railroad company for the operation of the same.

Civ. '12, § 1902; Civ. '02, § 1315; 1900, XXIII, 565.

(2843) § 18. College May Maintain Tramways, Etc.—The said Clemson Agricultural College of South Carolina is authorized to construct and maintain tramways, macadam roads, electric roads, and such other highways within the incorporation as the Board of Trustees may deem expedient for the improvement and development of the corporation, and to this end shall have all the powers, privileges and rights conferred by Sections 16 and 17 of this Chapter.

Civ. '12, § 1903; Civ. '02, § 1316; 1900, XXIII, 565.

(2844) § 19. Powers and Duties of Veterinarian of College.—The Veterinarian of said college shall have the right to visit any section of this State, where contagious diseases among animals is believed to exist, and shall determine, under the rules and regulations of said Board, whether such affected animals are worthy of remedial treatment or should be destroyed. It shall not be lawful for any person or persons to hinder or obstruct said

Veterinarian or his assistant, in the enjoyment of the rights given by this Section, or in the discharge of the duties prescribed by this next succeeding Section.

Civ. '12, § 1904; Civ. '02, § 1317; 1901, XXIII, 737.

(2845) § 20. Same.—When two or more reputable citizens, of any county in this State, shall notify said Veterinarian that any animals in their county are affected with a contagious disease, the tendency of which is to cause the death of such animals, he shall investigate the same, or cause an investigation thereof to be made; and for such purpose, he, or his assistant, shall have the right to go upon any premises on which such affected animals are, or where they are supposed to be. Said Veterinarian shall have the right to treat such affected animals, at the expense of the owner or owners of the same, or shall have the right to cause the same destroyed, under such rules and regulations as may be prescribed by the said Board. No compensation shall be paid to the owner or owners of any animals destroyed under the provisions of this Section. The necessary expenses incurred by the Veterinarian or his assistant in the discharge of the duties prescribed in this Chapter, shall be paid from the funds of Clemson College.

Civ. '12, § 1905; Civ. '02, § 1318; 1901, XXIII, 737.

(2846) § 21. County Commissioners May Appropriate Moneys to Be Used in Cooperation With State Officials in Live Stock Sanitation.—That the County Board of Commissioners in the various counties of the State are hereby authorized and empowered to appropriate money, not exceeding one hundred dollars in any one county, out of the general fund of the county, to be used for the purpose of cooperating with the State officials in charge of live stock sanitary work and the United States Department of Agriculture, in eradicating the cattle tick and preventing contagious, infectious and communicable diseases of live stock, or whenever funds are raised by subscriptions of private individuals in any county in the State.

1912, XXVII, 670.

(2847) § 22. Duties and Powers of State Veterinarian.—That the State Veterinarian or any live stock inspector appointed by him is hereby authorized to give written notice to any person, firm or corporation owning, possessing or controlling any live stock which may be found infested or infected with, or exposed to, the carrier or carriers of infectious, contagious or communicable diseases, or any barns, sheds, yards or fields which are capable of conveying the said infection or contagion, to disinfect the same, or have the same disinfected within five days from the service of such notice; and if any person, firm or corporation shall refuse or neglect for five days from the service of such notice to disinfect such animals, live stock, or premises in the manner and method and at such times that such written notice may specify, the said person, firm or corporation shall be guilty of a misdemeanor, and, upon conviction thereof, shall be liable to a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment for not less than ten nor more than thirty days in the County Jail, or upon the public works of the county in which such offense occurs: *Provided, however,* That there

shall be no conviction, fine or imprisonment imposed upon any person under this Section unless it shall appear that all necessary medicines, or disinfectants shall have been furnished or offered free of charge and without any cost whatever to the owner or controller of live stock or property at the same time or previous to the giving of the written notice.

1912, XXVII, 670; 1918, XXX, 826.

(2848) § 23. Powers of State Veterinarian for Eradication of Foot and Mouth Disease.—That in order to provide for prompt action by the State of South Carolina in case an outbreak of what is commonly known as “foot and mouth disease” appears among the live stock at any point or points within the bounds of the State of South Carolina, as certified to by the State Veterinarian, the authorities as outlined and stipulated in Sections 15 to 20 of this Chapter, be, and they are hereby, empowered and directed to act in reference to said disease under the authority contained in said Sections.

1919, XXXI, 241.

(2849) § 24. In Event of an Outbreak of Foot and Mouth Disease, Criminal Code, to Apply.—That for the purpose of eradicating said disease, should an outbreak occur, all of the provisions of the Criminal Laws of South Carolina, 1922, pertaining thereto shall apply, except that the value to be placed on animals condemned and destroyed on account of being affected with, or having been exposed to, “foot and mouth disease” shall be fixed in accordance with the succeeding Section herein.

1919, XXXI, 241.

(2850) § 25. Appraisal of Animals Condemned.—That the method of appraising the value of such animals as may be condemned and destroyed, as provided herein, shall be in accordance with the regulations provided by the United States Department of Agriculture, and upon such appraisal being made, the State of South Carolina shall pay one-half of the amount at which such live stock is valued, by a warrant approved by the State Veterinarian and drawn by the proper authorities of Clemson College on the Comptroller General, who shall issue his warrant on the State Treasurer for such amount, the same to be paid as hereinafter provided.

1919, XXXI, 241.

(2851) § 26. Authorities May Provide Regulations.—That the authorities specified in Sections 15 to 20 of this Chapter shall have power to make specific regulations in case of an outbreak of foot and mouth disease.

1919, XXXI, 241.

(2852) § 27. Governor May Borrow.—That whenever the State Veterinarian shall certify to the Governor of this State that an outbreak of said disease has occurred within the bounds of the State of South Carolina, he is hereby empowered to execute a note or notes in the name of the State, the same to be countersigned by the Comptroller General and the State Treasurer, and to raise sufficient funds in that manner to be used in the eradication of said disease, such sum of money to be placed in the State Treasury and to be drawn on by warrants, issued by the proper officers

of Clemson Agricultural College, in the usual manner that such warrants are issued, and to be paid by the State Treasurer in the same manner; such sum of money to be used for the payment for destroyed animals, as provided herein, for the employment of additional help by the authorities of Clemson Agricultural College, and for such other expenses as in the discretion of the Board of Trustees of Clemson Agricultural College may be necessary and incident to the eradication of said disease should an outbreak occur.

1919, XXXI, 241.

(2853) § 28. Privilege Tax on Fertilizer Subject to Order of Board—Application.—All the privilege tax on fertilizers heretofore required to be paid to the Commissioner of Agriculture shall in the future be paid to the Treasurer of the State, subject to the order of the Board of Trustees of the Clemson Agricultural College of South Carolina; and so much of the money so received as shall be necessary to defray the expenses of the Board in performing the duties now by this Chapter devolved upon them shall be thus used, and the balance shall go to the said college, for its erection and maintenance.

Civ. '12, § 1906; Civ. '02, § 1319; R. S. 1193; 1890, XX, 706, § 6.

(2854) § 29. Clemson College Incorporated—Limits.—A municipal corporation is hereby created, known as Clemson College, the limits of which shall consist of all lands belonging to the said college and cover all the territory included in a circle formed with the college building as a centre, with a radius of five miles, thus making the diameter of the circle ten miles, within which boundaries the jurisdiction of the corporation shall extend. No dispensary shall ever be located at Calhoun.

Civ. '12, § 1907; Civ. '02, § 1320; 1894, XXI, 915; 1901, XXIII, 830.

(2855) § 30. Powers of Board of Trustees.—1. The Board of Trustees of Clemson Agricultural College of South Carolina and their successors in office shall have perpetual control and direct the affairs of said corporation.

2. **POLICE MAGISTRATE.**—The said Board, by a majority vote, shall have the power, and it is made their duty, to recommend a suitable person as Police Magistrate, who shall be commissioned by the Governor, and who shall exercise all the powers of a Magistrate and of a City Recorder in punishing offenses against the law, or against the Ordinances of the said Board of Trustees. But said Magistrate shall not have jurisdiction in Pickens County.

PENALTIES.—The said Board of Trustees shall have authority, and it shall be their duty, to make such rules for the maintenance of order and provide such punishments, within the jurisdiction of a Magistrate, by fine or imprisonment, or both, as will keep the territory within their jurisdiction free from nuisances and enforce the police regulations of the State.

Civ. '12, § 1908; Civ. '02, § 1321; 1894, XXI, 915; 1901, XXIII, 830.

(2856) § 31. Trustees May License or Prohibit Sales.—The Board of Trustees of the Clemson Agricultural College of South Carolina are authorized and empowered to make such by-laws as they deem proper to license or

prohibit the sale of goods, wares and merchandise of any kind whatever on the grounds belonging to the said college as are not repugnant to the laws of the State.

Civ. '12, § 1909; Civ. '02, § 1322; R. S. 1135; 1892, XXI, 88.

(2857) § 32. Constables.—The said Board shall have authority to appoint one or more special Constables, who shall exercise all the power of a State Constable or of a municipal policeman, to enforce obedience to its ordinances and to the laws of the State.

Civ. '12, § 1910; Civ. '02, § 1323; 1894, XXI, 915.

(2858) § 33. No Tax to Be Levied.—Nothing contained in Section 29, 30 and 31 shall give said Board of Trustees the right to levy or collect any tax.

Civ. '12, § 1911; Civ. '02, § 1324; 1894, XXI, 915.

(2859) § 34. Annual Report to General Assembly.—A report of all their proceedings under this Chapter shall be made, annually, by the Board to the General Assembly.

Civ. '12, § 1912; Civ. '02, § 1325; G. S. 598; R. S. 1134; 1879, XVII, 74.

(2860) § 35. One Hundred and Sixty-Seven Scholarships Created in Clemson College.—There are hereby established and created one hundred and sixty-seven (167) beneficiary scholarships in the Clemson Agricultural College of South Carolina, and each of said scholarships shall be of the value of one hundred dollars per annum, and shall be apportioned and distributed by the Board of Trustees among the several counties of the State in the same manner as the members of the Senate and House of Representatives are apportioned, so that each county shall have as many scholarships as such county is entitled to members in the Senate and House of Representatives.

Civ. '12, § 1913; 1910, XXVI, 679; 1913, XXVIII, 130.

(2861) § 36. How Scholarships Awarded.—Said scholarships shall be awarded by the State Board of Education, upon the recommendation of the faculty of said college, to the most worthy and needy young men of such age as is fixed by the Board of Trustees of said college for other students who shall have passed an approved entrance examination upon the common school branches and made at least sixty per cent. upon such examination; and preference shall be given to those young men who desire to take the agricultural course and the textile courses: *Provided*, That not more than one scholarship from each county shall be open to the textile course: *Provided, further*, In counties having less than four such scholarships, one shall be open exclusively to boys from rural communities, and in counties having four or more such scholarships, at least two thereof shall be open exclusively to boys from rural communities: *Provided*, That nothing herein shall exclude boys residing in rural communities from also contesting for any of such scholarships.

Civ. '12, § 1914; 1907, XXV, 539; 1912, XXVII, 685.

(2862) § 37. **Manner of Conducting Examinations.**—The examinations for the award of these scholarships shall be conducted in the following manner: The questions for such examinations shall be prepared by the President or some member or members of the faculty of the said Clemson Agricultural College, under the direction of the President, and shall be forwarded to the respective County Boards of Education before the day for examination in each year, together with a statement showing the number of vacant scholarships to which each county is entitled. The said County Boards of Education shall hold the said examinations by numbers, *i. e.*, by requiring each applicant to draw a number from a miscellaneous collection of numbers furnished by said County Boards. Each applicant shall then seal his name in an envelope, which shall be kept sealed by said County Boards of Education. The applicants shall then put their numbers and not their names on their papers. The papers shall be forwarded to the President of Clemson College and the members of the faculty of that institution who may be designated by the President thereof, shall examine the papers and return the marks of the applicants to the County Boards of Education by the numbers as furnished to said faculty. The County Boards of Education shall then open the envelopes containing the names and make report of names therein to the faculty of the college, who shall make recommendations to the State Board of Education for the award of the scholarships.

Civ. '12, § 1915; 1907, XXVII, 539.

(2863) § 38. **How Scholarships Paid.**—The said scholarships shall be paid from the regular income of said Clemson Agricultural College, as now provided by law, and shall each continue for the term of four years, or for such length of time as the beneficiary shall be able to maintain himself and comply with the rules of the college; and the said sum of one hundred dollars per annum shall be placed to the credit of each of said beneficiaries and applied towards the payment of his board and other necessary school expenses.

Civ. '12, § 1917; 1907, XXVII, 540.

(2864) § 39. **One Year Beneficiary Scholarships for Clemson College Regulated.**—There are hereby established and created fifty-one beneficiary agricultural scholarships in the Clemson Agricultural College of South Carolina, said scholarships to be of the value of one hundred (\$100) dollars per annum and free tuition, and to be awarded so that there shall be one scholarship to each county, and seven scholarships from the State at large.

1912, XXVII, 686; 1913, XXVIII, 192.

(2865) § 40. **Who Eligible.**—The said scholarships shall be open to any young man a native of South Carolina, eighteen (18) years old or over, who has spent not less than three years in the active practice of farming, consideration being given to the need and worth of the applicant, and to his agricultural knowledge, as shown by suitable examinations. All applicants shall stand such examinations as shall be prescribed by the proper authorities of the Clemson Agricultural College, and these examinations

shall be held at the same time and in accordance with the general laws governing the examinations for other scholarship students.

1912, XXVII, 686; 1913, XXVIII, 192.

(2866) § 41. Board of Education to Appoint.—The faculty of the said Clemson Agricultural College, or committee designated by the Board of Trustees for that purpose, shall recommend to the State Board of Education for appointment to the scholarship, one of the young men who has successfully passed the examination and is otherwise qualified.

1912, XXVII, 686; 1913, XXVIII, 192.

(2867) § 42. How Scholarships to Be Paid for—Term of Scholarship.—The said scholarships shall be paid from the income of the said Clemson Agricultural College, as now provided by law, and each shall continue for a term not exceeding one year, or for such length of time as the beneficiary shall be able to maintain himself as a student of the college, and the said sum of one hundred (\$100) dollars per annum shall be placed to the credit of each beneficiary, and applied to the payment of his board and other necessary expenses.

1912, XXVII, 686; 1913, XXVIII, 192.

CHAPTER XXVII.

South Carolina Institute for the Education of the Deaf, Dumb and Blind.

(2868) § 1. Board of Commissioners.—The Board of Commissioners for the South Carolina Institution for the Education of the Deaf and Dumb and the Blind shall consist of five members as follows: The Superintendent of Education, *ex officio*, and four members to be appointed by the Governor, three of whom shall reside in Spartanburg County. The term of office of aforesaid four members shall be, respectively, two, four, six and eight years, the term of each to be designated by the Governor when appointed. At expiration of term of office of any member of the Board, the Governor shall fill vacancy by appointment for term of eight years, the Governor to have power to remove for cause at any time. The said Board shall be allowed actual expenses for not more than two meetings in each year, to be paid by the Superintendent of the institution. Nothing herein contained shall interfere with the present Board of Trustees and until after their term of office expires.

Civ. '12, § 1918; Civ. '02, § 1326; G. S. 1053; R. S. 1136; 1878, XVI, 707; 1894, XXI, 149; 1902, XXIII, 1026.

(2869) § 2. Duties and Powers of Board.—The Board of Commissioners are vested with the supervision and control of affairs and government of said institution, with power to regulate salaries of officers and teachers, to establish conditions, forms, and regulations for the admission of pupils therein, and to prescribe such rules and by-laws as in their judgment shall be necessary for the management and good government thereof.

Civ. '12, § 1919; Civ. '02, § 1327; G. S. 1054; R. S. 1137; 1878, XVI, 707.

(2870) § 3. **Superintendent—How Elected.**—The Superintendent of said institution shall be elected by said Board of Commissioners, and shall be the immediate executive head of the institution, and shall be responsible to the Board of Commissioners.

Civ. '12, § 1920; Civ. '02, § 1328; G. S. 1055; R. S. 1138; 1878, XVI, 707.

(2871) § 4. **Duties and Powers of Superintendent.**—The Superintendent shall nominate all his subordinate officers and teachers, subject to the approval of the Board of Commissioners; he shall be the official medium of communication between the Board and said subordinate officers and employees; shall make all regulations of internal police; shall authorize the purchase of ordinary supplies, and shall examine and certify to the correctness of all bills of such supplies.

Civ. '12, § 1921; Civ. '02, § 1329; G. S. 1056; R. S. 1139; 1878, XVI, 707.

(2872) § 5. **Meetings of Board.**—The Board of Commissioners shall elect a Chairman and Secretary from their number, and shall meet annually on the first Wednesday in August at the institution, and at such other times and places as the Chairman of the Board shall direct. The Board of Commissioners shall receive no compensation for their services.

Civ. '12, § 1922; Civ. '02, § 1330; G. S. 1057; R. S. 1140; 1878, XVI, 707.

(2873) § 6. **Reports of Board.**—The Board of Commissioners shall draw the annual appropriations as made by the Legislature for the support and maintenance of said institution, and shall annually report to the Legislature a statement of their various acts and doings during the past year, showing exactly how they disbursed the money received and expended, and file vouchers covering the same in the office of the Comptroller General.

Civ. '12, § 1923; Civ. '02, § 1331; G. S. 1058; R. S. 1141; 1878, XVI, 707.

(2874) § 7. **All Deaf Mutes and Blind Persons Admitted.**—All deaf mutes and blind of the State who are of proper age and mental capacity (each case to be decided by the Board of Commissioners) shall be admitted to the benefits of the institution.

Civ. '12, § 1924; Civ. '02, § 1332; G. S. 1059; R. S. 1142; 1878, XVI, 707.

(2875) § 8. **Expenses of Applicants.**—The whole or part of the expenses of the several applicants shall be paid, according to the opinion which the Commissioners may form as to the pecuniary condition of the applicants; and in case of more applicants than would exhaust the annual appropriation, the Commissioners shall make selection according to their opinion of the deserts of the various applicants.

Civ. '12, § 1925; Civ. '02, § 1333; G. S. 1133; R. S. 1143; 1878, XVI, 708.

(2876) § 9. **Expenses of Pupils.**—The sum which shall be allowed for the board, tuition and all incidental expenses of one deaf and dumb or blind person for one year, shall not exceed one hundred and fifty dollars, not including herein traveling expenses, clothing and medical attendance, which the Commissioners shall place upon the most economical scale.

Civ. '12, § 1926; Civ. '02, § 1334; G. S. 1134; R. S. 1144; 1878, XVI, 708.

(2877) § 10. Board May Provide for Higher Education of Any Graduate.

—The Board of Commissioners of the School for the Deaf and Dumb and Blind may, upon the recommendation of the Superintendent and faculty, appropriate one hundred and fifty (\$150.00) dollars annually to provide for the higher education of any graduate thereof, matriculating in any special or regular course offered in any chartered college. The Board shall make suitable regulations for such students, but not more than four graduates shall be thus aided in any one year.

Civ. '12, § 1927; 1910, XXVI, 917.

CHAPTER XXVIII.**Architects and Certified Public Accountants.**

ARTICLE 1. Architects, 841.

ARTICLE 2. Certified Public Accountants, 843.

ARTICLE I.**Architects.**

(2878) § 1. Qualifications for Practice of Architecture—Must Have Certificate of Registration—Not Applicable to Certain Persons.—Any person assuming the title of architect, or practicing the profession of architecture in the State of South Carolina from and after July 1, 1917, must not be less than twenty-one years of age, of good moral character and so skilled in the principles of design and construction, that he or she may be entrusted with the design and erection of buildings without undue risk to public safety, and before assuming such title or undertaking such work, must have a certificate of registration from the State Board of Architectural Examiners hereinafter provided: *Provided, however,* That nothing in this Article shall be construed to apply to contractors, builders, mechanics or private individuals making plans and erecting buildings so long as they do not hold themselves out to the public as architects.

1917, XXX, 198.

(2879) § 2. State Board of Architectural Examiners—How Composed—Term—Vacancy—Organization—Meetings—Seal—Compensation—The Governor shall appoint a Board of Examiners, to be known as "The State Board of Architectural Examiners," composed of five persons, two of whom shall be professors of architecture or engineering in universities or colleges controlled by this State, three of whom shall be reputable architects engaged in the actual practice of the profession in this State at the passage of this Article. They shall be appointed for terms of one, two, three, four and five years, respectively, and thereafter in each year as the terms of the members expire, the Governor shall fill the vacancies thus occurring by appointments under like conditions and qualifications, each such appointment to be for a term of five years. Vacancies occurring by reason of death, resignation or removal shall be filled by appointment by the Governor for the unexpired term only. The Board of Examiners shall

meet within thirty days after its appointment, shall organize by the election of a Chairman and Secretary and Treasurer, and shall adopt rules governing its proceedings, and thereafter it shall meet annually. The Board shall provide itself with a proper seal with which all its official documents shall be sealed. The members of this Board shall receive as compensation the same per diem and mileage as is now fixed by law for the State Board of Medical Examiners, but all costs and expenses shall be paid only from the fees and dues received and no claim shall be made on the State Treasury under this Article.

1917, XXX, 198.

(2880) § 3. Examination of Applicants — Who Entitled to Certificate Without Examination — Proviso.—The State Board of Architectural Examiners shall, at each annual meeting, examine all applicants for admission to the practice of architecture, and each applicant shall, before entering upon such examination, satisfy the Board that he or she is not less than twenty-one years of age, and of good moral character, and shall pay unto the Board a fee of fifteen dollars. The examination shall embrace mathematics, physics, analysis of stresses, strength of materials, foundations, design, sanitation, heating and ventilation, lighting, fire protection, panics and such other subjects as the Board may prescribe. Any applicant of the requisite age and character and who has had as much as two years' experience in architectural work, and who answers correctly two-thirds of the questions submitted, shall be admitted to practice, and the Board shall issue to such applicant a certificate, carrying authority to practice in the State of South Carolina, all under the seal of the Board. All architects resident and practicing in this State at the time of the passage of this Article shall be entitled to a certificate admitting them to practice without examination: *Provided*, Application for same shall be made on or before the first day of July, 1917, accompanied by the fee hereinbefore prescribed. Any applicant of requisite age, character and experience who is a graduate of any school of architecture, the standing of which is satisfactory to the Board, or, who is registered in another State, or Territory, having standards equal to those in this State, or who may satisfy the Board of his qualifications by a record of successful work, shall be entitled to a certificate of registration without other examination, upon payment of the fee hereinbefore prescribed.

1917, XXX, 198; 1920, XXXI, 832.

(2881) § 4. Fee for Continuation of Practice.—Every architect continuing his practice in South Carolina shall, on or before the first day of July in each year, pay to the Board of Architectural Examiners a fee of five dollars, and upon failure to do so, shall have his or her certificate of admission to practice revoked, such certificate may, however, be renewed at any time within one year upon the payment of a fee of ten dollars.

1917, XXX, 198.

(2882) § 5. Suspension or Revocation of Certificate—Trial—Appeal.—The Board of Architectural Examiners may suspend for a period, or revoke, the certificate of admission to practice and forbid further practice

by any architect upon conviction, after a fair and impartial trial of any dishonest practice, unprofessional conduct or incompetence. For the purpose of such fair and impartial trial, the Board shall have full power to subpoena and examine witnesses under oath, as to the facts of the case. Any architect against whom charges are preferred shall have not less than sixty days' notice before the trial of his case, and shall have the right to have witnesses subpoenaed in his behalf, and of being heard in person and by counsel. Any such trial shall be open to the public. Any architect convicted before the Board shall have the right to appeal to the Circuit Court of Common Pleas the same as in other causes in said Court.

1917, XXX, 198.

(2883) § 6. Certificate for Nonresident Architects—Proviso.—Every corporation practicing architecture in this State shall have at least one registered architect, who shall have charge of all architectural work of said corporation in this State, and who shall be held out to the public as the architect of the corporation, and under whose seal all plans and specifications shall be issued.

1917, XXX, 198; 1920, XXXI, 832.

(2884) § 7. Seal Required.—Every architect or firm practicing in this State must have a seal, the impression of which must contain the name of the architect, his or her place of business, and the words, "Registered Architect, State of South Carolina," with which he or she must stamp all drawings, prints and specifications for use in this State.

1917, XXX, 198.

(2885) § 8. Penalty for Practicing Architecture Without Certificate.—Any person practicing architecture in this State after July 1, 1917, without a certificate of admission to practice, shall be guilty of a misdemeanor, and shall be subject to a fine of not exceeding one hundred dollars (\$100.00) for each and every day so practicing, and shall not be entitled to recover in the Courts of this State compensation for his or her services.

1917, XXX, 198.

ARTICLE II.

Certified Public Accountants.

(2886) § 1. Who Practicing Public Accounting.—Any person shall be deemed to be practicing public accounting as a certified public accountant within the meaning of this Article who shall display a sign or in any way advertise himself as a certified public accountant.

1915, XXIX, 157.

(2887) § 2. Certificate of Registration—When Necessary.—It shall be unlawful for any person to hold himself out as certified public accountant, or to use the title certified public accountant, or the initials "C. P. A.," in the State of South Carolina unless such person shall have obtained a cer-

tificate of registration from the South Carolina State Board of Examiners of Public Accountants, as hereinafter provided.

1915, XXIX, 157.

(2888) § 3. Board of Examiners.—There is hereby created a Board whose duty it shall be to carry out the purposes and enforce the provisions of this Article, and shall be styled the South Carolina Board of Examiners of Public Accountants.

1915, XXIX, 157.

(2889) § 4. Members of Board—Qualification.—Said Board shall consist of three members, two of whom shall have been resident public accountants engaged in the actual practice of public accounting in the State of South Carolina for a period of three years prior to their appointment, or shall have been employed within five years next preceding the passage of this Article, in the State of South Carolina, for at least three years, both in public accounting and as chief or head bookkeeper managing an accounting department consisting of at least two accountants other than himself, one an attorney at law, who, in a like manner, has been engaged in the practice of his profession for three years prior to his appointment in Courts of this State. The term of each member shall be three years and until his successor is appointed and qualified, and vacancies shall be filled for the unexpired term only; but in the original appointment of members of the Board, one shall be appointed for the term of one year, one for two years, and one for three years. Said Board shall be appointed by the Governor of this State within thirty days after this Article shall become effective, and thereafter as vacancies occur. After the first Board has been appointed only licensed certified public accountants shall be eligible to appointment.

1915, XXIX, 157.

(2890) § 5. Board—Oath—Organization—Quorum—Meetings—Notice—Rules.—The members of said Board shall qualify by taking the oath of office before a Notary Public, or other officer empowered to administer oaths, and a record of same filed in the office of Secretary of State. At the first meeting of said Board after each annual appointment, the Board shall elect a President, Vice President and Secretary-Treasurer. Two members of the Board shall constitute a quorum. Regular meetings shall be held at least once a year at such time and place as shall be deemed most convenient for applicants. Due notice of such meetings shall be given by publication in such papers as may be selected by the President of the Board. The Board may prescribe rules, regulations and by-laws, in harmony with the provisions of this Article, for its own proceedings and government, for the examination of applicants for the practice of accounting. Said Board, or any member thereof, shall have the power to administer oaths for all purposes required in the discharge of its duties, and shall adopt a seal to be affixed to all its official documents.

1915, XXIX, 157.

(2891) § 6. Examination—Application for—Fee—Register—Certificate.

—That every person before beginning to practice as a certified public accountant in this State after the passage of this Article shall pass an examination before said Board of Examiners in the theory of accounts, bookkeeping, practical accounting, auditing, commercial arithmetic and commercial and municipal law. Any person desiring to be examined by said Board must fill out and swear to an application furnished by the Board of at least three weeks prior to the holding of an examination. Each applicant on making application shall pay to the Secretary of the Board a fee of twenty dollars. All *bona fide* residents of South Carolina successfully passing such examination shall be registered in the Board register, which shall be kept by the Secretary, as licensed to practice public accounting and shall receive a certificate of such registration, to be signed by the President and Secretary of said Board upon payment to the Secretary of said Board of the sum of five dollars, which said sum shall be for the use of said Board: *Provided*, That the Board may in its discretion, upon application in writing, waive the examination and issue a certificate to any person who has the qualifications required by this Article and the rules of the Board, except residents in South Carolina, when such person shall submit to said Board such evidence as to said qualifications as may be required by and be satisfactory to the Board, and when such person for not less than three years has had the degree of certified accountant or chartered accountant, issued by or under authority of another State or foreign nation, and such certificate was issued with the approval of the State Board of Accountancy or Examiners of the State or nation issuing same: *And provided, further*, That the standards prescribed by law or the rules and examinations conducted are, in the opinion of the Board, fully equivalent to the standards in this State: *And provided, further*, That if for any reason the certificate of original issue be revoked or cancelled, the Board of Accountancy of this State shall forthwith revoke and cancel the certificate issued to such person in accordance with this Section: *And provided, further*, That any nonresident of South Carolina obtaining a certificate in this State under the provisions of this Section shall pay such application, certificate, and annual license fees as are required of *bona fide* residents of this State, and shall be subject to such regulations and restrictions as are required of *bona fide* residents of South Carolina, recipients of certificates of registration under this Article: *And provided, further*, That any nonresident registered under this Article shall have his certificate recorded with the Clerk of the Circuit Court for any county in South Carolina.

1915, XXIX, 157; 1920, XXXI, 788.

(2892) § 7. Certain Persons May Use Title C. P. A.—Fee.—To every person who shall, within sixty days after the passage and approval of this Article, submit to said Board of Examiners satisfactory proof as to character, competency and qualifications, and that he is a *bona fide* resident of this State, and has been continually engaged in the practice of accounting in this State for more than three years prior to the passage of this Article, or shall possess the qualifications stated in Section 4 of this Article, said

Board shall, in consideration of the sum of ten dollars, issue to him a certificate of registration, and such person shall be entitled to use the title Certified Public Accountant.

1915, XXIX, 157.

(2893) § 8. Section 7 Not Affected by Section 6—Proviso—Evidence.—

All persons entitled to a certificate of registration under the provisions of Section 7 shall be exempt from the provisions of Section 6 of this Article, also every person entitled to a certificate under Section 7, as herein provided, must make application therefor and present the evidence to entitle him thereto. Before any certificate is issued it shall be numbered and recorded in a book kept by the Secretary of the Board of Examiners and its number shall be noted upon the certificate. In all legal proceedings the record so kept in the office of the Secretary of the Board, or certified copies thereof, shall be evidence of the facts therein stated.

1915, XXIX, 157.

(2894) § 9. Certificates to Be Recorded—Fee—Forfeiture.—All recipients of certificates of registration under this Article shall have the same recorded in the office of the Clerk of the Circuit Courts of the county in which they reside, and shall pay a fee of fifty cents to the Clerk for recording same. Said Clerk shall record said certificates in a book provided for that purpose. Any failure, neglect or refusal on the part of any person holding such certificate of registration to display or record the same as herein provided, for three months after the issuance of said certificate, shall forfeit all rights thereunder.

1915, XXIX, 157.

(2895) § 10. Certificate to Be Displayed.—Every person to whom a certificate of registration is granted under this Article shall display the same in a conspicuous place in his or her principal office, place of business or employment.

1915, XXIX, 157.

(2896) § 11. Compensation of Board—How Paid—Secretary and Treasurer—Duties—Bond—Report.—Out of the funds coming into possession of said Board each member thereof may receive as compensation the sum of ten dollars and expenses for each day actually engaged in the duties of his office and mileage at three cents per mile for all distances necessarily traveled in going to and from the meetings of the Board. Said expenses shall be paid from fees and licenses received by the Board under the provisions of this Article, and no part of the salary or other expenses of the Board shall ever be paid out of the State Treasury. All money received in excess of said per diem allowance and mileage, as above provided for, shall be held by the Secretary and Treasurer as a special fund for meeting the expenses of said Board and carrying out the provisions of this Article, and he shall give such bond as the Board shall from time to time direct, and the said Board shall make an annual report of its proceedings to the Governor on the first Monday of January in each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this Article.

1915, XXIX, 157.

(2897) § 12. **Annual License Fee—License Revoked—Regulated—Penalties.**—Every registered Certified Public Accountant who desires to continue the practice in this State shall, annually, on or before the first day of July of each year, pay to the Secretary of said Board a license fee, to be fixed by the Board, and which shall in no case exceed the sum of five dollars per annum, for which he shall receive a renewal of such license, and in case of the default of such payment by any person, his or her certificate shall be revoked by the Board of Examiners on twenty days' notice in writing by the Secretary, of the time and place of considering such revocation, and deposit of said notice in the United States postoffice, addressed to the person at his or her last known place of residence or business, and the registered postage prepaid thereon, shall be proof of due and legal service of such notice, but no certificate shall be revoked for nonpayment if the person so notified shall pay such penalty as may be imposed by said Board: *Provided*, That the said Board may impose a penalty not exceeding ten dollars upon the persons so notified as a condition for allowing certificate to stand valid. Any person whose certificate of registration has been revoked for failure to pay his or her renewal fee, as herein provided, may apply to have the same regranted to him or her upon payment to the Board of all renewal fees that should have been paid had the certificate of registration not been revoked.

1915, XXIX, 157.

(2898) § 13. **Cause for Revocation of Certificate.**—Any person registered as provided for in this Article may have his certificate of registration revoked or suspended by the South Carolina State Board of Examiners of Public Accountants for any of the following causes:

1. His or her conviction of a crime involving moral turpitude, in which case the record of conviction, or a certified copy thereof by the Clerk of Court, or by the Judge in whose Court the conviction is had, shall be conclusive evidence.

2. When his or her certificate of registration has been secured by fraud or deceit.

3. For unprofessional conduct or for gross ignorance or inefficiency in his profession.

1915, XXIX, 157.

(2899) § 14. **Violation of This Article Misdemeanor—Penalty.**—Any person who shall violate any of the provisions of this Article shall be deemed guilty of a misdemeanor, and, upon conviction in a Court of competent jurisdiction, shall be punished by a fine of not less than twenty-five dollars and not exceeding one hundred dollars, or by imprisonment not less than twenty days and not exceeding thirty days, and all fines thus received, one-fourth shall be paid to the party or parties furnishing proof necessary to convict, three-fourths to go to the common school fund in the county in which conviction takes place.

1915, XXIX, 157.

(2900) § 15. **No Certificate to One Under Legal Age.**—It shall be unlawful for the Board of Examiners to grant a certificate to any one in the State of South Carolina under legal age.

1915, XXIX, 157.

TITLE X.

OF WAYS, BRIDGES, FERRIES, DAMS AND DRAINS, GENERAL STOCK LAW.

CHAPTER XXIX. Of Highways, 848.

CHAPTER XXX. Watercourses and Cuts, 900.

CHAPTER XXXI. Bridges, Turnpikes and Ferries, 906.

CHAPTER XXXII. The Saluda Mountain Road, 916.

CHAPTER XXXIII. Dams and Drains and Drainage Generally, 916.

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CHAPTER XXIX.

Of Highways.

ARTICLE 1. Highways Generally and Special Provisions in Certain Counties, 848.

ARTICLE 2. State Highway Department, 890.

ARTICLE I.

Highways Generally and Special Provisions in Certain Counties.

(2901) § 1. **Navigable Streams Declared to Be Highways.**—All streams which have been rendered, or can hereafter be rendered, capable of being navigated by rafts of lumber or timber, by the removal thereof accidental obstructions, and all navigable watercourses and cuts, are hereby declared navigable streams, and such streams shall be common highways, and forever free, as well to the inhabitants of this State as to the citizens of the United States, without any tax or impost therefor, unless the same be expressly provided for by the General Assembly; and if any person shall obstruct the same, otherwise than as hereinafter provided, such person shall be deemed guilty of a nuisance, and such obstruction may be abated as other public nuisances are by the laws of this State.

Civ. '12, § 1928; Civ. '02, § 1385; G. S. 1062; R. S. 1159; G. S. 1104; 1853, XII, 305, § 1; Con., Art. XIV, § 1.

Navigable streams defined in *Heyward v. Farmers Mining Co.*, 42 S. C. 138, 19 S. E. 963; *State v. Pacific Guano Co.*, 32 S. C. 50. The right to erect a wharf on a navigable stream is a franchise, which can only be obtained from the State, and any erection without such authority is a nuisance. *State v. Young*, 30 S. C. 399, 9 S. E. 355.

This Act does not change definition of what are navigable waters. It only emphasizes law already declared that navigability does not depend upon depth or width of stream, nor upon ebb and flow of tide therein. *Manigault v. Ward & Co.*, 123 Fed. 707, 714.

A stream having no public terminus but its outlet is not a navigable water of the United States nor of this State. *Manigault v. Ward*, 123 Fed. 707, 714; *Chisholm v. Caines*, 67 Fed. 285, 293.

Obtaining special injuries from obstruction of navigable stream otherwise than as permitted by this section may recover without proof of negligence. *Drews v. Burton & Co.*, 76 S. C. 362, 366, 57 S. E. 176.

Edgefield County v. Georgia-Carolina Power Co., 104 S. C. 311, 88 S. E. 801.

(2902) § 2. Repairs of Highways and Bridges—Contracts for Advertisements for Bids.—The County Board of Commissioners shall take charge of and superintend the repair of the highways in the county; the bridges shall be repaired under their supervision, and the expense of the same shall be paid out of the money in the Treasury raised and appropriated for this purpose. All the work on bridges given out by the County Supervisor and County Board of Commissioners, where the amount shall exceed the sum of ten dollars, shall be done by contract. When the amount shall exceed the sum of one hundred dollars, the County Supervisor and County Board of Commissioners are hereby required to advertise the same in at least one of the papers in the county; said proposal shall in all such cases be accompanied by two or more sureties; when the amount is less than one hundred and more than ten dollars, the County Supervisor and County Board of Commissioners are required to advertise the same by posting a notice in three public places, one of which must be at the place where the work is to be done; said notices to be posted ten days prior to the day on which the work is to be let; and the County Supervisor and County Board of Commissioners shall have the right to reject any or all bids, if in their judgment the interest of the county so requires: *Provided*, That in Sumter and Richland Counties it shall not be necessary to advertise by posting, or otherwise in cases of emergency, where the sum to be expended is less than one hundred (\$100) dollars.

Civ. '12, § 1929; 1902, XXIII, 998; 1910, XXVI, 721; 1913, XXVIII, 5.

It is a condition of power or jurisdiction of County Board of Commissioners to allow a claim under this section that contract should be in existence; for language of statute is mandatory and not permissive. *People's Bank v. Goodwin*, 81 S. C. 419, 429, 62 S. E. 1100.

(2903) § 3. Highway Districts—How Constituted.—Each township in the several counties of the State and in any county where no township exists each tax district shall constitute a highway district.

Civ. '12, § 1930; 1902, XXIII, 998.

(2904) § 4. Counties May Establish and Maintain Free Ferries—Hours Open.—The County Board of Commissioners of the several counties of this State are authorized and empowered, jointly or separately, to establish and maintain such free ferries over the streams of this State and to discontinue the same as in their judgment may seem best; and that all ferries are required to be kept open for use from 5:30 to 9:30 p. m.

Civ. '12, § 1931; 1902, XXIII, 998.

(2905) § 5. Free Ferries at Holly's Ferry and Simpson's Ferry.—The County Supervisor of Newberry County is hereby authorized and directed to establish and maintain a free ferry across the Saluda River at Holly's Ferry. The County Supervisor of Saluda County is hereby authorized and directed to establish and maintain a free ferry across the Saluda River at Simpson's Ferry: *Provided*, Nothing in this Section contained shall be construed or deemed to require the county authorities of Newberry and Saluda Counties to discontinue said ferry.

1914, XXVIII, 730.

(2906) § 6. **Public Roads, Highways and Ferries—Supervision, Opening, Repairs, Discontinuance, Etc.**—All roads, highways and ferries that have been laid out or appointed by virtue of an Act of the General Assembly, or any order of Court, or by any order of the County Board of Commissioners, are declared to be public roads and ferries, and the County Supervisor and County Board of Commissioners shall have the control and supervision thereof. In those counties where the Township Board of Commissioners have not been abolished, they shall be in each township or tax district in any county where no township exists under the supervision of the Township Board of Commissioners and the County Board of Commissioners. The Township Board of Commissioners, in those counties where they exist, are incorporate, and the Township Board of such township shall be their corporate name. The said County Supervisor and County Board of Commissioners shall have full power and authority to order the laying out and repairing of public roads where necessary, to appoint where bridges or ferries or fords shall be made, to discontinue such roads, bridges and ferries as shall be found useless, and to alter roads so as to make them more useful.

Civ. '12, § 1932; 1902, XXIII, 998.

State road is public road. *Heape v. Berkeley County*, 80 S. C. 32, 37, 61 S. E. 203; *Wilson v. Greenville County*, 110 S. C. 321, 96 S. E. 301; *Whitlock v. Town of Jonesville*, 111 S. C. 391, 98 S. E. 142.

(2907) § 7. **Width of Roads—Opening New Roads or Change of Location—Surveyor—Proceedings.**—The roadbed shall not be less than 16 feet wide, exclusive of side ditches, roots and other obstructions, unless otherwise ordered by the County Board of Commissioners, and be posted with substantial mileposts, and where roads run through lands where water stands or flows, the roads must be ditched on either side and the roadbed raised. The County Board of Commissioners may also open new public roads and widen or change the location of old public roads, where, in their judgment, such change would be for the material interests of the traveling public. They may obtain the right of way for public roads or the drainage of public roads by gift or purchase, or they may condemn the lands therefor and assess the compensation and damages therefor as is hereinafter provided. They shall have power to call to their assistance a surveyor, who shall survey and lay off such roads, under their direction, so that the grade shall not exceed seven and a half inches to the road. The County Board of Commissioners requiring such right of way shall give ten days' notice, in writing, to the owner of the land over which such right of way is required, of their intention to condemn and establish such right of way, and of the time and place when and where the compensation and damages therefor will be assessed. If the owner of such land be a non-resident of the county, the notice may be served upon his agent or tenant, or any other person in possession thereof; but in such case at least fifteen days' notice must be given. If there be no agent, tenant or other person in possession, the notice may be served by depositing it in the postoffice, postage prepaid, directed to the owner at his last known place of residence; and by publishing such notice for at least two weeks in one of the newspapers published in the county wherein the land is situated. For the purpose of this Section the guardians of infants, the committees of idiots or

other persons *non compos mentis*, and trustees, shall be deemed to be owners of the lands of their wards and *cestuis que trustent*. In case an infant owner has no guardian, or an idiot or other person *non compos mentis* has no committee, service may be made upon the person with whom they severally reside, and upon the Probate Judge of the county, who shall appoint guardians *ad litem* to appear and represent them. In case the interests of any guardian or committee shall be opposed to those of his ward, a guardian *ad litem* shall be appointed by the Probate Judge, who shall have authority to appear and represent such ward. No member of the Board, who is personally interested or who is related by blood or marriage within the sixth degree to any person claiming compensation and damages, shall serve while the case of such person is under consideration. The places of disqualified members of the Board shall be filled *pro tempore* by appointment to be made by the Clerk of the Court. All persons interested shall have the right to introduce testimony and to be heard in argument upon the matter of compensation in damages. After hearing the evidence and arguments, the Board shall render its decision by resolution, which shall be recorded in its minutes.

Civ. '12, § 1933; Civ. '02, § 1392; 1896, XXII, 228; 1900, XXIII, 286; 1902, XXIII, 998; 1914, XXVIII, 513.

In re Rugheimer, 36 Fed. 369, 373.

This repeals R. S. 1171, 1172. Franklin v. Raborn, 60 S. C. 78, 100, 38 S. E. 260, 268. Similar condemnation proceedings held constitutional in Gilmer v. Hunnicutt, 57 S. C. 166, 35 S. E. 521. The statutory mode for obtaining the right of way must be followed. York Co. v. Fewell, 21 S. C. 106. The presumption is that it has been followed where the road has been opened. Commissioners v. Murray, 1 Rich. L. 335. The proceedings cannot be collaterally attacked for irregularities. State v. Kendall, 54 S. C. 192, 32 S. E. 300; though they may be for want of jurisdiction.

Minutes of County Commissioners showing a public road was granted, evidence that it had been laid out for eight years and had been worked by public is sufficient to show it public highway. Mere irregularities in proceedings before Commissioners would not affect it. State v. Havird, 88 S. C. 227, 228.

In order to restrain County officers from condemning lands for highways, the owner must show that they are about to abuse their discretion or act in bad faith or oppressively in changing location of road. Hutchison v. York County, 86 S. C. 396, 407, 68 S. E. 577.

PAYMENT FOR RIGHT OF WAY, APPEAL, ETC.—Upon the resolution of the Board fixing the amount of the compensation and the damages in any case, a warrant may be drawn on the County Treasurer for the amount so fixed, and the Treasurer shall pay the same out of any funds in his hands applicable to such purposes. Any person interested may appeal to the Court of Common Pleas from the decision of the Board: *Provided*, The notice and grounds of appeal be served upon the Supervisor of the County and filed with the Clerk of said Court within ten days after the decision of the Board. The Clerk shall docket such appeal on Calendar No. 1, and they shall be heard in said Court *de novo* before a jury, unless the right to jury trial be waived, as in other cases provided by law. Such appeals may be called up for trial out of their order by either party. The verdict of the jury in such cases shall be final, unless set aside for the reasons for which verdicts may be set aside in other cases, or unless the judgment of the Court thereupon be reversed, for error of law, on appeal to the Supreme Court. After tender of the amount found by the Board for compensation and damages, the pending of an appeal, either in the Circuit or the Supreme Court, shall not operate to stay the opening, widening or changing the location of such roads, but the acceptance of the amount tendered shall operate as an abandonment of the appeal. In case the amount tendered

be refunded, it shall be deposited with the Clerk of the Court for the owner, and the Clerk shall give his official receipt therefor, and shall pay the same to the owner upon demand, and take his receipt therefor. Unless the appellant shall recover on the appeal in which he shall be the actor, twenty per cent. more than the amount fixed by the Board, he shall pay the costs and disbursements of the appeal, and judgment may be entered against him therefor. In assessing compensation and damages for rights of way, only the actual value of the land to be taken therefor, and any special damages resulting therefrom shall be considered, and due allowance shall be made for any special benefit which may accrue to the owner, including the value of the old road, if the same revert to such owner.

Civ. '12, § 1933; Civ. '02, § 1393; 1902, XXIII, 998.

State v. Havird, 88 S. C. 227, 238; *In re Rugheimer*, 86 Fed. 369, 374.

Provisions of this section as to opening new roads and condemning land therefor constitutional. *Hutchison v. York County*, 86 S. C. 396, 407, 68 S. E. 577.

HOW ROADS SHALL BE WORKED.—It shall be the duty of each and every overseer to work the roads under his charge thoroughly as he goes, arching the same to the center, with drain on each side to convey the water, and, when necessary, protect such drains from washing by placing stone, gravel or other substance; whenever it is necessary to convey water to or to provide for it to cross any road, he shall have the drains across such road laid in stone, gravel or other hard substance, when such material is conveniently obtainable, and of such width as to afford an easy crossing where a bridge may not be necessary; and he shall protect the roads by suitable drains from interference by cultivation or otherwise; he shall open, or cause to be opened, all public roads or highways which have been or may hereafter be laid out and established in his road district, and keep them in repair, and remove, or cause to be removed, all obstructions that may from time to time be found therein; for which purpose he is hereby authorized to enter upon any uncultivated lands, or improved lands unincumbered by crops, near to and adjoining such road, to cut and carry away timber, except trees or groves on improved lands planted or left for ornament or shade, either in the fields, around the springs, or about the dwelling houses or appurtenances, and any rail timber when other timber may be procured at or near the place, and dig or cause to be dug and carried away any earth, gravel, sand or stone which may be necessary to make, improve or repair said roads, for which compensation shall be made, except from within grounds of any person inclosed for cultivation without consent of owner; and to enter on any lands adjoining or lying near the roads to make such drains or ditches through the same as he may deem necessary for the benefit of the roads, doing as little injury to said lands and improvements thereon and timber as the nature of the case and the public good will permit; and the drains and ditches so made shall be kept open by such overseer, and shall not be obstructed by the owner of the land, or any person having the same in charge: *Provided*, That in Beaufort and Berkeley Counties the County Supervisor is authorized to have the public highways worked by contract, by the overseer plan, or employing superintendent of work, and Georgetown County, by contract plan, and in Hampton County, by contract or overseer plan: and as a supplement to the chaingang work in Horry

County, the County Supervisor and Board of County Commissioners are hereby authorized, whenever practicable, to have the roads worked by contract or by the overseer plan, except as otherwise provided by law.

Civ. '12, § 1933; Civ. '02, § 1367; 1896, XXII, 228; 1900, XXIII, 286; 1902, XXIII, 998; 1909, XXVI, 59; 1910, XXVI, 658.

County is not liable to landowner for damages caused to his land by draining by ditches surface water off public road and other lands on to his where it ponds. Demurrer by County to complain against it, road overseer, County Supervisor and one Commissioner, charging draining surface water on to plaintiff's lands by ditches from public road, and against individual, charging he drained his surface water into road ditches and thence on to plaintiff's land, sustained as to all. *Heape v. Berkeley County*, 80 S. C. 32, 36, 61 S. E. 203.

(2908) § 8. Width of Roads in Hampton County.—The roadbed of all roads laid out in Hampton County shall be not less than twenty feet nor more than thirty feet wide, exclusive of side ditches, roots and other obstructions, unless otherwise ordered by the County Commissioners.

Civ. '12, § 1934; 1909, XXVI, 208.

(2909) § 9. Width of Roads in Bamberg, Beaufort and Union Counties
—**Proviso.**—The width of all public roads or highways hereafter laid out and constructed in Bamberg, Beaufort and Union Counties shall not be less than twenty feet nor more than thirty feet wide, exclusive of side ditches, roots or other obstructions. The public roads or highways now constructed, upon being permanently improved, shall conform to the width of the newly constructed roads as above set forth: *Provided*, That the additional right of way required shall be donated for such purpose.

1913, XXVIII, 178.

(2910) § 10. Width of Roads in Berkeley and Kershaw.—That all new public roads hereafter opened or permanently improved in Berkeley County shall be twenty feet wide exclusive of side ditches and drains. That in Kershaw County the Supervisor is hereby authorized, directed and required to widen all public highways in said county to a width of not less than thirty (30) feet; the period of four (4) years is hereby fixed as the time in which said highways shall be widened. All roads or highways hereafter opened or constructed shall be not less than thirty (30) feet in width.

1914, XXVIII, 741.

(2911) § 11. Removal of Road Hands After Working Road.—In case any person shall remove from one county to another, or from one township in the same county, or one district to another in the same township, who has prior to such removal performed the whole or part of the labor aforesaid, or in any other way has paid the whole or any part of the amount aforesaid in lieu of such labor, and shall produce a certificate of the same from the overseer of the proper district, such certificate shall be a complete discharge for the amount therein specified.

Civ. '12, § 1936; 1902, XXIII, 1003.

(2912) § 12. Duty of Hands Warned to Work Road.—Any person warned to perform any labor upon the public roads and highways under any provisions of this Chapter, shall, by himself or a suitable substitute, who shall not be under the age of sixteen years, appear at the time and place

appointed by the overseer at the hour of seven o'clock in the forenoon, and shall bring with him such necessary tools and implements used on a farm as the overseer may direct.

Civ. '12, § 1937; 1902, XXIII, 1004.

(2913) § 13. Residences.—Where.—For the purpose provided for in the preceding Section the residence of any person who has a family shall be held to be where his family resides, and the residence of any person shall be held to be where he boards or may be found. All tramps, or persons not having any visible means of obtaining a livelihood, not otherwise exempt, shall be subject to road duty.

Civ. '12, § 1938; 1902, XXIII, 1004.

(2914) § 14. Overseers to Account for Tools and to Note Labor Performed.—Every overseer is hereby required to account to the County Supervisor or County Board of Commissioners or the Board of Township Commissioners at their annual settlement for all tools received, material used or funds expended, under oath, under this Chapter, and they shall also return a full and true list and statement of the names of all persons within their respective districts who have been ordered out to perform the labor as required by this Chapter, and after each working to note the hours actually worked, work each hand does, and he shall make and furnish a list to the County Supervisor or County Board of Commissioners or the Board of Township Commissioners of those who have refused or neglected to perform the same, and shall by oath attest the correctness of each list so kept; and all fines and forfeitures used for and recovered under the provisions of this Chapter shall be paid by the Magistrate or Constable collecting the same to the County Treasurer wherein such fines or forfeitures accrued; and several overseers shall also render an account to the County Supervisor or County Board of Commissioners or the Township Board of Commissioners at the annual settlement of all moneys expended and all property remaining in their hands at the time of the settlement, also all judgments that remain unpaid, and the name of the judgment debtor, and Magistrate before whom such judgments were obtained, and the amounts thereof; and the County Supervisor or County Board of Commissioners or the Township Board of Commissioners shall make such order as to the prosecution of the suits by the owner of the proper district against delinquents as in the judgment of the County Supervisor or the County Board of Commissioners or the Township Board of Commissioners the interest of the public may require.

Civ. '12, § 1939; 1902, XXIII, 1004.

(2915) § 15. Overseers to Turn Over Property to Their Successors.—All property that may remain in the hands of the overseer at the time of the annual settlement with the County Supervisor or County Board of Commissioners or the Township Board of Commissioners, shall be turned over to his successor in office as soon as such successor shall be elected and qualified, taking a receipt therefor, and deposit said receipt with the County Supervisor or County Board of Commissioners or the Township Board of Commissioners. It shall be lawful for any overseer to sue out executions

on any judgment that remains unpaid within his proper district at any time when, in his opinion, the same can be collected, and the money so recovered and collected shall be paid over to County Treasurer, as provided in the foregoing Section, by the Magistrate so collecting.

Civ. '12, § 1940; 1902, XXIII, 1005.

(2616) § 16. Footpaths and Bridges Over Streams.—The County Supervisor or County Board of Commissioners, within the county, is authorized to have the overseer to construct footpaths or bridges over streams, swamps, marshes and along the highways of his county.

Civ. '12, § 1941; 1902, XXIII, 1005.

(2917) § 17. Guide Finger Boards.—Each overseer, within his district, may erect and keep up, at the expense of the county, at the forks and cross-roads, a post and guideboard, or finger board containing an inscription, in legible letters, directing the way and distance to the town or towns, or public place or places, situated on each road, respectively.

Civ. '12, § 1942; 1902, XXIII, 1005.

(2918) § 18. What County Board of Commissioners Shall Furnish for Roads—Improper Use of Tools.—The County Board of Commissioners are authorized to furnish signboards, ploughs, scrapers or other tools for the use of the several districts, at their discretion, to be paid for out of any moneys in the County Treasury not otherwise appropriated; and in those counties where Township Boards of Commissioners exist, to turn the same over to the Chairman of the Township Board of Commissioners, and take his receipt therefor. The Township Board of Commissioners shall take a receipt from each overseer for such implements as they may deliver to him, showing the number, kind and condition thereof; and such overseer shall be liable for any injury or damage that may result to such implements, or to any of them, by improper use thereof, or by unnecessary exposure to the weather, during the time the same may be in his possession; and he shall, on the first Tuesday of February, annually, return the same to said Township Board of Commissioners. The amount for which overseer may be liable for such improper use or neglect may be recovered by action in the name of the Township Board of Commissioners.

Civ. '12, § 1943; 1902, XXIII, 1005.

(2919) § 19. County Board May Hire Laborers to Work Roads.—The County Board of Commissioners in the several counties may, in their discretion, employ or hire, and employ overseers and laborers upon the public highways, under the control of overseers, at such compensation as the Board may determine. Commutation taxes and such other funds as may be applicable to highways, may be used in payment for such work.

Civ. '12, § 1944; 1902, XXIII, 1006.

(2920) § 20. Unlawful to Work Any But Public Roads.—It shall be unlawful for any overseer to perform or cause labor to be performed on any road not regularly laid out and established by law.

Civ. '12, § 1945; 1902, XXIII, 1007.

(2921) § 21. **Obstructions in Roads—How Removed.**—Any time during the year, when any public highway shall be obstructed, it shall be the duty of the overseer of the district in which the same may be, forthwith to cause such obstruction to be removed, for which purpose he shall immediately order out such persons liable to do work upon the public highways of his road district as he may deem necessary to remove said obstructions. If the person or persons thus called out shall have performed the required number of days' labor upon the public highways, the overseer shall give to such person or persons a certificate for the amount of labor performed, and said certificate shall apply on the labor that may be due for such person or persons for the ensuing year.

Civ. '12, § 1946; 1902, XXIII, 1007.

(2922) § 22. **Obstruction of Roads—Penalty.**—If any person or persons, corporations, or any conductor of any train of railroad cars, or any other agent or servant of any railroad company, shall obstruct unnecessarily any public road or highway by permitting any railroad car or cars or locomotive to be or remain upon or across any street, public road or highway for a longer period than five minutes, after notice to remove said cars has been given to conductor, engineer, agent or such other person in charge of said train, or shall permit any timber, wood or other obstruction to remain upon or across any such street, road or highway to the hindrance or inconvenience of travelers, or any person or persons passing along or upon such street, road or highway, every person or corporation so offending shall forfeit and pay for every such offense any sum not exceeding twenty nor less than five dollars, and shall be liable for all damages arising to any highway, to be recovered by an action at the suit of the County or Township Board of Commissioners in which such offense shall have been committed, or any person suing for the same, before any Magistrate within the county where such offense shall have been committed, or by indictment in the Court of General Sessions or suit in the Court of Common Pleas; and all fines so accruing under the provisions of this Section, when collected, shall be paid over by the Magistrate to the County Treasurer for the district in which such offense was committed; and every twenty-four hours such corporation, person or persons, as aforesaid, after being notified, shall suffer such obstructions to the hindrance or inconvenience of travelers or any person going along or upon such road or highway, shall be deemed an additional offense against the provisions of this Chapter.

Civ. '12, § 1947; Civ. '02, § 1375; 1896, XXII, 234; 1902, XXIII, 1007.

A similar statute, 1894, XXI, 954, § 23, in reference to highways in Barnwell County, was held not to authorize an action in the Court of Common Pleas by a traveler for damages on account of injury from the obstruction. *Woodward v. South Carolina R. Co.*, 47 S. C. 233, 25 S. E. 148, 149.

This section does not change or affect rule laid down in *Littlejohn v. E. R.*, 49 S. C. 12, holding that a railroad company may be trespasser by obstructing public crossing by leaving its train standing across it for an unreasonable length of time. *Walker v. Southern Railway*, 77 S. C. 161, 163, 57 S. E. 764, 12 Am. & Eng. Ann. Cas. 591.

Complaint stating facts necessary to make out cause of action for obstructing highway, under the statute need not refer to the statute nor set out its terms. *Smith v. Gilreath*, 69 S. C. 353, 355, 48 S. E. 262.

Settlemyer v. Southern Ry.—Carolina Division, 97 S. C. 85, 81 S. E. 465.

(2923) § 23. **Obstructions by Corporations and Their Agents—Liability for.**—Every railroad company, or other corporation, servant or servants, agent or agents, employee or employees, of which shall, in any

manner, obstruct any street, public road or highway, shall be liable to pay all fines which may be assessed against such servant or servants, agent or agents, employee or employees, for so obstructing any such street, public road or highway; and such liability as may be enforced by execution against such railroad company, or other corporation, on the judgment rendered against such servant or servants, agent or agents, employee or employees, for so obstructing such street, public road or highway.

Civ. '12, § 1948; 1902, XXIII, 1008.

(2924) § 24. Drainage of Public Road Not to Be Obstructed.—It shall be unlawful for any railroad company to obstruct the drainage of any public road or highway, by its roadbed or otherwise, or empty the water from its ditches into any public road or highway, to the injury of said highway; and if any railroad company, being warned by the overseer of the proper district, by leaving a written notice with any agent, or informing any station agent of said railroad company personally, shall refuse or neglect to remedy the same, to the acceptance of the overseer, shall forfeit and pay any sum not exceeding fifty nor less than twenty dollars, to be recovered by an action at the suit of the County or Township Board of Commissioners before any Magistrate; and every ten days such railroad company, after being notified, shall neglect or refuse to remedy such offense, shall be deemed an additional offense against the provisions of this Chapter; and the money so collected shall be paid by the Magistrate so collecting to the County Treasurer, and the money so paid over shall become a part of the county road fund.

Civ. '12, § 1949; 1902, XXIII, 1008.

(2925) § 25. Railroad Crossings Over Public Roads.—It shall be the further duty of such overseer to cause each railroad company to construct and keep in good repair the roadbed of all public roads across the roadbed of said railroad company; and if any railroad company shall neglect or refuse to construct or repair such roadbed to the acceptance of the overseer, after having been notified by said overseer either through a written notice left with the station agent of said railroad company or by said overseer informing said station agent of said railroad company personally, said railroad company shall forfeit any sum not exceeding fifty nor less than thirty dollars, to be recovered by an action at the suit of the County or Township Board of Commissioners, before a Magistrate of the county, and the money so collected shall be paid by the Magistrate collecting same to the County Treasurer, and the money so collected shall become a part of the county road fund; and for every five days such railroad company, after being duly notified, shall neglect or refuse to construct or repair said road, same shall be deemed an additional offense against the provisions of this Chapter.

Civ. '12, § 1950; 1902, XXIII, 1009; 1910, XXVI, 629.

This section has no application where bridge is on right of way, but not on railroad. *Felder v. Southern Railway*, 76 S. C. 554, 555, 57 S. E. 524.

(2926) § 26. Working Roads by Chaingangs on Contract System Optional.—So much of this Article as applies to the working of public highways by the contract system, or by convicts in chaingangs, shall not be obligatory on such County Boards of Commissioners as conclude that the

system of working the highways by those liable to road duty in their respective counties is more conducive to the welfare thereof; and in such cases overseers shall be appointed in each township by the County Board of Commissioners, or in those counties where Township Boards of Commissioners exist, by said Township Board of Commissioners for such township, who shall execute the laws in reference to working public highways.

Civ. '12, § 1951; 1902, XXIII, 1009.

(2927) § 27. Division of Highways Into Sections — Overseers — Road Hands—Assignment of Work—Notice—Duties of Overseers.—In those counties where the public roads are worked by those liable to road duty, or in which any highway district is so worked, the County Supervisor and Board of Commissioners shall divide the highways in each district which is so worked into suitable sections of not less than two, nor more than five miles each, and where not worked by the contract system shall appoint an Overseer of Roads for each of said sections. They shall also divide the persons liable to road duty in each highway district into convenient and suitable squads or companies, and assign a squad or company to each overseer of a section, assigning the road hands, as far as practicable, to the nearest roads; they shall require the Overseer of Roads to call out the hands assigned to their respective sections, and work the roads, and repair and build bridges of same, whenever they may deem it necessary, after twelve hours' notice; and shall require every road hand to bring with him for use a hoe, axe, mattox, spade or other tools for work on the road or bridges. They shall determine the number of days each working, and the tools to be brought by each hand, but not more than the number of days as fixed for each county herein are required of any one man in the year. Whenever a highway runs along the line of two highway districts, the Supervisor shall divide the highway into suitable sections, and appoint one or more overseers for each of such sections, and they shall assign to such overseers from said districts, or from either district, such laborers and road hands as may be necessary to work the same. The Supervisor shall cause overseers, when working sections in which there are bridges, to preserve and keep them in order, as are in their opinion of such character as not to require to be given out under contract, and can conveniently be done by the road hands.

Civ. '12, § 1952; 1902, XXIII, 1009.

(2928) § 28. Duties of Township Commissioners and Power Over Road Hands, Etc.—Warners Appointed.—In those counties where Township Boards of Commissioners exist they shall, subject to the approval of the County Board of Commissioners or the Supervisor of their respective counties, divide their respective townships into suitable road districts, and make a record thereof in a book kept for that purpose, and annually thereafter may make such alterations therein as they may deem proper, and cause a brief description thereof to be made on the township records, and also to furnish each overseer with a description of his road district. The Township Board of Commissioners of each township, at their annual meeting, and annually thereafter, shall elect from the qualified electors of their townships

liable to road duty one overseer for each road district, whose term of office shall be two years from the date of appointment, and who shall receive such compensation as the County Board of Commissioners may fix. Such overseer shall not be compelled to serve more than one term; and each overseer who refuses or neglects to qualify and serve shall forfeit and pay the sum of ten dollars and costs, or be sentenced to the county chaingang, suit to be brought by the Township Commissioners before the nearest Magistrate. Money so collected shall go into the road fund of the county and be credited to the road district from which it was collected. That when any vacancy shall occur in the office of overseer by death, resignation, or otherwise, the Township Board of Commissioners wherein such vacancy occurs shall appoint some suitable person to fill vacancy: *Provided*, That such overseer may appoint some suitable person liable to road duty on his road a warner, and such person shall be exempt from road duty for the time he acts as warner.

Civ. '12, § 1953; 1902, XXIII, 1010.

(2929) § 29. Duty of Commissioners Where Contract System of Working Roads Is Adopted.—If the County Board of Commissioners conclude to adopt a contract system for working, maintaining and operating the several sections of highways, roads, bridges and ferries in the several townships in the respective counties, or any part thereof, the County Supervisor or County Board of Commissioners, as soon as practicable thereafter, may advertise in the newspaper published in the county, once a week for three weeks, and by notices posted in two or more conspicuous places in the several townships, or the township to be worked by contract system, for bids from responsible persons for the performance of the work as above set forth, and to furnish specifications of all such work or contracts as has been advertised. Any and all bids shall be made in writing, sealed and addressed to the County Supervisor and by him opened in the presence of and submitted to the County Board of Commissioners, and it shall be the duty of said Board to accept the lowest bid made by a responsible person or party: *Provided*, The County Board of Commissioners shall have power to reject any and all bids, and shall require bond), who shall execute good and sufficient bond to keep, repair and maintain said public highway for the period of twelve months from date of contract, such contractor or contractors to execute a bond in double the amount of his or their contract, with two or more sureties, to be approved by the County Board of Commissioners, and said Board is hereby empowered to hire overseers and laborers, and have the work performed as in its judgment may be most expedient and for the best interest of the county: *Provided, further*, That the County Supervisors and County Boards of Commissioners of the counties of this State are hereby authorized and empowered to arrange to work the roads of their respective counties with the convicts of their several counties, or to lease to or from the County Board of Commissioners of any county, upon such terms as may be agreed upon by the respective County Boards of Commissioners, and convicts sentenced to perform hard labor upon the public works of any county, and said convicts may be worked upon the roads, highways,

bridges or other public works of the county where convicted or of the county to which they have been leased.

Civ. '12, § 1954; Civ. '02, § 1381; 1896, XXII, 237; 1902, XXIII, 1011.

Provisions that County Supervisors "may advertise should not be construed "shall" or "must," but was intended to give such officer discretion, and city council of Spartanburg, under general charter giving it same powers over streets as County officers over highways, is not required to advertise for bids for paving streets in County newspaper. *Willingham v. City Council*, 75 S. C. 549, 554, 56 S. E. 381, 117 Am. St. Rep. 917, 9 Am. & Eng. Ann. Cas. 829, 8 L. R. A., N. S., 412

Taxpayer cannot object to validity of contract for paving streets because city officers refused all bids made after advertisement, and thereafter, upon conference with two lowest bidders, received bids from them lower than previously filed, and contracted with lowest of these two to do work, where act resulted in larger saving to taxpayers. *Dillingham v. City Council*, 75 S. C. 549, 555, 56 S. E. 381, 117 Am. St. Rep. 917, 9 Am. & Eng. Ann. Cas. 829, 8 L. R. A., N. S., 412.

(2930) § 30. Credit to Be Given County for Labor Performed by Road Hands Under Contractor.—In the districts where the working, maintaining and operating the highway is done by contract, as above provided, such persons as are liable to road duty on such highways, respectively, and desire to work the number of days required instead of paying the commutation tax, shall be allowed to work on said highway, under the direction and control of the contractor, and such contractor shall account to the Supervisor or Board of County Commissioners, as the case may be, for the days so worked by each person, and in the sum per day as the number of days required of such person bears to the commutation tax permitted in lieu thereof.

Civ. '12, § 1955; 1902, XXIII, 1012.

(2931) § 31. Levy of Special Tax for Roads—Lists of Road Hands to Be Furnished.—The County Board of Commissioners of said counties are authorized to levy annually a sum not exceeding one mill on all the taxable property of the respective counties, which shall constitute a part of the county road fund, to be expended by the said Board in the same manner as is provided by law for the use and expenditure of the commutation tax in lieu of road duty; and such tax shall be collected at the same time and in the same manner as is provided by law for the collection of taxes levied for ordinary county purposes: *Provided*, That the County Board of Commissioners of any county may cause to be levied a road tax not to exceed one mill on all taxable property of any township in their county, when so requested by a written petition signed by two-thirds of the freeholders of such township, such tax to be collected as other taxes, and to be expended on the roads and highways of such townships. The County Treasurer of said counties shall furnish the County Supervisor and County Board of Commissioners of their respective counties a list containing the names of all persons who have paid their commutation tax; and the Township Boards of Commissioners shall also prepare and furnish to the Supervisors and County Board of Commissioners a list of all persons liable to road duty in their respective townships; and County Treasurers, on receipt of said commutation tax, shall furnish the persons paying the same with certificates that said tax has been paid, which shall relieve such persons from road duty for the year, as aforesaid. And all persons whose names shall remain on the list, prepared by the overseers, so checked, shall be required to perform road duty, not exceeding in the aggregation the number of days required as fixed for each county herein, and shall be assigned to such duty by the County Supervisors and County Board of Commissioners under one of the contractors or overseers in the township having under control the

section or sections nearest the residence of such person or persons. It shall be the duty of the contractor of any section to receive such person or persons so assigned to him by the County Supervisor or County Board of Commissioners, and he shall allow to the County Board of Commissioners such sum per diem for the labor of any such person or persons as may be agreed upon by contractors and the County Board of Commissioners, and said sum shall be credited upon the amount due or to become due said contractor by the said Board as hereinbefore provided.

Civ. '12, § 1956; Civ. '02, § 1860; 1901, XXIII, 639; 1902, XXIII, 1012.

Special levy of road tax by County Commissioners constitutional. *So. Ry. Co. v. Kay*, 62 S. C. 28, 39 S. E. 785.

(2932) § 32. Use of Chaingang on Roads—List of Persons Paying Commutation Tax.—The County Board of Commissioners are hereby authorized to work the highways in their counties, or any part thereof, by a chaingang, without regard to the system or systems used in other portions of their counties. Immediately after the payment of the commutation road tax to County Treasurers, as provided in this Chapter, they shall furnish the County Board of Commissioners of their respective counties with the names of all persons who have paid said tax; and the County Board of Commissioners shall furnish all overseers or contractors with the names of all such persons who shall not be liable to road duty for the year in which said payment may be made.

Civ. '12, § 1957; 1902, XXIII, 1013.

(2933) § 33. County Authorities May Combine Chaingangs—Proviso.—Whenever in the judgment of the County Board of Commissioners or other county authorities having jurisdiction under the law it shall become to the best interest of the counties concerned to combine in the operation and management of the chaingangs of their respective counties, the County Board of Commissioners or other authorities are hereby empowered to combine their several chaingangs and provide for their maintenance and operation: *Provided*, That counties which are contiguous or are connected by means of railroad, highways or other means of communication may thus combine whenever it shall appear to be economically to the advantage of such counties, or the county authorities of any such counties may hire the convicts to another of such counties on such terms as to them may be to the advantage of their respective county.

1919, XXXI, 244.

(2934) § 34. How Money Paid for Commutation Tax Shall Be Kept and Applied.—All moneys paid into the County Treasury in commutation of work on the public roads shall be kept separate and apart from the general county fund, and, except as otherwise hereinbefore directed, shall be exclusively applied by the County Board of Commissioners to repairing the highways and bridges of the county, by contract or otherwise, as may be deemed most expedient; but said moneys must be expended upon those sections of the public roads whereon the persons paying such commutation tax may be liable for road duty. The County Board of Commissioners of the counties are authorized to use for other county purposes than repairs of

highways and balance of the road commutation tax remaining in County Treasurer's hands on the first day of January in each year.

Civ. '12, § 1958; 1902, XXIII, 1013.

(2935) § 35. Duties of County Commissioners With Respect to Bridges.—The County Board of Commissioners are hereby authorized and empowered to have special supervision of the building of new bridges over the rivers and creeks of this State; also of extra and extensive repairs of old bridges. When such work is to be accomplished the Supervisor and County Board of Commissioners shall give fifteen days' notice in the county paper, and in writing duly posted in the neighborhood in which such work is to be performed, that he will be at such place on such a day and hour, with suitable specifications, to let out such work to the lowest bidder, and to take from the successful bidder sufficient bond for the faithful performance of his duty. When the work is done it shall be inspected by the Supervisor and County Board of Commissioners, who shall report the result of his investigations to the full Board, and they shall accept or reject the same according as they may determine whether the contractor has or has not complied with the terms of his contract.

Civ. '12, § 1959; 1902, XXIII, 1014.

(2936) § 36. Bridges Over Waters Between Two Counties.—If any bridge over waters of this State which shall constitute a boundary line between counties shall be necessary to be erected or repaired, it shall be the duty of the Commissioners of such counties to cause the same to be erected or repaired in the manner provided in the last Section, each county bearing an equal share of the expense so incurred. And when any such bridge already exists, or shall hereafter be built, it shall be the duty of said Commissioners to divide the same, by measurement from the centre to the end of each approach, and each Board shall be responsible for the good condition of the half next adjoining the county in which they exercise the functions of office. And when it becomes necessary to build a new bridge, or to entirely replace an old one which has been carried away or destroyed, it shall be the duty of the Boards of the two counties to do the same, as aforesaid.

Civ. '12, § 1960; 1902, XXIII, 1014.

(2937) § 37. Owners of Mill Dams and Bridges to Keep Same in Repair.—It shall be the duty of all owners of mill dams and bridges in connection therewith over which any public highway shall pass, to keep the same in good repair, and no county shall be responsible for repairs upon the same, except that the County Commissioners may have said dams and bridges repaired in the ordinary way of repairing highways and bridges, if, in their opinion, such ordinary repairs be just.

Civ. '12, § 1961; 1904, XXIV, 399.

(2938) § 38. Voters of Township May Levy Special Road Tax—Election—Ballot—Tax Levy.—The voters or electors of any township who return real or personal property for taxation, are authorized to levy and collect an annual road tax, to supplement any special or other funds for like purposes, in the following manner: Upon the written petition or request of at least one-fourth of the resident electors of the township and a like proportion of the resident freeholders of the age of twenty-one years, as shown by the tax books of the county, being filed with the County Board of Com-

missioners, asking for the same and stating the rate of the tax levy proposed, which shall not exceed two mills, the said County Board of Commissioners shall order the Township Board of Assessors of said township to hold an election at some place within the township, after giving notice of the time and place thereof for at least two weeks in some newspaper published within the county, and by posting notice thereof in at least three public places within such township, for such length of time, unless there be no newspaper published within the county, in which event the posting of the notices as above shall suffice. At which said election only such electors as return real or personal property for taxation, and who exhibit their tax receipts and registration certificates as required in general elections, shall be allowed to vote. For said election the Township Board of Assessors shall appoint the managers, and the election shall be conducted as is provided by law for the conduct of general elections. At said election each elector favoring the proposed levy shall cast a ballot containing the word "Yes," printed or written thereon; and each elector opposed to said levy shall cast a ballot containing the word "No," printed or written thereon. Within ten days after such election, if the majority of those voting shall vote for such levy, the Board of Assessors shall furnish the County Auditor with a statement of the amount so levied, and the Auditor shall enter the same in the tax duplicate and he shall annually, for two years only, enter said amount in the tax duplicates; and the County Treasurer shall collect the same as other county and State taxes. Such levy shall be a lien on the property in such township, which shall be subject thereto in case of default of payment. Said tax so collected shall be used for the improvement of the public roads of the township, and shall be paid out by the County Treasurer upon warrants drawn by the County Board of Commissioners, countersigned by the Chairman of the Township Board of Assessors: *Provided*, That any surplus of such levy remaining in the hands of the County Treasurer at the expiration of any fiscal year shall be paid out the next year for the same purpose.

Civ. '12, § 1962; 1902, XXIII. 1015.

(2939) § 39. Special Tax Levy for Road Purposes—How Expended—Commissioners' Interest in Contract. — The County Board of Commissioners of the several counties of the State where there is a special levy on real and personal property for road purposes, not later than the first of March in each year, shall apportion the road fund derived from said special levy to each township upon an equitable basis: *Provided*, Where levied in a township, as provided, it shall be expended in that township. The road fund so apportioned shall be expended in doing all necessary work upon the public highways and opening new roads when directed, and in building and keeping in repair all bridges that do not exceed twelve feet in length by the road overseers or Township Board of Commissioners, as the case may be, subject to the general supervision and approval of the County Board of Commissioners: *Provided, however*, That the Board of County Commissioners or Township Commissioners shall not enter into any contract for the expenditure of more than four-fifths of their apportionment before the first of the last quarter of the fiscal year: *Provided, further*, That

any contract entered into by the Board of County Commissioners in excess of the apportionment shall be void. No County Commissioner shall be directly or indirectly interested in any contract pertaining to his duty as County Commissioner.

Civ. '12, § 1963; 1902, XXIII, 1015.

(2940) § 40. Protection of Private Crossings Over Railroad.—Private roads crossing railroads shall be protected by said railroads the same as the law requires them to protect public highways.

Civ. '12, § 1964; 1902, XXIII, 1015.

(2941) § 41. County Boards of Commissioners May Condemn Land for Road Material.—That the Boards of County Commissioners of the counties are empowered to condemn lands for the purpose of securing gravel, sand, clay, stone or other material for building and maintaining the public roads and highways within their respective counties, when and wheresoever necessary, in the same manner as now provided by law for the condemnation of rights of way for roads.

1914, XXVIII, 741.

(2942) § 42. Gates on Private Roads.—It shall be lawful for any citizen of this State over whose land any road other than a public highway may pass to erect gates thereon.

Civ. '12, § 1966; Civ. '02, § 1338; G. S. 1067; R. S. 1162; 1885, XII, 408, § 1; 1885, XIX, 59.

Jennings v. Jennings et al, 104 S. C. 242, 88 S. E. 527.

(2943) § 43. Gates on Public Highways.—The County Boards of Commissioners of the several counties, on application to them for the purpose, may allow the erection of gates upon the highways of the State, wherever in their judgment the same be expedient and not detrimental to the public interest.

Civ. '12, § 1967; Civ. '02, § 1339; G. S. 1072; R. S. 1163; 1878, XVI, 361; 1893, XXI, 481.

(2944) § 44. Requirements as to Construction of Gates.—The owner or keeper of any gate which obstructs a highway, either public or private, shall have such gate constructed so as to afford a roadway between the posts of at least nine feet, and shall keep the said gate in such repair and condition as to be easily opened and shut, and that the latch or other fastening will adjust itself on being closed; and, further, shall cause to be erected, at convenient distance from such gate on each side, a suitable hitching post for the convenience of those traveling in vehicles.

Civ. '12, § 1968; Civ. '02, § 1340; R. S. 1164; 1885, XIX, 59.

(2945) § 45. Cutting Ditches and Canals Across Highways—Conditions—Repairs.—Any inhabitant of this State is authorized, for the purpose of draining his or her lands, to cut a ditch or ditches, canal or canals, across any public highway in this State; but he shall bridge such ditches or canals under the direction of the County Supervisor, and shall keep the same in

good repair for one year, after which time the County Supervisor shall take charge of such ditches or canals and keep them open and in repair.

Civ. '12, § 1969; Civ. '02, § 1341; G. S. 1069; R. S. 1165; 1856, XII, 507; 1893, XXI, 481.

The owner of land over which a highway passes may drain or flow his lands through it in a manner not inconsistent with the public easement. *Baring v. Heyward*, 2 Speer 553.

(2946) § 46. Unauthorized Diversion of Highways—Duty of Commissioners as to.—It shall be the duty of the County Supervisor of the county in which any part of the high road has been diverted from its original course without authority of law, on information of any two persons, to commence a suit against any such person so offending, in order to compel him, as soon as may be, to restore, at his own expense, the high road in its course, as established by law.

Civ. '12, § 1970; Civ. '02, § 1342; G. S. 1070; R. S. 1166; 1797, IX, 379, § 33; 1893, XXXI, 481.

(2947) § 47. Performance of Road Duty in Towns and Villages.—In the event the corporators of any incorporated town or village in this State refuse or neglect to appoint and organize the officers required by their Act of incorporation, or refuse or neglect to carry out, in good faith, the obligations imposed by their Act of incorporation, in regard to roads or streets, the County Commissioners in whose county such town or village, or other incorporated body, shall be located, shall be authorized and required to take charge of all such roads and streets, together with all such road hands as may reside within the limits of such incorporation, and require the same performance of all residents, within such limits, as they are authorized to do within their counties generally.

Civ. '12, § 1971; Civ. '02, § 1346; G. S. 1076; R. S. 1168; 1864, XIII, 251, § 12.

Prior to 1864 the Commissioners had no power over such roads. *Pope v. Commissioners*, 12 Rich. 407. See, also, *Commissioners v. Durant*, 11 Rich. 485.

(2948) § 48. Damages from Defective Highways — Action Against County.—Any person who shall receive bodily injury or damage in his person or property through a defect or in the negligent repair of a causeway, or bridge, or of any ferry operated by the county, may recover in an action against the county the amount of actual damage sustained by him by reason thereof: *Provided*, Such person has not in any way brought about such injury or damage by his own act or negligently contributed thereto. If such defect in any road, causeway or bridge, or in any ferry operated as aforesaid, existed before such injury or damage occurred, such damage shall not be recovered by the person so injured if his load exceeded the ordinary weight: *Provided, further*, That such county shall not be liable unless such defect was occasioned by its neglect or mismanagement: *Provided, further*, That if in any case brought under this Section it is made to appear that before the damage occurred the Supervisor or other officer or officers of such county, who is or are thereunto charged by law, had been notified in writing, by any citizen, that the highway, causeway or bridge, or ferry operated as aforesaid, at or on which the damage occurred, was defective, or needed repair, the burden of proof as to the negligence of county officials shall be upon the county to show, either that such defect did not in fact exist, or that it had been properly repaired, or that a reason-

able time had not elapsed since such notice within which to make such repairs.

Civ. '12, § 1972; Civ. '02, § 1347; G. S. 1087; R. S. 1169; 1874, XV, 785; 1892, XXI, 111; 1901, XXIII, 645; 1920, XXXI, 1021.

The injury must arise from a defect in the highway, not from fright of horse. *Mason v. Spartanburg County*, 40 S. C. 390, 19 S. E. 15, 42 Am. St. Rep. 837. Absence of railing not proximate cause of injury resulting from horse taking fright at a piece of timber lying near, and backing buggy off the bridge. *Brown v. Laurens County*, 38 S. C. 232, 17 S. E. 21. See, also, *Dunn v. Town of Barnwell*, 43 S. C. 398, 21 S. E. 315; *Acker v. Anderson County*, 20 S. C. 494. Absence of contributory negligence must be alleged in the complaint since the Act of 1892. *Walker v. Chester County*, 40 S. C. 342, 18 S. E. 936. The negligence of plaintiff is not governed by the rules as to contributory negligence at common law, but he cannot recover if the injury was in any way brought about by his negligence, or if he negligently contributed thereto—"contributed" defined. *McFall v. Barnwell County*, 57 S. C. 294, 35 S. E. 562. Claim for damages need not be presented to County Board of Commissioners before action brought. *Jennings v. Abbeville County*, 24 S. C. 543. Even before the amendment as to negligence on part of plaintiff he could not recover if he received the injury through heedlessly disregarding a patent defect, which he knew to be dangerous. *Laney v. Chesterfield County*, 29 S. C. 140, 7 S. E. 56. The right of action does not survive. *All v. Barnwell County*, 29 S. C. 161, 7 S. E. 58. The defect must be in a public road which is a highway and which it is the duty of the County to maintain. *Hill v. Laurens County*, 34 S. C. 141, 13 S. E. 213. This statute does not include injuries arising from the use of a defective flatboat on a ferry operated by the County, a ferry not being a highway within the meaning of the statute. *Chick v. Newberry County*, 27 S. C. 419, 3 S. E. 737. Measure of actual damages. *Pearson v. Spartanburg County*, 51 S. C. 480, 29 S. E. 193.

It seems that County is liable for damages resulting to traveler from colliding with heavily laden wagon used in repairing highway, left standing in public highway for several weeks unlighted. *Duncan v. Greenville Co.*, 71 S. C. 170, 173, 50 S. E. 776.

The words in proviso, "has not in any way brought about such injury or damage by his own act," construed to mean act of person injured must be efficient cause of injury; i. e., the immediate and proximate cause thereof. *Cooper v. Richland County*, 76 S. C. 202, 203, 56 S. E. 953, 121 Am. St. Rep. 946, 10 L. R. A., N. S., 799.

Injury sustained by owner while trying to help horse whose foot gets fastened in hole in bridge, while being driven along highway, is within provision of this statute. *Cooper v. Richland County*, 76 S. C. 202, 204, 56 S. E. 953, 121 Am. St. Rep. 946, 10 L. R. A., N. S., 799.

There can be no recovery without allegation and proof that defect which caused damage, or injury, was occasioned by neglect or mismanagement on part of County. *Scott v. Richland County*, 83 S. C. 506, 509, 65 S. E. 729.

Allegation that by all aforesaid negligent acts of defendant, its agents and servants plaintiff has been damaged, on demurrer saves complaint against County for damages to land owner caused by raising grade of highway, and it is within discretion of trial Judge to permit amendment, as cause of action is defectively stated. *Scott v. Richland County*, 83 S. C. 506, 509, 65 S. E. 729.

That bridge was in bad condition one or two years before accident, that attention of overseer had been called to it, that County Commissioner had inspected it about one month before, tend to show defective bridge, resulting from neglect. That wagon passed over bridge with load, driver noticing no defect, but horse fell through on return, being driven in walk, without load, tend to show absence of contributory negligence. *Herdson v. Colleton County*, 33 S. C. 551, 65 S. E. 850.

Traveler is not conclusively entitled to damages for injury to animal on bridge forming part of highway. *Wallace v. Orangeburg County*, 87 S. C. 359, 360, 69 S. E. 664.

Latimer v. Anderson County, 95 S. C. 137, 78 S. E. 379; *Sanders v. York County*, 106 S. C. 274, 91 S. E. 805; *School District No. 19 of Marion County v. Marion County*, 114 S. C. 382, 103 S. E. 767.

(2949) § 49. Tender Before Action—Effect of Refusal.—If before the commencement of an action provided for in the preceding Section the County Commissioners tender to the plaintiff the amount which he might be entitled to recover, together with all legal costs, and the plaintiff refuse to accept the same, and does not recover upon subsequent trial a sum larger than the amount so tendered, the defendant shall recover costs and the plaintiff be entitled to the results of no verdict.

Civ. '12, § 1973; Civ. '02, § 1348; G. S. 1088; R. S. 1170; 1874, XV, 785.

(2950) § 50. Death Caused by Defective Highway, Etc.—Cause of Action to Survive.—Whenever the death of a person shall be caused by any injury through a defect in or failure to repair a highway, causeway, public way, street or bridge, under such circumstances and conditions as would have entitled the party to recover damages under Section 48 of this Article, or under Section (4478) of this Code, either or both, if death had not ensued, then in every such case the right of action for such injury and death shall survive to and may be enforced by the personal representative of such person in the same manner as is now provided by the Code of Civil Procedure,

Volume II, for actions by Administrators and Executors, where death results from personal injuries; and the provisions of said Code shall be applicable to all such actions.

Civ. '12, § 1974; 1903, XXIV, 67.

McLendon v. City of Columbia, 101 S. C. 48, 85 S. E. 234.

(2951) § 51 Commutation or Road Tax.—Unless otherwise provided in this Code, all persons who are liable to road duty, in lieu of performing or causing to be performed labor upon the public highways, shall, in the counties hereinafter named, be required to pay to the respective County Treasurers an annual commutation or road tax as follows: Anderson and Aiken Counties, one dollar; Orangeburg, two dollars; Dorchester, two dollars. The commutation or road tax so collected shall be expended as nearly as possible in the township or parish from which collected. The said commutation or road tax shall be payable between the fifteenth day of October and the thirty-first day of December, of each year: *Provided*, That in the County of Orangeburg it shall be payable on or before the first day of March of each year.

Civ. '12, § 1975; 1911, XXVII, 170, 181, 186; 1912, XXVII, 582, 842, 844; 1913, XXVIII, 32.

(2952) § 52. Exemptions from Road Duty.—Except as otherwise provided in this Code, and except in the Counties of Abbeville, Clarendon, Darlington, Fairfield, Georgetown, Lexington, Saluda and York, the following persons shall be exempt from road duty: Ministers of the gospel in actual charge of congregations, teachers employed in the public schools, school trustees, persons permanently disabled in the military duties of the State, persons who served in the late War Between the States, persons in the military or naval service of the United States, all persons actually employed in the quarantine service of the State, and all students who may be attending any school or college at the time when the commutation tax provided for shall become due: *Provided*, That in the Counties of Berkeley, Edgefield, Georgetown, Horry and Sumter any persons claiming exemption from the provisions of this Section on the ground of physical disability, where such disability is not apparent, shall be required to produce a certificate of disability from two regular physicians, dated within twelve months: *Provided, further*, That in the Counties of Horry and Sumter such certificate shall be dated within three months, and in the County of Berkeley the certificate shall be signed by one regular physician.

Civ. '12, § 1976; 1911, XXVII, 181; 1912, XXVII, 582, 842, 844; 1913, XXVIII, 32.

(2953) § 53. Road Duty—Who to Perform—Number of Days.—Except as otherwise provided in this Code, all male persons able to perform the labor herein required, from the age of eighteen to fifty years, both inclusive, except in Anderson, Pickens and Union Counties, where the age shall be from twenty-one to fifty years, both inclusive, and except in Sumter County, where the age shall be from eighteen to fifty-five, both inclusive, and except in the Counties of Abbeville and York, where the ages shall be from twenty-one to fifty-five, both inclusive, shall be required annually to perform labor on the highways under the direction of the overseer of the road district in

which he shall reside, in the various counties as follows: Anderson, three days; Cherokee, three days; Pickens, five days: *Provided*, Persons liable to labor under this Section shall have the right to furnish a competent substitute to labor in his stead: *Provided, further*, Ten hours a day shall be a day's work.

Civ. '12, § 1977; 1911, XXVII, 170; 1912, XXVII, 582, 842, 844; 1913, XXVIII, 32; 1921, XXXII, 192.

The owner of land over which a highway passes may drain his lands through it in a manner not inconsistent with the public easement. *Baring v. Heyward*, 2 Speer 553.

(2954) § 54. Commutation Tax in Lieu of Labor.—Except as otherwise provided in this Code, in lieu of performing or causing to be performed, the labor of ten hours per day, as provided for in the several counties, a commutation tax may be paid by the person so liable, on or before the first day of March of each year (except in the Counties of Pickens and Richland; it shall be paid by the thirty-first of December of each year), which in the following counties shall be as follows: Abbeville, Anderson, one dollar; Darlington and Union, two dollars; York, three dollars: *Provided*, That a person liable to road duty shall have a right to furnish a competent substitute to labor in his stead; said substitute not to be less than eighteen nor more than fifty years of age.

Civ. '12, § 1978; 1911, XXVII, 165, 170, 184, 186, 187; 1912, XXVII, 844; 1913, XXVIII, 32; 1914, XXVIII, 729; 1921, XXXII, 192.

(2955) § 55. Return for Road Tax in Certain Counties.—Every person in the Counties of Abbeville, Dorchester, Horry and Kershaw, liable for the road tax shall return himself for taxation for such tax to the County Auditors of said counties in each and every year between the first day of January and the twentieth day of February, and the County Auditors are hereby authorized and directed to solicit and take such returns. The County Auditors shall make out and deliver to the Township Boards of Assessors of said counties lists of names of the persons who have returned themselves for taxation for such tax in their townships. Said Township Board of Assessors shall add to said lists the names of all persons in their respective townships liable for said tax, but who have not returned themselves to the County Auditors. Said County Auditors in each and every year, on or before the fifteenth day of October, shall make out and deliver a list of the names of all persons liable for said road tax in said county, alphabetically arranged by townships to the County Treasurers of said counties. The said County Treasurers are hereby authorized and directed to collect said tax and to turn the same into the road fund for their respective counties. Said County Treasurers shall keep a book in which shall be recorded by townships or parishes the names of those paying said commutation or road tax: *And provided, further*, That in Berkeley, Dorchester, Hampton and Horry Counties the County Treasurer shall keep a book in which shall be recorded by townships or parishes the names of those paying said commutation or road tax.

Civ. '12, § 1979; 1911, XXVII, 175; 1912, XXXII, 842, 846.

(2956) § 56. Age Limits for Road Duty in Counties Containing Cities of 50,000 Inhabitants—Commutation Tax.—That all male persons able to

perform labor from the ages of eighteen years to fifty-five years, both inclusive, shall be required annually to perform labor on highways under the direction of the overseer of the road and district in which he shall reside, for a period of eight days, or pay a commutation tax of six dollars in lieu thereof, within counties containing cities of 50,000 inhabitants or more in the State of South Carolina.

1918, XXX, 847; 1920, XXXI, 1048.

(2957) § 57. **Competent Substitute May Be Furnished.**—*Provided*, That persons liable to labor under the above Section shall have the right to furnish a competent substitute to labor in his stead.

1918, XXX, 847.

(2958) § 58. **Ten Hours a Day's Work.**—*Provided*, further, That ten hours shall be a day's work.

1918, XXX, 847.

(2959) § 59. **Persons in Military or Naval Service of United States, Exempted from Road Tax.**—All persons who are now, or hereafter may be, in the military or naval service of the United States, shall be exempted from the payment of the commutation road tax or street tax during the term of their service.

1918, XXX, 853

SPECIAL PROVISIONS IN CERTAIN COUNTIES.

ANDERSON COUNTY.

(2960) § 1. **Operation of Traction Engines Across Public Bridges in Anderson County Regulated**—Any person, firm or corporation using or causing to be used, any traction engine or engines on or across the bridges on the public highways in Anderson County, shall in crossing any of the said bridges place upon the surface of said bridge pieces of timber not less than two inches thick and twelve inches wide, on which said timbers the said engines may pass and cross the said bridges.

1914, XXVIII, 719.

(2961) § 2. **Damages.**—Any person, firm or corporation who shall violate the provisions of Section 1 of this Article shall be liable to the said county for all damages done to any bridge therein.

1914, XXVIII, 719.

BAMBERG COUNTY.

(2962) § 1. **Commutation Tax Required in Certain Counties.**—All able-bodied male persons between the ages of twenty-one and fifty-five years, in the County of Bamberg, shall be liable to road duty.

Civ. '12, § 1980; 1911, XXVII, 192; 1920, XXXI, 951.

(2963) § 2. Persons Liable—Failure to Pay a Misdemeanor.—All persons who are liable to road duty in said county, as fixed by the preceding Section, in lieu of performing, or causing to be performed, labor upon the public highways of said county, shall be required to pay to the County Treasurer of said county an annual commutation or road tax of four dollars per head, which shall be expended upon the public roads of the county, and, as nearly as possible, within the school district from which it was collected; and any failure to pay said road tax shall be a misdemeanor, and the offender, upon conviction, shall be punished by a fine of not less than five dollars and not more than fifty dollars, or imprisoned for not more than thirty days.

Civ. '12, § 1981; 1911, XXVII, 192; 1912, XXVII, 632; 1915, XXIX, 194; 1920, XXXI, 771; 1921, XXXII, 103.

(2964) § 3. Returns.—Every person in said county liable for said tax shall return himself for taxation to the County Auditor between the 1st day of January and the 20th day of February, and the Auditor is required to take such returns and enter same upon the tax duplicates, and such tax shall be collected by the Treasurer in the same manner and times as other taxes: *Provided*, That when said tax is collected from the citizens of incorporated towns within said county, the same shall be turned over to the respective Town Treasurers for use in street work.

Civ. '12, § 1982; 1911, XXVII, 192; 1912, XXVII, 632.

BEAUFORT COUNTY.

(2965) § 1. Liability for Road Tax in Beaufort County—Amount.—Be it enacted by the General Assembly of the State of South Carolina: That all male persons of Beaufort County, liable to the payment of poll tax, shall be required, annually, to pay a road tax of three and one-half (\$3.50) dollars.

1913, XXVIII, 176; 1914, XXVIII, 697; 1915, XXIX, 445; 1916, XXIX, 898; 1917, XXX, 252; 1919, XXXI, 293; 1921, XXXII, 233.

(2966) § 2. Collection.—Said road tax shall be due and payable when the poll tax is due and payable and shall be charged against all persons liable to the payment of a poll tax by the County Auditor, and it shall be collected by the County Treasurer as the said poll tax is now collected.

1913, XXVIII, 176; 1914, XXVIII, 697; 1915, XXIX, 445; 1916, XXIX, 898; 1917, XXX, 252; 1919, XXXI, 293; 1921, XXXII, 233.

(2967) § 3. Evasion a Misdemeanor.—Any person herein made liable to the payment of said road tax who shall fail to make such payment shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five (\$5.00) dollars nor more than ten (\$10.00) dollars, or by imprisonment for not less than ten nor more than thirty days.

1913, XXVIII, 176; 1914, XXVIII, 697; 1915, XXIX, 445; 1916, XXIX, 898; 1917, XXX, 252; 1919, XXXI, 193.

(2968) **4. Disbursement of Tax and Fines.**—All funds collected under the provisions of this Article shall be used for general road purposes by the County Commissioner, and in so far as is practicable there shall be expended in each township an amount equal to the commutation tax collected in same township.

1921, XXXII, 233.

(2969) **§ 5. Road Supervisor — Qualifications.**—The County Commissioners are hereby authorized and instructed to employ a Road Supervisor, at such compensation as may be fixed in the County Supply Bill: *Provided*, That said Road Supervisor shall be a person skilled in the building and maintenance of roads and bridges. Any person so employed shall be approved, as to his qualification, by the State Highway Commission.

1920, XXXI, 1122.

CALHOUN COUNTY.

(2970) **§ 1. Commutation Tax in Calhoun County.**—All persons who are liable to road duty in said county, in lieu of performing, or causing to be performed, labor upon the public highways of said county, shall be required to pay to the County Treasurer of said county, between the 15th day of October and the first day of March in each and every year, an annual commutation or road tax of two dollars per head, which shall be expended upon the public roads of the county, and, as nearly as possible, from the township from which it was collected; and any failure to pay said road tax shall be a misdemeanor, and the offender, upon conviction, shall be punished by a fine of not less than five dollars and not more than fifty dollars, or imprisoned for not more than thirty days.

Civ. '12, § 1994; 1911, XXVII, 180.

CHARLESTON COUNTY.

(2971) **§ 1. Sanitary and Drainage Commission to Receive and Expend Commutation Road Tax.**—That the County Treasurer of Charleston County shall turn over to the Sanitary and Drainage Commission of said county all moneys received by him from the commutation road tax and the said Sanitary and Drainage Commission shall direct the expenditure of same and shall have the same power and authority in reference to said commutation tax and labor to be performed in lieu thereof as is now possessed by the County Supervisor.

1916, XXIX, 905.

EDGEFIELD COUNTY.

(2972) **§ 1. Commutation Tax for Edgefield County.**—That all able-bodied male persons from the age of eighteen to fifty-five, both inclusive, in the County of Edgefield, shall be required annually to pay a commuta-

tion or road tax of four (\$4.00) dollars, or work four days on the public roads of said county, except ministers of the gospel actually in charge of congregations, teachers employed in the public schools, School Trustees, and all students who are attending any school or college: *Provided*, That any person claiming exemption from the provisions of this Section on the ground of disability, where such disability is not apparent, shall be required to produce a certificate of two regular physicians, dated within twelve months, the said commutation tax to be paid by the person so liable on or before the fifteenth day of February of each year.

Civ. ' 12, § 2036; 1914, XXVIII, 721; 1916, XXIX, 909; 1920, XXXI, 1125; 1921, XXXII, 257.

(2973) § 2. **Nonpayment a Misdemeanor—Penalty.**—All persons who are liable to the payment of commutation or road tax in Edgefield County, who shall fail to pay such commutation or road tax when the same becomes due, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than eight dollars and not more than twenty-five dollars, or imprisonment of not less than ten days nor more than thirty days: *Provided*, That any person liable to penalty for nonpayment of road tax may pay the amount of said penalty to the Sheriff or County Treasurer, and said officers are authorized to accept eight dollars in full payment of said penalty when voluntarily paid by the person so liable.

Civ. '12, § 2037; 1914, XXVIII, 721; 1916, XXIX, 909; 1921, XXXII, 257.

(2974) § 3. **Commutation Tax in Edgefield County to Be Used on Roads of Township in Which Collected.**—That the commutation tax now in force in Edgefield County and hereafter to be collected shall be credited to the township from which it was collected and be used upon the public roads of such township.

1919, XXXI, 129.

(2975) § 4. **Enforcement by Sheriff—Compensation.**—It shall be the duty of the Sheriff to enforce the penalty for nonpayment of commutation or road tax, and the County Board of Commissioners are authorized to allow him the sum of two (\$2.00) dollars for each case where the penalty provided by this Act is enforced, in addition to his salary, as now provided by law.

1914, XXVIII, 721; 1916, XXIX, 909; 1920, XXXI, 824; 1921, XXXII, 257.

(2976) § 5. **Reports of Sheriff.**—The Sheriff is required to make a report to the Grand Jury at the October term of Court of General Sessions of each year of the discharge of the duties devolved upon him under the preceding Section, such report to show the amount of fines collected and the number of cases reported by him for nonpayment of commutation tax.

1914, XXVIII, 721; 1916, XXIX, 909; 1920, XXXI, 824; 1921, XXXII, 257.

FLORENCE COUNTY.

(2977) § 1. Supervisor of Florence County May Cut Trees and Use Soil Near Highways—Provisos.—The County Supervisor of Florence County is hereby authorized and empowered, when in his discretion it is deemed necessary for the protection of the safety of the traveling public on said highways, or for the improvement of any of the said highways in Florence County, to cut any trees, shrubbery, bushes or other growth adjacent to the said highways, or to use any gravel or other soil adjacent thereto for the improvement of said highways, and for the safety of the traveling public: *Provided*, That when any trees or soil of another is used by the Supervisor of Florence County for the purpose hereinabove named, he shall pay to the owner of said trees or dirt a reasonable compensation to be agreed upon by himself and owner; and if such an agreement cannot be reached as to the price for said trees or dirt, the same shall be left to arbitration by three citizens in said county, one to be selected by the owner, one by the Supervisor, and these two to select a third: *Provided, further*, That the County Supervisor in lieu of entering into an agreement with the owner of said trees or soil may institute condemnation proceedings as is now provided for by law.

1918, XXX, 781.

(2978) § 2. Commutation Road Tax in Florence County.—All male persons from the age of twenty-one to fifty years, inclusive, in the County of Florence shall be required annually to pay a commutation tax of two (\$2.00) dollars on or before the 31st day of December of each year, which tax must be paid by the person subject thereto to the County Treasurer, and no payment of which he shall receive a receipt showing the date, amount and purpose for which paid, and signed by the person collecting the same.

1919, XXXI, 122.

(2979) § 3. When Due—Collection.—Said commutation tax shall be due and payable when the poll tax is due and payable and shall be charged against all persons liable therefor by the County Auditor, the same as poll taxes are now charged, and shall be collected by the County Treasurer at the same time as the said poll tax is now collected.

1919, XXXI, 122.

(2980) § 4. Failure to Pay a Misdemeanor—Penalty.—Any person herein made liable to the payment of said road tax who shall fail to make such payment shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not less than five (\$5.00) dollars and not more than ten (\$10.00) dollars, or by imprisonment of not less than ten nor more than thirty days.

1919, XXXI, 122.

(2981) § 5. Residents of Towns Paying Street Tax Exempt.—Any person who is a *bona fide* resident of any incorporated city or town in said county, paying the regular assessed street tax of such city or towns, is exempt from the provisions of this Article.

1919, XXXI, 122.

JASPER COUNTY.

(2982) § 1. **Commutation Tax for Jasper County.**—Every person in the County of Jasper, between the ages of twenty-one and fifty-five years, shall be liable to road duty and shall pay an annual commutation tax of two dollars in lieu of performing the services now required by law, said tax to be assessed by the County Auditor and collected by the County Treasurer at the same time and in the same manner as now provided for assessment and collection of poll tax. That a separate account of said commutation tax shall be kept by the County Treasurer, all of which shall be expended within the school district from which collected.

1913, XXVIII, 173.

(2983) § 2. **Misdemeanor Not to Pay Tax.**—That any person who shall fail to pay said commutation tax shall be guilty of a misdemeanor, and, upon conviction thereof by any Court of competent jurisdiction, shall be punished by a fine of not less than five dollars nor more than twenty dollars, or be confined at hard labor upon the public works of said county for not less than ten days nor more than thirty days.

1913, XXVIII, 173.

LAURENS COUNTY.

(2984) § 1. **Commutation Road Tax for Laurens County.**—All able-bodied male persons from the age of 21 to 55, both inclusive, in the County of Laurens, shall be required to pay annually a commutation or road tax of one and 50/100 (\$1.50) dollars, or work four days on the roads of Laurens County, either in person or by satisfactory substitute, under direction of the County Supervisor: *Provided*, That any person claiming exemption from the provisions of this Section on the ground of physical disability, where such disability is not apparent, shall be required to produce a certificate from two regular practicing physicians dated within three months from the time when said tax is made due and payable.

Civ. '12, § 2074; 1911, XXVII, 191; 1920, XXXI, 967; 1921, XXXII, 44.

(2985) § 2. **Time of Payment.**—That said commutation or road tax shall be paid by the person so liable at the time of payment of State and county taxes.

Civ. '12, § 2074; 1911, XXVII, 191; 1920, XXXI, 967; 1921, XXXII, 44.

(2986) § 3. **Evasion a Misdemeanor—Penalty.**—That all persons liable to commutation or road tax of Laurens County, who shall fail to pay such commutation or road tax when same shall become due, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than ten (\$10.00) dollars nor more than twenty (\$20.00) dollars, or imprisonment not less than ten nor more than thirty days: *Provided*, That any person liable to penalty for nonpayment of said tax may pay the amount due and costs to the Sheriff when such payment is voluntarily made.

1920, XXXI, 967; 1921, XXXII, 44.

(2987) § 4. **Use of Proceeds of Tax.**—That all taxes collected under provisions of the foregoing Sections shall be used for road improvement in the school district from which said taxes are collected.

1920, XXXI, 967; 1921, XXXII, 44.

(2988) § 5. **Appointment of Superintendent of Highways for Laurens County.**—There is hereby created the office of Superintendent of Highways for Laurens County, and the appointment to fill the same shall be made by the Governor, upon the recommendation of the members of the County Delegation of said county to the General Assembly, or a majority of them, and the Supervisor of Laurens County.

1918, XXX, 791.

(2989) § 6. **Duties.**—The County Superintendent of Highways shall have general supervision of all the work on the roads and bridges of the county and management of the chaingang under the directions and advice of the County Supervisor.

1918, XXX, 791.

(2990) § 7. **Term of Office and Salary.**—His term of office shall be for four years, from the date of his commission and until his successor has been appointed and qualified, and his salary shall be twelve hundred (\$1,200.00) dollars annually.

1918, XXX, 791.

(2991) § 8. **County Commissioners of Laurens and Spartanburg Counties May Condemn Certain Timber—Provisos.**—The County Boards of Commissioners of Laurens County and Spartanburg County be, and they are hereby, authorized to enter upon any land contiguous to the highways of such county for the purpose of cutting down and removing such standing timber as in their judgment obstructs, or interferes with the proper maintenance of such highways: *Provided*, That just compensation be made to the owner or owners therefor: *And provided, further*, That the said County Commissioners be vested with the same power of condemnation now vested in them for the acquisition of rights of ways for public highways and to be enforced in like manner.

1916, XXIX, 759.

LEE COUNTY.

(2992) § 1. **Commutation Tax in Lee County.**—That all able-bodied male persons from the age of twenty-one to sixty years, both inclusive, in the County of Lee, shall be required annually to pay two dollars commutation or road tax, except persons living in incorporated cities or towns, whose street tax is two dollars or more, school trustees, paupers, paralytics, the insane, ministers of the gospel actually in charge of a congregation, teachers employed in public schools, persons permanently disabled in the military service of this State and persons who served in the late War Between the

States, and all persons actually employed in the quarantine service of this State, and all students who may be attending any school or college at the time when the commutation tax herein provided for shall become due.
1912, XXVII, 855; 1913, XXVIII, 32.

(2993) § 2. Person Liable to Road Duty May Pay Tax—Penalty.—That all persons who are liable to road duty in said county, as fixed by Section 1 of this Article, in lieu of performing or causing to be performed, labor upon the public highways of said county, shall be required to pay to the County Treasurer of said county at the same time other taxes are paid, an annual commutation or road tax of two dollars per head, which shall be expended upon the public roads of the county, and as nearly as possible from the township from which it was collected. Said tax to be collected as poll tax is now collected, and any failure to pay said road tax shall be a misdemeanor, and the offender, upon conviction, shall be punished by a fine of not less than five dollars and not more than fifty dollars, or imprisoned for not more than thirty days.

1912, XXVII, 855; 1913, XXVIII, 32.

McCORMICK COUNTY.

(2994) § 1. Commutation Tax for McCormick County—Who Exempt.—All able-bodied male persons from the age of eighteen to fifty-five years, both inclusive, in the County of McCormick, shall be required annually to pay two dollars commutation or road tax, except ministers of the gospel actually in charge of a congregation, teachers actually employed in teaching in the public schools, and persons permanently disabled in the military service of this State, and persons who served in the late War Between the States, and all students who may be attending any school or college at the time when the commutation tax, hereinabove provided for, shall become due.
1917, XXX, 288.

(2995) § 2. Tax in Lieu of Labor.—All persons who are liable to road duty in said county, as fixed by Section 1 of this Article, in lieu of performing or causing to be performed, labor for six days at ten hours per day, upon the public highways of said county, shall be required to pay the County Treasurer of said county between the 15th day of October and the 31st day of December, in each and every year, an annual commutation or road tax of two dollars per head, which shall be expended upon the public roads of the county, as nearly as possible in the townships from which it was collected.

1917, XXX, 288.

(2996) § 3. Failure to Pay Tax or Labor a Misdemeanor—Penalty.—Any person or persons failing or refusing to pay said tax or perform labor on said roads, as hereinabove provided, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than five dollars nor more than fifty dollars, or imprisonment for not more than thirty days.

1917, XXX, 288.

(2997) § 4. **Those Liable to Return Themselves—Auditor to Make Lists—Duty of Township Board of Assessors—Proviso.**—Any person in said county liable for said road tax shall return himself for taxation for such tax to the County Auditor of said county, between the first day of January and the 20th day of February of each year, and the County Auditor is hereby authorized and directed to solicit and take such returns. Thereafter the County Auditor shall make out and deliver to the Township Boards of Assessors of the respective townships in said county lists of the names of the persons who have returned themselves for taxation for such tax in their townships. Said Township Boards of Assessors shall add to said lists the names of all persons in their respective townships liable for said tax, but who have not returned themselves to the County Auditor. Said County Auditor, in each and every year, on or before the 15th day of October, shall make out and deliver a list of the names of all persons liable for said road tax in said county, alphabetically arranged by townships, to the County Treasurer of said county: *Provided*, That the Auditor shall add a penalty of fifty cents to each person liable for said commutation tax who had not returned himself for such tax as hereinabove required.
1917, XXX. 288.

(2998) § 5. **Treasurer to Collect Tax.**—The said County Treasurer is hereby authorized and directed to collect said tax and to turn the same over to the road fund for said county.
1917, XXX. 288.

(2999) § 6. **Record of Tax Payments.**—The County Treasurer shall keep a book, in which shall be recorded, by townships, the names of those paying said commutation or road tax.
1917, XXX. 288.

OCONEE COUNTY.

(3000) § 1. **Commutation Road Tax for Oconee County—Failure to Pay a Misdemeanor—Penalty.**—That all able-bodied male persons residing in Oconee County, between the ages of 21 and 50 years, inclusive, shall each be liable for the payment of an annual commutation road tax of two and fifty one-hundredths (\$2.50) dollars, which shall be due and payable between the 15th day of October and the 15th day of March of each and every year, except ministers of the Gospel actually in charge of congregations, persons permanently disabled in the military service of this State and of the United States and persons who served in the late War Between the States, school trustees, school teachers actually engaged in teaching school, all persons physically unable to do manual labor and all persons residing within any corporate city or town of said county: *Provided*, That any person claiming exemption from the provisions of this Act on the ground of physical disability, where such disability is not apparent, shall be required to give a certificate of disability from two regular physicians: *Provided, further*, That in the event of the failure to pay same within said dates of any one liable therefor, he shall be guilty of a misdemeanor and shall pay a fine of not less than ten (\$10.00) dollars nor more than

twenty (\$20.00) dollars, or be confined to the public works on the roads of Oconee County for not more than ten (10) days.

1912, XXVII, 846; 1913, XXVIII, 174; 1917, XXX, 764; 1921, XXXII, 202.

(3001) § 2. Method of Collection.—That it shall be the duty of the County Treasurer of Oconee County to collect this tax by keeping eight separate receipt books for the payment of same, one for each township, and when same is paid, the proper receipt book, in duplicate form, must show in what township same is paid; that it shall be the duty of each person liable to said tax to make an annual return of same to the County Auditor.

1912, XXVII, 846; 1913, XXVIII, 174; 1917, XXX, 764.

PICKENS COUNTY.

(3002) § 1. Commutation Road Tax for Pickens County.—Hereafter all persons within Pickens County who shall under the law be subject to perform labor upon the public roads within said county may, in lieu of such labor, pay a commutation tax of three dollars annually.

1912, XXVII, 846; 1920, XXXI, 1064.

(3003) § 2. Rural Mail Route to Be Maintained.—That the County Board of Commissioners of Pickens County are hereby required to maintain at the public expense all roads and highways forming the whole, or any part of the regular route of any rural delivery mail carrier.

1912, XXVII, 681.

RICHLAND COUNTY.

(3004) § 1. Road Duty in Richland County.—All able-bodied male persons from the age of eighteen to fifty years, both inclusive, in the County of Richland shall be required annually to pay one dollar commutation or road tax, except ministers of the gospel actually in charge of a congregation, teachers employed in the public schools, school trustees and persons permanently disabled in the military service of this State, and persons who served in the late War Between the States, and all persons actually employed in the quarantine service of this State, and all students who may be attending any school or college at the time when the commutation tax hereinabove provided for shall become due.

Civ. '12, § 2093; 1911, XXVII, 181.

(3005) § 2. Commutation Tax.—All persons who are liable to road duty in said county as fixed by Section 1, in lieu of performing or causing to be performed labor upon the public highways of said county, shall be required to pay the County Treasurer of said county, between the 15th day of October and the 31st day of December in each and every year, an annual commutation or road tax of one dollar per head, which shall be expended upon the public roads of the county, and as nearly as possible

in the township from which it was collected; and any failure to pay road tax shall be a misdemeanor, and the offender, upon conviction, shall be punished by a fine of not less than five dollars and not more than fifty dollars, or imprisoned for not more than thirty days.

RETURN FOR ROAD TAX.—Every person in said county liable for said road tax shall return himself for taxation for such tax to the County Auditor of said county between the first day of January and the 20th day of February, and the County Auditor is hereby authorized and directed to solicit and take such returns. Hereafter the County Auditor shall make out and deliver to the Township Boards of Assessors of the townships of said county lists of the names of the persons who have returned themselves for taxation for such tax in their townships. Said Township Boards of Assessors shall add to said lists the names of all persons in their respective townships liable for said tax, but who have not returned themselves to the County Auditor. Said County Auditor in each and every year on or before the 15th day of October shall make out and deliver a list of the names of all persons liable for said road tax in said county, who reside without the limits of the said City of Columbia, alphabetically arranged by townships to the County Treasurer of said county; and, at the same time, he shall make out and deliver a list of the names of all persons liable for said road tax in said county who reside within the corporate limits of the City of Columbia, alphabetically arranged, to the City Treasurer of the City of Columbia: *Provided*, That the Auditor shall add a penalty of fifty cents to each person liable for said commutation tax who had not returned himself for such tax as hereinabove required.

Civ. '12, § 2094; 1911, XXVII, 181; 1912, XXVII, 537; 1918, XXX, 752.

(3006) § 3. Collection of Tax.—The said County Treasurer is hereby authorized and directed to collect said tax from all persons liable therefor who reside in said county without the limits of the City of Columbia and to turn the same into the road fund for said county, and he shall keep a book in which shall be recorded by township the names of those paying said commutation or road tax, and the said Treasurer of the City of Columbia is hereby authorized and directed to collect said tax from all persons residing within the limits of the City of Columbia and turn the same into the fund for permanent street improvements.

Civ. '12, § 1979, 2095; 1911, XXVII, 181; 1918, XXX, 752.

SUMTER COUNTY.

(3007) § 1. Commutation Road Tax in Sumter County—Times of Payment.—All persons in Sumter County liable to road duty, or now required by law to pay a commutation tax, shall annually pay a commutation road tax of four dollars in lieu of labor on public roads, same to be paid at the same time and collected as other taxes.

1920, XXXI, 1048, 1064.

YORK COUNTY.

(3008) § 1. Office of Township Supervisor Abolished in York County.—That the office of Township Supervisors for York County be, and the same is hereby, abolished.

Civ. '12, § 2113; 1909, XXVI, 223; 1920, XXXI, 1139.

(3009) § 2. Boards of Township Commissioners—Appointment.—That a Board of Township Commissioners, consisting of three members, who shall be freeholders in said township, is hereby created, to be appointed and commissioned by the Governor upon the recommendation of a majority of the Legislative Delegation of York County.

1920, XXXI, 1139.

(3010) § 3. Term of Office.—That said Board of Township Commissioners shall be appointed for a term of two years, or until their successors are appointed and qualified.

1920, XXXI, 1139.

(3011) § 4. Vacancies.—Any vacancy on said Board of Township Commissioners caused by death, resignation, or otherwise, shall be filled by appointment by the Governor, as herein provided.

1920, XXXI, 1139.

(3012) § 5. Powers and Duties.—That said Board of Township Commissioners shall have all the power heretofore vested in the Township Supervisors by law, and shall assume all the official duties heretofore exercised by the Township Supervisors.

1920, XXXI, 1139.

(3013) § 6. Organization—Vouchers.—That said Board of Township Commissioners shall elect from among their number a Clerk and a Chairman, who shall sign and countersign all vouchers issued out of their office.

1920, XXXI, 1139.

(3014) § 7. Compensation.—The Chairman and the Clerk of the said Board of Township Commissioners shall receive as compensation for their services, each, the sum of seventy-five dollars per annum, and the other member of the said Board shall receive as compensation for his services the sum of fifty dollars per annum.

Civ. '12, § 2118; 1909, XXVI, 226; 1920, XXXI, 1139.

(2015) § 8. How Roads to Be Worked.—It shall be the duty of the Township Commissioners annually, before the 15th day of March, to ascertain the names of all persons living in their township liable for road duty, and file with the County Supervisor an alphabetical list of the same. The County Supervisor shall forthwith file said list with the County Auditor, who shall file same, after making any corrections or additions from information in his office, with the County Treasurer. The Township Commissioners may let contracts for the working of all sections of roads and the construction and repair of all bridges in their township not over fifteen feet in length, and shall pay from their township fund all damages recov-

ered from defects in said bridges, and shall cooperate with the County Supervisor in letting all contracts for the working of all sections of roads in their township costing over twenty dollars. They shall see that the law in reference to keeping the streams free from rafts is complied with in their township. They may appoint not over four road overseers in their township, at not exceeding \$2.00 per day for each day actually worked, to superintend and have worked those sections of roads which they have not worked themselves, or which have not been let to a contractor to be worked. They may, after the first day of July of each year, assign any person liable to road duty, who has not paid his commutation tax in lieu thereof, to the control of any of said road overseers to work upon any section of roads in the township which they may direct. They may also hire hands at such price per day to work on said sections of roads, either under their direction or under the direction of their overseer. The Township Commissioners shall, when so requested, give their receipt to all those persons who may have worked out their full road duty, and it shall be valid in the county for that year.

Civ. '12, § 2114; 1909, XXVI, 223; 1910, XXVI, 661; 1919, XXXI, 57; 1920, XXXI, 1139.

(3016) § 9. **How Funds Expended.**—The Township Commissioners, jointly with the County Supervisor, shall expend the township road fund, belonging to their township, hereinafter provided, for the improvement and maintenance of the public roads in their township, for the construction of such bridges as are not over fifteen feet in length. They shall personally inspect all work done on the public roads of their township, by contract or otherwise, and shall vouch for and approve every claim against their township road and bridge fund, and where the amount exceeds twenty dollars they shall submit same to the County Supervisor for his approval. No Township Commissioner, with or without the approval of the County Supervisor, shall expend annually more than the amount of funds belonging to their township road and bridge fund, and no Township Commissioner shall present any claim, directly or indirectly, for any material, hands or teams furnished by himself, nor shall the overseers render bills for teams furnished by himself: *Provided, however,* That the contracts for construction and repair of all bridges in the county over fifteen feet in length shall be awarded as now prescribed by law, and that all such bridges shall be paid for out of the county bridge fund.

Civ. '12, § 2115; 1909, XXVI, 225; 1912, XXVII, 851; 1920, XXXI, 1139.

(3017) § 10. **Purchase of Machinery.**—The Township Commissioners may purchase for the township from the township road funds, hereinafter provided for, such machines, road plows, scrapes and tools as may be necessary, or hire teams, for the purpose of working and maintaining the roads in a good condition: *Provided,* They shall make no purchase or let any contract for over twenty dollars without the approval of the County Supervisor. They shall be responsible for the township machine, implements and tools, and shall render an itemized statement April 1, 1910, and each year thereafter, to the County Supervisor for file in his office, showing the amount expended and the value of implements, etc., on hand.

Civ. '12, § 2116; 1909, XXVI, 225; 1920, XXXI, 1139.

(3018) § 11. **Township Road Fund.**—The township road fund shall consist: (a) The funds arising from the two-mill tax levy now provided by law and hereinafter mentioned; (b) the commutation tax for said township; (c) and any funds arising from a local or special tax, or otherwise, for roads and bridges in the township for road purposes.

Civ. '12, § 2117; 1909, XXVI, 226.

(2019) § 12. **Apportionment of Taxes.**—The County Treasurer shall, from time to time, as collected, place to the separate credit of each township, in a ledger kept for that purpose, any and all funds raised in said township by the two-mill tax levy for roads and bridges, except that part of same derived from said two-mill tax on insurance companies, express companies, telegraph and telephone companies, railroads and other like companies, which do not return their property by townships, which shall be kept as a separate county fund for the building and repair of bridges, all sums received from the commutation tax, special tax for road purposes, and all other sources for road and bridge purposes. Each township road fund is to be kept separate and paid out as hereinafter provided, and the Treasurer shall make monthly settlements with the Township Supervisor and County Supervisor for the fund belonging to each township road and bridge fund.

Civ. '12, § 2119; 1909, XXVI, 226.

(2020) § 13. **Township Engineer—Compensation—Bond.**—That the said Board of Township Commissioners is authorized and empowered to employ, as they deem it necessary, a competent engineer as Road Superintendent, whose duty shall be to superintend the construction, repairing and maintenance of the public roads and highways of the township, and perform such other duties as the said Township Commissioners may deem to be for the best interest of the roads and highways of the township, at a reasonable salary, to be determined by the said Board of Township Commissioners: *Provided*, That said Engineer, or Road Superintendent, shall enter into a surety bond, to be approved by the said Township Commission, in the sum of two thousand dollars, conditioned for the faithful performance of his official duties, the premium on said bond to be paid for out of the road funds of the township.

1920, XXXI, 1189.

(3021) § 14. **Maintenance of Highways—Contracts—Condemnation.**—It shall be the duty of the Township Commission to keep the roads constructed or improved by them in repair, and for this purpose they shall use the funds arising from the tax levies and the commutation road tax, as provided by law. They may divide the roads to be improved or repaired into sections of not less than one-half mile, or more than five miles, for the purpose of letting the same out for construction or improvement by contract to the lowest responsible bidder, according to plans and specifications to be furnished by the said Township Commissioners, of the letting of which contract ten days' notice shall be given in at least four public places in the township in which the section or sections of road are to be let, of the time and place of the letting of said contract, reserving in said notice

the right to reject any and all bids; in case any sections are not let on bids, the Township Commissioners shall have such section improved and repaired by hired labor. The successful bidder shall enter into bond for the faithful performance of his duty in double the amount of his bids. They shall have the right to condemn land, soil, trees, or other material adjoining or near to the road, for the purpose of relocating, widening, improving, and repairing public roads, in case the right of way surface, soil, trees, or other material cannot be secured by donation or agreement. The same may be taken for the use herein mentioned, and the landowner may afterwards be compensated as in condemnation of rights of way as now provided for by law.

1920, XXXI, 1139.

(3022) § 15. **Records.**—The said Township Commissioners shall keep a book, open for public inspection at all reasonable times, setting forth all contracts made by it for the repairing and maintenance of public roads.

1920, XXXI, 1139.

(3023) § 16. **Vouchers.**—All moneys shall be paid out on warrants of the Chairman of the Township Commissioners, countersigned by the Secretary thereof.

1920, XXXI, 1139.

(3024) § 17. **Township Highway Commission.**—In case of any township that has heretofore issued bonds under the provisions of Sections 28 to 38, inclusive, of this Article, or may hereafter issue bonds for roads thereunder, the Township Highways Commission provided for by said Sections shall constitute and exercise all the powers and duties of the Township Commissioners provided for by this Article.

1920, XXXI, 1139.

(3025) § 18. **Filing Vouchers.**—The Clerk of the County Board of Commissioners shall keep, in files specially provided for that purpose, all approved bills or vouchers which have been paid by warrant upon any of said township road and bridge funds, each township's vouchers to be kept in a separate file and numbered so as to conform with the number of the warrant by which it is paid.

Civ. '12, § 2121; 1909, XXVI, 227.

(3026) § 19. **Chaingang.**—The county chaingang shall be used in opening, building, grading and repairing three of the main highways of the county; one of the said roads to run from the most practicable point on the county line, between Lancaster and York Counties, through the City of Rock Hill, through the Town of York, and on to the most practicable point on the county line, between Cherokee County and York County; another of said roads to run from the most practicable point on the county line, between Chester and York Counties, through McConnellsville, through the Town of York, through Clover and on to the most practicable point on the line between York County and North Carolina; another of said roads to run from the most practicable point on the York County line through the Town of Fort Mill, then as near as practicable a straight line to the

City of Rock Hill, then through the Blackjack section to McConnellsville: *Provided*, That any of the Townships of York County which neither of said roads runs into or through shall receive a proportionate part of the work of the chaingang in such township on such road or roads as the Township Commissioners of said township and the County Board of Commissioners may determine upon: *Provided*, No macadam work shall be done by the chaingang where a sand and clay or gravel road is practicable, and sand, gravel and clay may be put down by the chaingang if the same be furnished by the Township Commissioners or otherwise: *Provided, further*, That work and control of the chaingang shall at all times be under the exclusive supervision and direction of the County Supervisor, and the time or rotation of the working of said roads above referred to shall be entirely within the discretion of the County Supervisor and County Commissioners, and that in selecting the roads to be so opened, built, graded and repaired the County Commissioners and County Supervisor shall have in view the greatest good to the greatest number of people: *Provided*, County Supervisor and County Commissioners of York County, while building the main thoroughfares through said county as now provided for by law, may, in their discretion, use the chaingang in building one road, connecting incorporated towns with the said thoroughfares, where the distance to such incorporated town is not over one and one-half miles, and where, in the judgment, the building of such connecting road will benefit a greater number of people.

Civ. '12, § 2122; 1910, XXVI, 663; 1913, XXVIII, 128; 1920, XXXI, 1130.

(3027) § 20. **County Supervisor to Cooperate With Township Commissioners.**—The County Supervisor, while so working the public highways, shall cooperate with the Township Commissioners in each township through which the highways may pass; and when said work is completed by the chaingang, the Township Commissioners for that township shall keep the same in repair: *Provided*, That the three main highways of the county as set forth in the preceding Section outside the corporate limits of any incorporated city, town or village, shall be maintained and kept in repair by the County Supervisor and County Commissioners, and that the funds received by the county from the State automobile license tax shall be expended by them in maintenance and repairs of said three main highways, and that an additional amount shall be added to the above fund by taking from the township road funds, through which said highways may pass, an amount equal to fifteen (\$15.00) dollars per mile of the said main highways included in and extending through each township which said highways pass, and the County Treasurer is hereby authorized and directed to create the fund as above provided as a maintenance and repair fund for the purpose as above mentioned: *Provided, further*, That all funds received by the county from the State automobile license tax arising from the Townships of Bullocks Creek and Broad River shall be expended in the maintenance and repairs of the public roads in such townships: *Provided, further*, That the County Supervisor and County Commissioners shall divide the said highways into sections of not less than one mile, or more than five miles, for the purpose of letting the same out for improvement, repair and maintenance by contract to the lowest responsible bidder, according

to plans and specifications to be furnished by the County Engineer; of the letting of which contracts ten days' previous notice shall be given in at least four public places in the township in which the section or sections of roads are to be let, of the time and place of the letting of said contract, reserving in said notice the right to reject any and all bids; in case any sections are not let on bids, the County Supervisor shall have such sections repaired by hired labor or chaingang. The successful bidders shall enter into bond for the faithful performance of their work in double the amount of their bid: *Provided, further*, That the County Board of Commissioners shall resoil all of the said main highways, using for the payment of the cost of such resoiling any automobile license tax now on hands or unexpended arising from the automobile license tax of 1918. And if this sum be insufficient, then they are authorized to supplement the same from the general county funds, or in the event such resoiling cannot be speedily done, then the County Board of Commissioners is directed to use the county chaingang for such work: *Provided, further*, That all funds received by the county from the State automobile license tax arising from the Township of Bethel shall be expended for the improvement, repairing and maintenance of the Clover and Wright's Ferry Road in said township as graded by chaingang.

Civ. '12, § 2123; 1909, XXVI, 228; 1918, XXX, 708; 1919, XXXI, 22; 1920, XXXI, 1189.

(3028) § 21. Engineer and Expert Bridge Builder.—The County Board of Commissioners may employ an engineer and an expert bridge builder for such time as in their judgment may be necessary, fix their compensation and prescribe their duties and powers.

Civ. '12, § 2124; 1908, XXV, 1172; 1910, XXVI, 663.

(3029) § 22. Bridges.—Highways in the county where bridges are to be rebuilt, over streams of thirty-five feet or over in width, stone or concrete piers or abutments, and span the same with an iron or steel or reinforced concrete bridge, erecting not over two annually unless made absolutely or providentially necessary. They may let contracts, after public notice, for the erection of the piers or abutments or reinforced concrete bridges, or use the chaingang for said purpose, if in their judgment it can be cheaper done; and all contracts for iron or steel spans shall be let to the lowest responsible bidder, as per plans and specifications furnished by the engineer. They shall let all contracts for the other bridges or public work, after notice, to the lowest responsible bidder, when the amount is likely to exceed fifty dollars; and the County Supervisor and Engineer, when employed, shall personally inspect all work done under contract, and unless the contract is fully complied with the claim shall not be valid; and all claims shall be approved by the County Supervisor, certified to by the engineer, when employed, and approved by a majority of the Board of County Commissioners, before being paid by the County Treasurer. All such claims shall be paid out of the county bridge fund. The County Supervisor shall thoroughly inspect the work of each Township Supervisor

once a year and report the progress of the work by sections, noting the deficiencies, if any, and incorporate the same in his annual report, and file a copy of the same in his office.

Civ. '12, § 2125; 1909, XXVI, 228; 1912, XXVII, 851.

(3030) § 23. **Annual Report of Supervisor.**—The County Supervisor is hereby required to publish a monthly report of the operation of the chain-gang, showing the total expense, number of miles and kinds of roads constructed or repaired, cost per mile, the time employed, and the value of all stock, machines, and the equipments of the chaingang, and any failure so to do shall subject him to fine or imprisonment at the discretion of the Court. He shall have township maps of each township, showing, by sections, numbered, the location of roads, bridges, etc., for the use of the Township Supervisor.

Civ. '12, § 2126; 1909, XXVI, 228; 1912, XXVII, 851.

(3031) § 24. **County Supervisor's Office.**—The County Supervisor shall keep his office open at least one day in each week. He shall keep on file all of his reports, and the reports of the Township Commissioners, in a systematic order, for the inspection of the Grand Jury and the public. He shall call a meeting of the Township Commissioners the Wednesday after the first Monday of January each year, to be held in his office, for conference, interchanges of views for working roads, and making suggestions for the improvement of the system.

Civ. '12, § 2127; 1909, XXVI, 228; 1920, XXXI, 1139.

(3032) § 25. **Clerk of County Commissioners to Keep Accounts.**—The Clerk of the County Commissioners shall keep a detailed account of all transactions in regard to the various sections, in a book specially provided for that purpose, which shall at all times be open to public inspection.

Civ. '12, § 2128; 1908, XXV, 1173.

(3033) § 26. **Special Tax.**—For the maintenance and improvement of the public roads and highways under the direction of the Supervisor and County Commissioners, and for the building and repair of all bridges in said county, there shall be levied an annual tax of two (2) mills on all real and personal property, which shall be levied and collected as all other taxes and at the same time. In addition to above levy of two mills on real and personal property for roads and bridges, there shall be a road tax of three dollars on all male citizens in said county between the ages of twenty-one and fifty-five years, which road tax shall be collected as all other taxes are collected: *Provided*, That any such citizen reaching their majority of twenty-one years of age during the month of June of any year shall become subject to the payment of such tax for said year.

Civ. '12, § 2129; 1908, XXV, 1173; 1909, XXVI, 262; 1916, XXIX, 894; 1919, XXXI, 46.

(3034) § 27. **County Auditor to Make Levy.**—It shall be the duty of the County Auditor to obtain from the County Supervisor the names of all persons in the county liable for road duty and to compare the same with

his tax list, and to enter and levy the said road tax the same as other taxes are levied and entered.

Civ. '12, § 2130; 1908, XXV, 1173.

Edgefield County v. Georgia-Carolina Power Co., 104 S. C. 311, 88 S. E. 801.

(3035) § 28. How Election on Issue of Township Road Bonds May Be Ordered in York County.—That whenever one-third of the qualified freeholders residing in any township in York County shall present a petition to the County Board of Commissioners of York County praying for an election upon the question of issuing serial or other coupon bonds for the construction of public highways in such township it shall be the duty of the County Board of Commissioners of York County to order an election upon the question of issuing of serial or other coupon bonds in such township to an amount of not exceeding eight per cent. of the assessed taxable property of such township, said bonds to run for not exceeding twenty years and to bear a rate of interest not to exceed six per cent., with the right to call in any or all of said bonds after ten years.

1919, XXXI, 165; 1921, XXXII, 229.

(3036) § 29. Election—Ballots—Sale of Bonds.—Said election shall be held under the laws governing the holding of general elections in this State. The ballot shall be provided according to law, and on one ballot shall be printed "For permanent road bonds—Yes," on the other "For permanent road bonds—No." That said election shall be held at the same polling places as were used in such township in the last general election, and all qualified electors residing in such township shall be qualified to vote therein. If a majority of the ballots cast in said election shall be for the issuing of said bonds, the County Supervisor and Commissioners hereinafter provided for, to be known as Township Highway Commissioners, shall dispose of said bonds to the highest bidder for cash, at not less than par, upon such notice by advertisement and competitive bids as the Supervisor and said Township Highway Commissioners shall deem proper, reserving the right to reject any and all bids. The expense of the election shall be paid out of the township road funds.

1919, XXXI, 165.

(3037) § 30. Maturity and Execution of Bonds.—Upon the acceptance of any bid the County Board of Commissioners shall have printed serial or other coupon bonds to an amount not exceeding eight per cent. of the assessed valuation of the taxable property of such township, to run not more than twenty years, with the right to the township of redeeming any or all of them after ten years. These bonds shall be signed by the County Supervisor and countersigned by the Clerk of the Board, but the signatures may be lithographed on the coupons. The bonds to be issued by any of said townships shall show upon their face for what township said bonds are issued and liability incurred thereby shall extend only to the township named therein.

1919, XXXI, 165.

(3038) § 31. **Interest—Annual Tax—Sinking Fund.**—The interest on said bonds shall be paid semiannually on the first of January and the first of July each and every year, and the Auditor and Treasurer shall levy and collect annually on the property in said township a tax sufficient to pay the interest on these bonds and to pay one-tenth (1-10) or more of the principal, the one-tenth or more mentioned above and surplus accruing after the payment of the interest on said bonds shall be turned over to the County Sinking Fund Commission, to be invested by them in such funds as are recognized in law as proper for the investment of trust funds. The Sinking Fund Commission shall annually present to the Circuit Court of York County an itemized statement of all funds received by it, and how they have been invested, to whom loaned, and what security. This report shall be filed with the Clerk of said Court: *Provided*, That the amount from the taxes collected for the payment of said Sinking Fund may be at the discretion of the Sinking Fund Commission, placed in one or more banks in the County of York without said banks being chargeable with interest on same, but the preservation of the said fund shall be duly protected by bond or otherwise, as the Sinking Fund Commission may determine.

1919, XXXI, 165; 1921, XXXII, 49.

(3039) § 32. **Disposition of Funds.**—As soon as the funds arising from the sale of said bonds shall be received by the said Township Highway Commissioners they shall be turned into the County Treasury, until they shall be withdrawn from time to time by the warrant of said Township Highway Commissioners as needed by them in the performance of their duties hereunder.

1919, XXXI, 165.

(3040) § 33. **Township Highway Commissioners.**—The Township Highway Commissioners provided for in this Article shall consist of three members who shall be freeholders in said township, who shall be appointed and commissioned by the Governor upon recommendation of a majority of the Legislative Delegation of York County. The said Commission shall elect its Chairman and Secretary, and any vacancy in the Commission shall be filled by the Governor upon majority recommendation of the Legislative Delegation from York County. The Commissioners each shall receive as compensation for their services the sum of one hundred dollars per annum, payable quarterly out of the proceeds of the sale of said bonds. The life of said Commission shall be for a period of three years, or until their successors shall be appointed and qualified. Each shall give bond in some approved company doing business in this State, under the laws thereof, in the sum of five thousand dollars from the time the bonds are issued to the time the proceeds thereof are expended and accounted for, premiums on said bond to be paid from the funds derived from said bond issue; but they shall construct said roads as soon as may be advantageously done in their judgment.

1919, XXXI, 165.

(3041) § 34. **Improvement of Highways — Condemnation.**—The said Township Highway Commission shall elect the roads which shall be permanently improved, in whole or in part, to decide the width of the same, and the material to be employed, regard being had to the present condition of said roads and amount of traffic over same. They shall divide the roads to be constructed or improved into sections of not less than one mile, or more than five miles, for the purpose of letting the same out for construction or improvement by contract to the lowest responsible bidder according to plans and specifications to be furnished by the said Township Highway Commission, of the letting of which contract ten days' notice shall be given in at least four public places in the township in which the section or sections of road are to be let of the time and place of the letting of said contract, reserving in said notice the right to reject any and all bids; in case any sections are not let on bids the Township Highway Commission shall have such section constructed or improved by hired labor. The successful bidder shall enter into bond for the faithful performance of his duties in double the amount of his bids. They shall have a right to condemn land service, soil, trees or other material adjoining or near to the road for the purpose of relocating, widening, improving or constructing public highways herein provided for, in case the right of way surface, soil, trees or other material cannot be secured by donation or agreement. The same may be taken for the use herein mentioned and the landowner may afterwards be compensated as in condemnation of rights of way as now provided for by law.

1919, XXXI, 165.

(3042) § 35. **Maintenance of Roads Improved.**—It shall be the duty of the said Township Highway Commissioners to keep the roads constructed or improved by them in proper repair during the life of said Commission, and for this purpose so much of the two-mill levy now provided for by law as may be necessary shall be used, together with all funds received by the county from the automobile license tax collected from the Township of King's Mountain, and the Township Supervisor as now constituted shall cooperate with said Commission.

1919, XXXI, 165; 1920, XXXI, 753.

(3043) § 36. **Township Engineer—Employment and Duties.**—The said Township Highway Commissioners may employ a competent engineer; his duty shall be to locate roads to be constructed by the Commission, to furnish to the said Commission estimates of cost of said construction; to see that the work is perfectly performed, furnish plans and specifications and such other duties as said Commission may desire.

1919, XXXI, 165.

(3044) § 37. **Record of Contracts—Reports.**—The said Township Highway Commission shall keep a book open for public inspection at all reasonable times setting forth all contracts made by it for the construction and maintenance of said roads. They also shall present annually to the Circuit Court of York County an itemized statement of all funds received and disbursed by them, and this shall be a part of records of said Court. At

the expiration of the life of said Commission all its contracts, papers and books of accounts shall be turned over to the Clerk of Court and filed in his office.

1919, XXXI, 165.

(3045) § 38. **Disbursement of Funds.**—All moneys shall be paid out on warrants of the Chairman of the said Township Commission, countersigned by the Secretary thereof.

1919, XXXI, 165.

(3046) § 39. **Operation of Trucks in York County—Loads—Speed—Chains**—Be it enacted by the General Assembly of the State of South Carolina: Hereafter, no truck used upon the highways within the County of York shall be loaded to a capacity of more than seven thousand (7,000) pounds, nor shall any such truck, loaded, be driven at a greater speed than fifteen miles per hour, nor shall any such truck be driven upon the highways of said county with any chains other than regular truck chains, the links of which shall not be larger than one and one-half inches in circumference.

1921, XXXII, 139.

(3047) § 40. **When License Required for Trucks from Without the State.**—All trucks from without this State operating in the said county upon the public highways thereof continuously for a period of more than thirty days and used entirely within the county of York shall be required to pay the same license as is now required in the case of citizens of the State operating such trucks.

1921, XXXII, 139.

(3048) § 41. **Penalty for Violation.**—Any violation of the provisions of this Act shall subject the offender, upon conviction, to a penalty of not less than fifty nor more than one hundred dollars, or imprisonment of not more than thirty days.

1921, XXXII, 139.

ARTICLE II.

State Highway Department.

(3049) § 1. **State Highway Department Created—State Highway Commission—Appointment—Term—Compensation.**—A Highway Department for the State of South Carolina is hereby created and established, the same to consist of a State Highway Commission and a State Highway Engineer. The Highway Commission shall be composed of seven members, one from each of the seven Congressional Districts, who shall be appointed by the Governor by and with the consent of the Senate. Three shall be appointed to serve for a period of four years and the remaining four for a period of two years, and their successors for a period of four years. The members of said

Highway Commission shall each receive one hundred (\$100.00) dollars per annum, and actual necessary expenses incurred in the discharge of duties under the provisions of this Article.

1917, XXX, 320; 1920, XXXI, 1072.

(3050) § 2. State Highway Engineer—Secretary of Commission—Bond.

—As soon as practicable, the State Highway Commission shall appoint a State Highway Engineer, who shall be a competent engineer, skilled and experienced in highway construction and maintenance and the designing and construction of highway bridges; the selection of the said Engineer may be based on a civil service examination, under rules and regulations to be made and promulgated by the State Highway Commission. The State Highway Commission shall elect a Secretary (not a member of the Commission), who shall have charge of the records of the Commission, and who, before entering upon the duties of his office, shall file with the Secretary of State a bond to the State of South Carolina in the sum of twenty-five thousand dollars (\$25,000.00), conditioned upon the faithful performance of the duties of his office, said bond to be approved in the manner now provided by law for the bonds of State officers. The said Engineer shall be subject to removal at the discretion of the State Highway Commission.

1917, XXX, 320; 1920, XXXI, 1072.

(3051) § 3. Employment of Clerical and Engineering Help.

—The Secretary of the Commission may appoint and employ, subject to the confirmation of the State Highway Commission, such clerks, stenographers and other clerical assistants as he may find necessary for the proper conduct of the department. And the Chief Engineer shall appoint and employ, subject to the confirmation of the State Highway Commission, such engineers and assistants as may be necessary for the proper conduct of the Engineering Department of the work, under the direction of the Highway Commission. All such appointments to be subject to the approval and confirmation of the Highway Commission.

1917, XXX, 320; 1920, XXXI, 1072.

(3052) § 4. Oaths.—The State Highway Commissioners and the State Highway Engineer shall take and return the oath prescribed by law for all State officers.

1917, XXX, 320; 1920, XXXI, 1072.

(3053) § 5. Compensation of Engineer and Employees.—The State Highway Engineer shall be paid such annual salary as the State Highway Commission may determine, and his actual necessary traveling expenses when traveling on business of his office. The salaries of the Assistant Engineers and other agents and employees of the Department shall be fixed by the State Highway Engineer, subject, however, to confirmation and ratification by the State Highway Commission. They shall also be allowed their necessary traveling expenses in connection with their official duties.

1917, XXX, 320; 1920, XXXI, 1072.

(3054) § 6. **Purpose, Powers and Duties of State Highway Commission—System of Highways—Condemnation—Reports.**—The object and purpose of the State Highway Commission shall be to provide systematic highway construction and maintenance throughout the State. That it shall be the duty of the State Highway Commission, through the State Highway Engineer, by and with the consent of the county road authorities, to survey and lay out the public highways within the State, having due regard for the connecting of the roads of one county with another, and the main roads connecting with the roads of adjoining States, so as to form a system of connecting roads within the State; and shall also instruct, assist and cooperate with the county authorities of the various counties with the consent of the county road authorities, and maintain with county funds all roads built and constructed within the system. To that end the said State Highway Commission shall, under the advice of the State Highway Engineer, lay out a system of connecting highways throughout the State connecting every county seat within the State, and covering such main avenues of travel and traffic as the said State Highway Commission may deem advisable. It shall have the right, with the assent of the county authorities of each county, to lay out and build public highways and bridges, the title to such roads and bridges to remain in the county within which they are built. It shall have the power to acquire such lands and road building material and rights of way as may be needed for roads and bridges, by purchase or gift or by condemnation, in the same manner as is prescribed by Section (2907) of this Code, and amendments, for the condemnation of roads by county authorities, and the Acts of 1914, XXVIII Statutes, 741: *Provided*, That it shall be done in the name of and in the interest of the county. The county in which such highway is built shall furnish the necessary funds and means for the building of such highways and bridges. It shall cause the said highways to be marked with suitable directions for travel, and shall regulate the travel and traffic along said highways, subject to the laws of the State. The State Highway Commission shall make annual reports to the General Assembly of the work of the State Highway Department.

1917, XXX, 320; 1920, XXXI, 1072.

(3055) § 7. **Duties of State Highway Engineer—Of Secretary of State Highway Commission**—The duties of the State Highway Engineer shall be to make the necessary surveys and investigations, so as to advise the State Highway Commission as to where the system of State highways shall be located; to supervise the building, repair and maintenance of such highways and bridges; to supervise and direct the work under the method which by the said Commission may be prescribed. It shall also be his duty to furnish engineering advice, and, whenever not inconsistent with the other work of the Department, to render assistance to the various county authorities upon their request; and when requested by the road authorities in any county, he shall make, by his assistance, surveys for roads and bridges, and prepare plans and specifications and estimates of the cost for the construction and improvements of such roads and bridges; and if further requested by the county authorities, he shall supervise, or furnish competent engineering

supervision for the construction and improvement of such roads and bridges: *Provided*, The duties herein imposed shall not conflict with the other duties of his office. The Secretary of the State Highway Commission shall have charge of all the records of the State Highway Department, and shall keep a record of all proceedings and orders pertaining to the business of his office and of the Department. He shall keep on file copies of all plans, specifications and estimates prepared by his office, and shall perform such other duties as would be proper in the conduct of his office or required by the State Highway Commission. He shall report all proceedings of his office to the State Highway Commission at such time and places as it may designate.

1917, XXX, 320; 1920, XXXI, 1072.

(3056) § 8. Repair of Highways Through Towns of Less Than 1,000 Inhabitants.—Whenever the system of highways adopted by the State Highway Commission shall include any road passing through a town or city of one thousand population, or less, the said Highway Commission is hereby empowered, with the consent of the proper authorities of said town or city, to maintain the highway upon any of said streets, avenues or roads in proper condition and repair.

1917, XXX, 320; 1920, XXXI, 1072.

(3057) § 9. Offenses in Regard to State Highways — Obstruction of Drainage—Placing Objects Injurious to Vehicles—Cutting Trenches, Etc., Without a Permit—Loads or Vehicles of Excessive Weight or Width—Tractors—Timber Carts.—It shall be unlawful for any person to wilfully obstruct ditches and drainage openings along said roads, to place obstructions upon said roads, or to throw or place on said roads any objects likely to cut or otherwise injure vehicles using same. It shall also be unlawful for any person, firm or corporation to cut trenches, lay pipes or tracks through, under, over or on said highways and bridges without first obtaining a permit from the State Highway Engineer; or to transport over such highways and bridges loads exceeding a specified tonnage or weight per square inch of bearing surface in excess of that prescribed in the regulations laid down by said Highway Commission; or to run or operate any farm tractor or traction engine with wheel lugs or cleats on said highway, without first removing said lugs or cleats, or providing fillers for same, so that no injury will be done to road surface, or to operate over said highways or bridges any motor vehicle, the maximum width of which, or of the load it carries, exceeds seven and one-half feet ($7\frac{1}{2}$), or to operate motor vehicles with chains upon or around the wheels, contrary to such regulations for the use of chains which may be adopted and promulgated by the State Highway Commission. It shall also be unlawful to operate upon any of the public highways of this State any two-wheeled timber carts, with tongue or small wheel attached thereto, which comes in contact with the road, and it shall also be unlawful to operate any vehicle over said roads for the purpose of carrying timber or other loads, by which timber or any other character of load is allowed to strike or drag on the surface of the road: *Provided, further*, That this proviso shall not apply to four-wheeled

lumber carts where the load is so suspended as not to come in contact with the road. Any violation of the provisions of this Section shall be deemed a misdemeanor and punished by the fine or imprisonment prescribed in Section 14 hereof.

1920, XXXI, 1072.

(3058) § 10. **Apportionment and Use of Vehicle License Tax.**—It shall be the further duty of the State Highway Commission to determine as to each county the portion of the motor vehicle license accruing to such county under the provisions of this Article, which shall be set aside for the maintenance of roads theretofore constructed in such county, and the residue of the funds so accruing in each county shall be paid over quarterly to the respective County Treasurers and used for road construction, as herein provided for the use of the proceeds of the two mill levy.

1917, XXX, 320; 1920, XXXI, 1072.

(3059) § 11. **Registration of Motor Vehicles—Provisos as to Nonresidents—New Vehicles—License Plates.**—That in order to provide funds for carrying out the provisions of this Article, every owner of a motor vehicle, and every dealer in motor vehicles, which shall be operated or driven upon the public highways of the State shall file in the office of the State Highway Commission, on a blank to be furnished by the said State Highway Commission for that purpose, an application for registration. Upon the filing of such application and the payment of the license fee for the remainder of the current year, hereinafter provided, the State Highway Commission shall register serially and license such motor vehicles in accordance with such rules and regulations as shall be made and promulgated by the State Highway Commission: *Provided*, That nonresident owners of motor vehicles, duly registered and licensed in their home State, shall not be required to secure registration and license herein provided for in this State, unless such motor vehicle shall remain within its borders thirty days: *Provided, further*, That purchasers of new motor vehicles shall have ten days to secure registration and license herein provided: *Provided, further*, That the said State Highway Commission shall furnish such owner with a metal plate showing in plain Arabic numerals the number of such license.

1917, XXX, 320; 1920, XXXI, 1072.

(3060) § 12. **License Fees After January 1, 1921—Limitation on Weight of Trucks—Penalty for Violation—Dealer's License—Transfer of License.**—On and after January 1st, 1921, every resident owner of a motor vehicle in the State of South Carolina shall pay to the State Highway Commission, in lieu of all other State, municipal or county licenses, an annual license as follows: For each automobile weighing not over two thousand pounds the sum of six (\$6.00) dollars, and for each additional five hundred pounds of weight, or fraction thereof, the additional sum of two (\$2.00) dollars. The manufacturers' weight of automobiles shall be accepted as the weight for the purpose of registration hereunder. And for trucks the license fees shall be as follows: Trucks of a capacity not exceeding one ton, fifteen (\$15.00) dollars. Trucks exceeding one ton and up to and including two tons, thirty (\$30.00) dollars. Trucks exceeding two tons and up to and including three

tons, sixty (\$60.00) dollars. Trucks exceeding three tons and up to and including four tons, one hundred (\$100.00) dollars. Trucks exceeding four tons and up to and including five tons, two hundred (\$200.00) dollars. Trucks exceeding five tons and up to and including six tons, two hundred and fifty (\$250.00) dollars. Trucks exceeding six tons and up to and including seven and over, three hundred and fifty (\$350.00) dollars: *Provided*, That a reduction of twenty-five (25) per cent. on the license be allowed on all trucks using pneumatic tires on all the wheels. Lumber trucks, and other trucks with trailer attached, shall pay an annual license of \$5.00 for each trailer so operated, and an additional sum of \$2.00 for every thousand pounds or part thereof of ordinary loading capacity of such trailer: *Provided*, That no truck larger than a four ton truck shall be allowed to be used on any highway or public road of this State unless the person desiring to operate any such truck larger than a four ton truck shall first make a petition to the authorities in charge of the roads in any county where it is proposed to operate such truck, stating the road or roads proposed to be used, and such road authorities shall consent to the use of such truck on such roads, and such consent shall be approved by the State Highway Engineer, in which event such truck shall, upon payment of the license fee herein provided, be permitted to operate on the roads stated in the petition and none other; any violation of the provisions of this proviso shall be punished as herein provided in Section 14 of this Article. For each motorcycle, three (\$3.00) dollars per annum. Every dealer in motor vehicles in this State, before operating any such motor vehicle upon the highways of this State for the purpose of demonstration and sale, shall pay to the State Highway Commission of this State, in lieu of all other State, municipal and county licenses, an annual license of twenty-five (\$25.00) dollars for the first make of motor vehicles sold by such dealer, and an additional annual license fee of fifteen (\$15.00) dollars for each other make of motor vehicle sold by such dealer. All licenses shall expire on the thirty-first day of December following the date of issue. Annual licenses shall hereafter be issued between the first day of January and the first day of February of each year. In the case of motor vehicles registering for the first time, the full annual fee shall be paid for licenses issued between January the first and March the thirty-first; three-fourths of the annual fee for licenses issued between April the first and June thirtieth; one-half of the annual fees for licenses issued between July first and September thirtieth; and one-fourth of the annual fees for licenses issued between October first and December thirty-first. Any owner of a motor vehicle upon which the license fee for the then current year shall have been paid shall, upon the sale of said motor vehicle, notify the State Highway Department of such sale, giving the name and address of the purchaser, and upon the payment of a transfer fee of fifty (50c) cents the original license shall be transferred to the new owner. The State Highway Commission shall furnish the Clerk of Court of each county with a sufficient supply of application blanks for license for use of the people of the county.

1917, XXX, 320; 1918, XXX, 841; 1920, XXXI, 1072.

(3061) § 13. **Annual Levy for State Highways—Use of Proceeds.**—There shall be annually levied upon all the taxable property of the State a tax of two mills, which shall be retained by the counties and used for the construction of highways and bridges *in the State system* in the respective counties, *under the general supervision of the Highway Department*, as provided in this Article. In the event any county or township has issued bonds or notes for the construction of highways, or shall issue bonds for such purposes, *which shall be adopted into the State system*, the said levy shall be annually retained by the counties or townships from which said tax is levied, and may be used as a sinking fund or for the purpose of retiring said bonds or notes at the maturities of same, or applied to the payment of interest on such bonds or notes.

1920, XXXI, 1072.

(3062) § 14. **Operation of Motor Vehicle Without License Plate a Misdemeanor—Penalty.**—It shall be unlawful for any person or persons, without securing registration for license, as provided in this Article, to run, drive or operate any motor vehicle on or along or across any public road, street or highway in the State of South Carolina without having displayed at all times to public view, in the rear of said vehicles, a license number as shall be acquired from the Highway Department under the law providing for such license number. Any violation of the provisions of this Section shall be deemed a misdemeanor, and shall be punished by a fine of not less than ten (\$10.00) dollars nor more than twenty-five (\$25.00) dollars, or imprisonment for not more than fifteen (15) days for each offense.

1917, XXX, 320; 1920, XXXI, 1072.

(3063) § 15. **“Motor Vehicle” Defined.**—The term “motor vehicle,” as used in this Article, shall be construed to mean and include all automobiles and vehicles, whether propelled by steam, gasoline, electricity or other such sources of energy other than muscular power, except such vehicles or machines as are used in the building of roads, or farming implements, or as operated only upon rails or tracks therefor.

1917, XXX, 320; 1920, XXXI, 1072.

(3064) § 16. **Apportionment of Funds to Counties—Disbursement—State Highway Commission to Report to Clerks of Court**—That eighty per cent. (80%) of the income received by the State Highway Commission from any county shall be expended in that county, with the approval of the county road authorities, for construction and maintenance of the highways that have been approved and received, or may hereafter be approved and received, into the State system: *Provided*, That if any county should not have sufficient highways approved by the State Highway Commission to exhaust such apportionment in the maintenance of highways, said county shall have the benefits of any surplus in the construction or improvement of highways in such manner and location as may be approved by the State Highway Commission. The remaining twenty per cent. (20%) of the income received by the State Highway Commission from any county shall be for the expenses of the State Highway Department, and for aid to the counties in the construction of roads and bridges. The funds for the use

of the State Highway Commission shall be drawn out upon the order of the Chairman of the State Highway Commission: *Provided*, That when any county has, or may create, any County Highway Commission, such County Highway Commission shall have supervision and control of the expenditures of the amount of the money turned over to the respective counties under and by the provisions of this Article: *Provided*, The State Highway Commission shall transmit to the Clerks of Court of the respective counties quarterly, within fifteen days after the close of each quarter, the names of owners and registration numbers of all motor vehicles registered and licensed in the respective counties, and the Clerks of Court shall keep on file copy of said list for public inspection. Said Highway Commission shall at the same time report to the proper authorities of the respective counties the amounts collected for each county during said quarter.

1917, XXX, 320; 1920, XXXI, 1072.

(3065) § 17. Assent to Act of Congress—Compliance Therewith.—That the assent of the State of South Carolina is hereby given to the terms and provisions of an Act of Congress, approved July 11, 1916, entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads and for other purposes," and Acts amendatory thereof; that the State Highway Department is hereby empowered and directed to have prepared, and submit all such plans, specifications and data relating to the construction of roads and bridges as may be required under the terms of this Article; to enter into all contracts with the United States Government and to do any and all things necessary to carry out the provisions of said Act of Congress; and the good faith of the State is hereby pledged to provided sufficient funds to meet the requirements of said Act, so as to acquire the benefits thereof.

1917, XXX, 320; 1920, XXXI, 1072.

(3066) § 18. Applications for Federal Aid—Project Statements—Duties of State Highway Commission.—That any county, or aggregation of counties, desiring aid under the terms of the said Act of Congress, may make application to the Commission therefor, and upon receipt of such application the Commission shall, by and through the Commissioner, or otherwise, make such investigation of the facts as it deems necessary. But before any such application shall be approved the Commission shall require each and every county to be benefited thereby, through its duly authorized officers, to enter into a written guarantee to the Commission, to be approved by the Commission, to the effect that such other county or counties will supplement by an equal amount, either in money, labor, or materials, any sum procured through the United States Government and expended on such road or roads within the bounds of such county; that it will procure all necessary rights of way for such proposed roads, and will maintain the same when completed in accordance with said Act of Congress. Upon the approval of any such application, the Commission shall forthwith have all necessary surveys, plans, and estimates of cost of such proposed roads made by the Commission, and submit the same to the Secretary of Agriculture, in the form of a project statement, in accordance with said Act of Congress: *Provided, however,*

Should no application be filed with the Commission within the period or periods during which any apportionment of aid under said Act of Congress is available for the State of South Carolina, which shall meet the requirements of said Act of Congress, the Commission shall submit to the Secretary of Agriculture such project statement, setting forth proposed construction of such roads as, in its judgment, will best serve the interests of the State; and in order to meet the requirements of said Act of Congress under such conditions, said Commission shall be empowered to appropriate for such purpose all available funds credited at such time to the State Highway Fund, in excess of expenses for the maintenance of the Highway Department, and to further pledge the good faith of the State for the payment of any balance necessary to meet the available funds set apart by the Secretary of Agriculture for such proposed project.

1917, XXX, 320; 1920, XXXI, 1072.

(3067) § 19. State Highway Department to Inspect Certain Toll Bridges.

—It shall be the duty of the State Highway Department to inspect or cause to be inspected, at such intervals (at least once a year) as the said State Highway Department may determine, all bridges in this State over one hundred yards in length which charge a fare or toll to the public for passage over or across the same, to ascertain if the same are kept in good repair, both for the safety and convenience of the public.

1920, XXXI, 285.

(3068) § 20. Such Bridges to Be Inspected on Request of County Road Authorities.—That, in addition to the inspection provided for by the preceding Section, the State Highway Department shall cause to be inspected any bridge as set forth in the preceding Section hereof when requested so to do by County Supervisor of any county in which such bridge may be located in whole or in part, or by any commission having charge of the roads, bridges and ferries in such county.

1920, XXXI, 285.

(3069) § 21. Repairs to Be Ordered If Bridge Found Unsafe or Inconvenient.—That if, upon such inspection, the State Highway Department finds that any such bridge is unsafe or is not kept in such repair as is proper for the convenience of the traveling public using the same, then the State Highway Department shall order such repairs to be made to said bridge by the owner or owners thereof as shall make it safe and convenient for the traveling public, and shall supervise such repairs. The cost of such supervision to be paid by the owners of said bridge.

1920, XXXI, 285.

(3070) § 22. Performance of Repair Work.— That when repairs are ordered by the State Highway Department the owner or owners of such bridge shall actually commence the work on such bridge within thirty days after receipt of notice from the State Highway Department to commence the same; and shall complete the same within such length of time thereafter as may be set by the State Highway Department, which shall be authorized to extend time, provided the work be actually commenced

and is progressing satisfactorily to such Department. A letter addressed to the owner or owners of such bridges and sent by registered mail, postage prepaid, shall be deemed sufficient notice under the provisions hereof.

1920, XXXI, 285.

(3071) § 23. Application for Receiver, Upon Failure to Repair.—That in case the said owner or owners of any such bridge, after having been notified to make repairs as above set forth, fail to commence actual work thereon or to complete the said work as provided in Section 22 hereof, the State Highway Department shall have the right, and it shall be its duty, to apply to the Court of Common Pleas of any county in which such bridge is situated, in whole or in part, for the appointment of a receiver for such bridge and of the franchise or charter under which it is operated, and of any other property belonging to the owner or owners of said bridge incident or necessary to the operation thereof, and it shall be the duty of such Court to appoint a receiver with the usual powers of receivers if it appears to such Court that the owner or owners of any such bridge have not complied or are not complying with the provisions hereof.

1920, XXXI, 285.

(3072) § 24. Receiver to Make Repairs—Cost Thereof a Lien.—That upon the appointment of such receiver it shall be his duty, and he is hereby empowered, to take charge of said bridge and other property of the owner or owners thereof incident or necessary to the use of such bridge and shall proceed to make the repairs as ordered by the State Highway Department, and to meet the cost of such repairs he shall operate such bridge until such repairs are paid in full from the receipts of such operation. The cost of such repairs shall be a lien on such bridge, and the franchise or charter thereof and of such other property incident or necessary to its operation and the receipts thereof superior to all other liens except the lien for taxes levied according to law.

1920, XXXI, 285.

(3073) § 25. If Necessary, Court May Order Sale.—That the Court in which any such application for the appointment of a receiver is made shall have power to order a sale of such bridge and other property incident or necessary to its operation and of the franchise or charter under which it is operated for the purpose of paying for such repairs if in the opinion of the Court it is necessary to do so.

1920, XXXI, 285.

(3074) § 26. Article Not Applicable to Railroad Bridges.—This Article shall not apply to any railroad bridge or other bridge under the jurisdiction of the State Railroad Commission.

1920, XXXI, 285.

CHAPTER XXX.

Watercourses and Cuts.

(3076) § 1. **Power of County Board of Commissioners Over Watercourses and Cuts.**—The County Board of Commissioners of the several counties of this State shall have and exercise the same powers over the navigable streams, watercourses and cuts, within the limits of their respective counties, as they have over the highways and bridges therein, except as the same are herein modified.

Civ. '12, § 2131; Civ. '02, § 1402; G. S. 1096; R. S. 1212; 1893, XXI, 481.

(3077) § 2. **To Keep in Repair as Highways.**—The said navigable streams, watercourses and cuts shall be taken and deemed as highways, and the County Board of Road Commissioners shall take charge of and keep the same in repair at all times.

Civ. '12, § 2132; Civ. '02, § 1403; G. S. 1097; R. S. 1213; 1871, XIV, 666, § 1; 1879, XVII, 144; 1893, XXI, 481.

Speights v. Colleton County, 100 S. C. 304, 84 S. E. 873.

(3078) § 3. **To Keep Open for Navigation—Regulations as to.**—It shall be the duty of the County Board of Commissioners to see and ascertain from time to time that the said watercourses and cuts, and the mouths or entrances thereof, are open and free to the customary navigation for boats drawing not more than four feet of water, except at such times as may be necessary to close the same for the purpose of repair or other necessary work; but in no case shall the said watercourses or cuts be closed so as to prevent the free passage of such boats for a longer period than two consecutive months, or without thirty days' previous notice, signed by the County Supervisor, and published in at least one newspaper in the County wherein such watercourses or cuts may be situated; and if the said watercourses or cuts are within the limits of Charleston County, then such notice shall be published in at least one of the daily newspapers in the City of Charleston.

Civ. '12, § 2133; Civ. '02, § 1404; G. S. 1098; R. S. 1214; 1856, XII, 517; 1893, XXI, 481.

(3079) § 4. **To Remove Logs, Stumps, Etc.**—The said County Board of Commissioners shall see and provide that no logs, stumps, shell banks, sand bars, marshes, mud banks, or any other obstacle to the free, safe, and convenient passage of such boats at the usual time of tide, be allowed to remain in the said watercourses, or in the said cuts, so as to prevent navigation.

Civ. '12, § 2134; Civ. '02, § 1405; G. S. 1099; R. S. 1215; 1856, XII, 517; 1893, XXI, 481.

(3080) § 5. **To Keep Banks in Repair and Above Tidewater.**—They shall keep, or cause to be kept, in firm and good condition, the banks or causeways of the said watercourses and cuts where such banks or causeways may be necessary, so that they shall be above tidewater, and shall be free from all such breaks, sluices, or other obstacles as may be an impediment to their uses and objects.

Civ. '12, § 2135; Civ. '02, § 1406; G. S. 1100; R. S. 1216; 1856, XII, 517; 1893, XXI, 481.

(3081) § 6. **County Commissioners May Cause New Channels to Be Opened, Etc.**—The County Board of Commissioners shall have full power and authority to appoint special Commissioners, who may cause to be

opened any new channel through such projecting points of marsh lands as impede and delay the navigation of the said watercourses and cuts, and the proprietor or owner of the said marsh land shall be entitled to such reasonable compensation for the appropriation of the land to the public use as may be deemed a fair equivalent by three discreet and disinterested citizens, to be selected by the mutual consent of the said special Commissioners and the said proprietor or owner.

Civ. '12, § 2136; Civ. '02, § 1407; G. S. 1101; R. S. 1217; 1856, XII, 517; 1868, XIV, 130, § 14; 1893, XXI, 481.

(3082) § 7. May Open and Repair New Channels at Certain Points.—The County Board of Commissioners are authorized and empowered, for the better navigation of the watercourses and cuts, to make, open, dig out, cleanse and keep in repair new channels through such points of marsh mud as project out, and, by forming curves or banks therein, impede the transit of such boats.

Civ. '12, § 2137; Civ. '02, § 1408; G. S. 1102; R. S. 1218; 1856, XII, 517; 1893, XXI, 481.

(3083) § 8. May Use Road Hands or Contract for Labor in Making Repairs, Etc.—The County Board of Commissioners are authorized and empowered to keep the said watercourses and cuts in repair, and to dig out, clear, cleanse, shorten, straighten and make navigable the same, either with the labor of such male inhabitants as shall be liable to work on the public highways, or by contract with one or more persons; and they shall also have all such work done as may from time to time be expedient and necessary for the preservation and use of the said watercourses and cuts notwithstanding such work be not designated in this Chapter.

Civ. '12, § 2138; Civ. '02, § 1409; G. S. 1103; R. S. 1219; 1856, XII, 517; 1893, XXI, 481.

(3084) § 9. Owners May Erect Dams—Proviso.—It shall be lawful for owners of lands on such streams to erect mill dams across the same: *Provided*, They construct and keep in repair sufficient locks, or slopes, or canals, in or around such mill dams, to admit their free navigation for rafts of lumber and timber: *And provided, further*, That the County Supervisor and County Board of Commissioners are hereby authorized and empowered to require the construction of sufficient fish ways in such dams as they may deem necessary.

Civ. '12, § 2139; Civ. '02, § 1410; G. S. 1105; R. S. 1220; 1856, XII, 517; 1893, XXI, 481.

(3085) § 10. Proceedings to Remove Mill Dams for Purposes of Navigation.—In all cases in which mill owners shall have erected their mill dams on such streams antecedent to their use for the purposes aforesaid, at the points at which such mill dams have been or may be erected, it shall be lawful for all persons, who may desire, to use such streams for the purposes of navigation as aforesaid, upon payment to such mill owner of a compensation to be determined by the parties themselves. But if the parties cannot agree, it shall be the duty of any neighboring Magistrate, at the instance of any person desiring to use such streams for the purposes of rafting of rafts of lumber and timber, to call to his assistance four neighboring freeholders, two to be selected by the mill owner and two by the applicant; and the said

Magistrate and freeholders shall determine the amount of compensation to be paid by such person desiring to use such stream, subject to the right of appeal to the next Court of Common Pleas for the county in which the mill may be situated: *Provided*, That nothing herein contained shall be construed to extend to the navigation of Big Horse Creek, above the point of which the waste water of Bath Mills returns to the old bed of said creek: *Provided, nevertheless*, Nothing herein contained shall be held or deemed to apply to any stream or watercourse within the corporate limits of the City of Charleston.

Civ. '12, § 2140; Civ. '02, § 1411; G. S. 1106; R. S. 1221; 1856, XII, 517; 1866, XIII, 474. Compensation. *Witt v. Jeffcoats*, 10 Rich. 389.

(3086) § 11. Fish Traps Not to Be Kept Up Near Dams on Navigable Streams.—It shall not be lawful for any person whomsoever, at any time, to erect or keep up any fish trap or other device for catching fish, or to fish with any net or seine within eighty yards of any dam, erected by the order or at the expense of the State, across any stream intended thereby to be made navigable, in which dams there shall be left or constructed any sluice for the passage of fish; and all and every person or persons offending against this Section shall, for each and every offense, pay the sum of twelve dollars, to be recovered before any Magistrate of the county where the offense may have been committed; one-half of which penalty shall go to the informer, and the other half to the support of the work to which the dam is attached; and all traps and other devices for catching fish, erected or kept up in violation of this Section, are hereby declared public nuisances, and may be treated as such.

Civ. '12, § 2141; Civ. '02, § 1412; G. S. 1107; R. S. 1222; 1828, IX, 521; 1827, VI, 340.

Boatwright v. Bookman, Rice 447.

As to certain counties in certain seasons, XVI, 392; extended, XVI, 718; time changed, XVI, 724; protection of migratory fish, XVI, 539.

See Criminal Code for penalty for obstructing streams by fish traps.

(3087) § 12. Streams Ordered to Be Made Navigable Not to Be Obstructed.—It shall not be lawful for any person to keep up or erect any dam, except as provided for by Section 9 of this Chapter, across any river which the Legislature has ordered to be made navigable, or for improving which the Legislature has made any appropriation, so as to obstruct the passage of boats or rafts of timber and lumber therein; and in case any dam, hereafter to be created, shall not be immediately taken down and opened, when required by the County Board of Commissioners, the same shall thenceforth be regarded and taken to be a public nuisance, and shall and may be abated as such; and the person erecting or keeping up the same shall, on conviction thereof, be fined at the discretion of the Court, in a sum not exceeding five hundred dollars, for the use of the navigation of the river where the said nuisance exists.

Civ. '12, § 2142; Civ. '02, § 1413; G. S. 1109; R. S. 1223; 1823, VI, 219.

(3088) § 13. Bridges Not to Obstruct Navigation—Penalty.—No person or persons or corporations in this State shall keep or cause to be kept, put or caused to be placed, any bridge over and across any of the navigable rivers within this State, so as thereby to injure or obstruct the free naviga-

tion of said rivers; and every such person or persons or corporations so offending shall forfeit, for each and every such offense, the sum of two hundred dollars for each day that such bridge may be so kept or remain as an obstruction to said free navigation, for the use of the State.

Civ. '12, § 2143; Civ. '02, § 1414; R. S. 1224; 1887, XIX, 796.

(3089) § 14. Obstructing Bridges to Be Removed or to Have Draw Spans—Streams Applicable.—Any railroad company or other corporation in this State which may now have any bridge over and across any navigable river in this State too low for the purposes of free and unobstructed navigation be, and they are hereby, required to remove the same, or to construct and manage draw spans in said bridges as will secure safe and unobstructed navigation of said stream; which said spans shall not be less than sixty (60) feet in width in the clear, and shall be properly located with reference to the deep water and the convenience of navigation, and shall be provided on both sides of the span with strong and suitable fenders extending to not less than one hundred and fifty (150) feet above and not less than eighty (80) feet below the bridge, and rising above ordinary high watermark to within not less than one foot of the lower chords of said spans. And upon failure to do so, said railroad company or other corporation shall forfeit for each and every day that said bridge may remain too low for free and unobstructed navigation the sum of two hundred dollars, for the use of the State: *Provided*, That this Section shall apply only to such streams as are now navigable by steamboats or may hereafter be made so.

Civ. '12, § 2144; Civ. '02, § 1415; R. S. 1225; 1887, XIX, 796.

State v. Knotts, 2 Speer 692.

(3090) § 15. Tolls Allowed Owner of Shores or Wharves.—The owner or owners of the shores or any wharf erected on the shores, or in or over the waters of any navigable streams in this State, are hereby authorized to charge reasonable tolls for the use thereof.

Civ. '12, § 2145; 1911, XXVII, 25.

SPECIAL PROVISIONS IN CERTAIN COUNTIES.

CHESTER AND CHEROKEE COUNTIES.

(3091) § 1. Landowners to Clean Out Streams.—That all landowners and their agents in Chester and Cherokee Counties, in this State, shall yearly, between the 10th day of July and the 15th day of August, of each year, remove from the running streams upon or adjoining and bounding their lands, all trash, trees, rafts, timber, snags, overhanging limbs, and all other obstructions to the natural and free flow of the water, and all objects that tend to catch trash and make rafts: *Provided*, The County Commissioners may extend the time for cleaning such streams upon such ground and within such limits as may be just.

1916, XXIX, 919.

(3092) § 2. Notice to Be Given.—It shall be the duty of the County Commissioners to give public notice of the time of cleaning such streams by publishing the same in one or more newspapers for two weeks.

1916, XXIX, 919.

(3093) § 3. Further Notice.—That, in addition to said public notice, request of two or more landowners upon any stream, in writing, and setting forth the names of all the other owners of lands along said stream, the said County Commissioners shall give written notice to each of said landowners or their agents of the cleaning of said stream, at the time fixed herein, or at a later time extended by said Commissioners, by depositing the same in the postoffice addressed to each of said landowners or their agents, requiring them to clean said stream in the manner set forth herein within the time set forth herein or the time fixed in said notice; and said notice shall also inform said landowners or their agents that if they refuse or neglect to clean said stream within the time set forth therein, that then the County Commissioners will have said work done at their expense, and the costs will be taxed as a first lien upon their property.

1916, XXIX, 919.

(3094) § 4. Commissioners May Have Stream Cleared at Cost of Owner.—That after the mailing of such personal notice, if any landowner or agent refuse or neglect to clean the stream upon or bounding his lands, then the County Commissioners shall have made an estimate of the cost of cleaning and draining such stream upon or along the lands of such delinquent, and upon the necessary funds for cost of such work being advanced or secured by any one or more persons interested in the cleaning or draining of said stream, the County Commissioners shall proceed to have the same cleaned and drained, and the expense and cost of such cleaning and draining is hereby made a first lien upon the lands of such person or persons; and the said estimate of expense and cost shall be made up and signed officially by the County Supervisor, and filed and recorded in the Clerk's office in the same manner as now provided in case of mechanic liens, with like effect as to notice; and the County Commissioners, if the delinquent landowner or his agents refuse or neglect to pay said cost, shall proceed at once to foreclose said lien and collect the said costs by suit, and the sale of the lands of such delinquent, or so much thereof as may be necessary to pay said cost. And the said lands of such delinquent may be sold and the title thereof conveyed under the lien herein provided in the same manner as real estate mortgages are foreclosed.

1916, XXIX, 919.

(3095) § 5. Refund of Costs.—That upon such collection of the said costs by suit or otherwise, the said costs shall then be repaid to party advancing the same, or to the person or persons performing the work, as the same may be actually due and owing in any case.

1916, XXIX, 919.

(3096) § 6. This Article Supplementary.—That this Article is intended to be supplementary to any and all other Laws for cleaning or draining streams in Chester and Cherokee Counties and does not repeal the same.

1916, XXIX, 919.

YORK COUNTY.

Whereas, Under an amendment to the Constitution of this State, ratified and approved the 18th day of February, A. D. 1905, the General Assembly of this State was authorized to make and enact local and special laws concerning drainage; and,

Whereas, It will be conducive to the good health of the people of the county, and for the general public good to have all obstructions removed from all running streams of water, for the purpose of preventing all stagnant ponds of water, and for the purpose of draining the lands of said county: now, therefore,

(3097) § 1. Streams Required to Be Kept Open in York County.—That all landowners and their agents in the county of York, in this State, shall annually, between the 5th day of July and the 15th day of August, in each year, remove from the running stream of water upon their lands all trash, trees, rafts, timber, snags, overhanging limbs and any other objects that obstruct the natural flow of the water, and any object that tends to catch extraneous matters and cause rafts: *Provided, however*, That in the case of sickness or other unavoidable necessity, the County Commissioners, by and with the approval and consent of the Township Supervisor, may extend the time for draining such stream as in each case shall be deemed just and right.

1914, XXVIII, 656.

(3098) § 2. Duty of Township Commissioners to Give Notice.—It shall be the duty of the Township Commissioners in said County of York, annually, between the 1st day of July and the 10th day of July, to give written notice to each landowner, or his agent, by depositing said notice in the postoffice, in an envelope sealed and postage thereon prepaid, and addressed to said landowner, or his agent, at their last known postoffice address, requiring them and notifying them, between the 5th day of July and the 15th day of August, in each year, to remove all trash, trees, stumps, rafts, timbers, snags, overhanging limbs, or any other objects that obstruct the natural flow of the water, and anything that tends to catch extraneous matter and cause rafts, and said notice shall also inform said landowner, or his agent, that if they refuse or neglect to do this work within the time limited that the county, through its Board of County Commissioners, will proceed to have the work done and the cost of same will be made a first lien upon the property.

1914, XXVIII, 656.

(3099) § 3. Duty to Inspect.—It shall be the duty of the Township Commissioners and their overseers, annually, between the 15th and 20th days of August, in each year, to inspect all the running streams of water in their townships from where stream enters said townships to the point where they leave the same. And on the day fixed by the County Supervisor, in each year, which shall be on or before the 25th day of August, in each year, notify the County Supervisor and County Commissioners of all delinquents and furnish them with the names of all landowners who have neglected or refused to drain their streams in the manner and way hereinbefore provided, and

the said Township Commissioners and their assistants shall furnish said County Board of Commissioners with an estimate of the costs of draining said streams of said delinquents, as hereinbefore provided, and the County Board of Commissioners shall proceed forthwith to employ said Commissioners and their assistants to have said streams of said delinquents drained, as herein provided, and as economically as possible, and pay for same out of the ordinary county fund. And the expense of such drainage and cleaning of said streams shall be, and hereby is, made a first lien upon the lands of such person or persons in preference to all other liens upon same, except debts due the State, and the County Commissioners of York County are hereby authorized and empowered to collect the same by suit or otherwise in any Court of competent jurisdiction. And in case the delinquent landowner, or his agent, neglects or refuses to pay said costs, then the County Commissioners of said county are hereby authorized and empowered to obtain such judgment as may be necessary to sell said land of such delinquents, or, so much of their said land as may be necessary to pay said costs. And the said land of said delinquents may be sold and title made therefor in the same manner in which real estate mortgages are now foreclosed.

1914, XXVIII, 656.

CHAPTER XXXI.

Bridges, Turnpikes and Ferries.

ARTICLE 1. Bridges, 906.

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ARTICLE 3. Ferries and Bridges, 909.

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ARTICLE I.

Bridges.

(3100) § 1. **Railing to Be Put to Bridges.**—It shall be the duty of the owners of all toll bridges which have been or may hereafter be chartered by the Legislature to cause to be erected a good and sufficient railing, extending twenty feet from the ends of all such toll bridges, on each side of the road, passing over said toll bridge.

Civ. '12, § 2146; Civ. '02, § 1416; G. S. 1110; R. S. 1226; 1823, IX, 528.

Grigsby v. Chappel, 5 Rich. 443.

(3101) § 2. **Toll Bridges to Be Furnished With Lights.**—Every toll bridge within this State shall be furnished at night by the owners of the franchise or the keepers of the said bridges, respectively, with sufficient light or lights to enable persons traveling over the same to see their way and to avoid danger.

If any person or persons traveling over any of the said bridges at night shall, in any way, be injured, in person or property, for want of sufficient light, as herein provided for, the owner or owners of said bridge, whether an individual or a corporation, shall be liable to any person or persons so

injured, as aforesaid, either in person or property, for all damages such person or persons may sustain, to be recovered in any Court of the State having competent jurisdiction.

Any person violating the provisions of this Section shall also be deemed guilty of a misdemeanor.

Civ. '12, § 2147; Civ. '02, § 1417; G. S. 1111; R. S. 1227; 1881, XVII, 579.

(3102) § 3. How Bridges Are to Be Crossed.—No person shall drive lead, or, having charge thereof, shall permit any carriage, animal, or other thing, to travel over or on any bridge more than ten feet long, now constructed or hereafter to be constructed by the authority of the Legislature, in a gait faster than a walk, nor shall any person having charge of any carriage, animal, or thing, cause or permit it to stop on any such bridge. And every person so offending against this provision shall, on conviction thereof before any Magistrate of the county, pay a fine not exceeding ten dollars nor less than five dollars, and shall be further liable for all damages occasioned by such offense.

Civ. '12, § 2148; Civ. '02, § 1418; G. S. 1112; R. S. 1228; 1827, VI, 314.

Applies to bridges built by County under general law. *Culbertson v. Abbeville County*, 70 S. C. 457, 50 S. E. 33.

(3103) § 4. No Fire to Be Carried on a Bridge.—No person shall carry over, or otherwise have or place any fire on any wooden bridge, or bridge the superstructure whereof is of wood, now constructed, or hereafter to be constructed, by the authority of the Legislature; and every person so offending shall, on conviction before any Magistrate of the county, pay a fine not exceeding ten dollars nor less than two dollars, and shall be liable for all damages occasioned thereby.

Civ. '12, § 2149; Civ. '02, § 1419; G. S. 1112; R. S. 1229; 1827, VI, 314.

(3104) § 5. No Building to Be Erected Within Fifty Feet of Bridge Unless of Stone or Brick.—No person shall erect, or cause to be erected, any building or other edifice not constructed of stone or brick, and not roofed with tile or slate, so as not to be fireproof, within fifty feet of the wooden part of any bridge which is more than fifty feet long, constructed by authority of the Legislature; and if any person shall attempt such building or edifice, he may be enjoined from proceeding therein by the Court of Common Pleas or any Judge thereof; or if the same shall have been erected contrary to this Section, the said Court may order the same to be taken down and removed, and it shall be lawful for the proprietor or proprietors of the bridge, their officers or agent, to execute such order under the direction of the Sheriff of the county, or his lawful Deputy.

Civ. '12, § 2150; Civ. '02, § 1420; G. S. 1114; R. S. 1230; 1827, VI, 314.

(3105) § 6. Vessels Passing Under Bridges to Drop Anchor, Etc.—Penalty.—All vessels, boats and rafts passing under any bridge shall, before they come to the same, drop anchor and drag through under the same; and if any vessel, boat, or raft, shall pass, or attempt to pass, under any bridge without dragging as aforesaid, every such vessel, boat, or raft, shall forfeit the sum of fifty dollars, to be recovered by immediate seizure and detention of the said vessel, boat, or raft, until the payment of the said

sum, by information being given of the same to the Circuit Court in the county where the offense was committed; the money, when so recovered, to be applied for the rebuilding or keeping in repair such bridge.

Civ. '12, § 2151; Civ. '02, § 1421; G. S. 1115; R. S. 1231; 1785, IX, 294; 1785, IX, 311.

ARTICLE II.

Turnpike Roads and Bridges.

(3106) § 1. **Where Toll Gates Shall Not Be Erected.**—The proprietor or proprietors of a turnpike road shall not erect any toll gate across any public road now established by law, or which may hereafter be established by Act of the Legislature, and which is and shall be kept in repair by any means at the disposal of the County Commissioners, according to a general law of the State.

Civ. '12, § 2152; Civ. '02, § 1422; G. S. 1116; R. S. 1232; 1827, VI, 307.

(3107) § 2. **How Turnpikes Shall Be Graduated.**—Every turnpike road shall be so graduated as that no part of it shall rise above the horizon in a greater angle than three degrees, or a rise of one foot in nineteen feet of horizontal extension.

Civ. '12, § 2153; Civ. '02, § 1423; G. S. 1117; R. S. 1233; 1827, VI, 310.

(3108) § 3. **Wheels With Broad Tires to Pay Less Toll.**—All carriages, the tires of whose wheels are more than four inches broad, shall be subject to a toll on all the turnpike roads in this State, less by twenty-five per cent. than the toll which carriages of the same description having narrower tires are subject to; and all carriages, the tires of whose wheels are more than six inches broad, shall be subject to a toll on the roads less by fifty per cent. than the toll which carriages of the same description having tires less than four inches broad are subject to. The maximum of tolls established by any law granting the charter of a turnpike road, shall always have reference to carriages with tires less than four inches broad.

Civ. '12, § 2154; Civ. '02, § 1424; G. S. 1118; R. S. 1234; 1827, VI, 307.

(3109) § 4. **One Toll Gate Every Twenty Miles, or Ten Miles With Half Rate.**—For every twenty miles of turnpike road completed, one toll gate may be established, with the rates of toll allowed by law. Or for every ten miles of turnpike road completed, one toll gate may be established, with half the said rates of toll.

Civ. '12, § 2155; Civ. '02, § 1425; G. S. 1119; R. S. 1235; 1827, VI, 307.

(3110) § 5. **Width of Turnpike Roads and Bridges.**—The bed of every turnpike road shall not be less than thirty nor more than forty feet wide, exclusive of the ditches and grounds shaded with trees, except where the bed runs on the top of a causeway more than three feet high, or is cut more than three feet deep in the solid earth, in either of which cases the bed of the road shall be not less than twenty-four feet wide. Every bridge on a turnpike road shall be as wide as the bed of the road, except where the

bridge shall be more than twelve feet long, in which case it must be at least twenty-two feet wide, and shall have side railings at least three feet high, or parapet walls.

Civ. '12, § 2156; Civ. '02, § 1426; G. S. 1127; R. S. 1236; 1827, VI, 310.

(3111) § 6. **All Traveling to Be on the Right of the Center.**—Every person, carriage, animal or other thing, traveling or passing on or over any turnpike road, causeway, or bridge, now constructed, or hereafter to be constructed, by authority of the Legislature, shall keep entirely on the right of the center of the said road, causeway, or bridge, so as not to obstruct the passage of any other person, carriage, animal, or thing, on the other side of the center thereof.

Civ. '12, § 2157; Civ. '02, § 1427; G. S. 1130; R. S. 1237; 1827, VI, 314.

Smook v. Martin, 103 S. C. 472, 94 S. E. 869.

ARTICLE III.

Ferries and Bridges.*

(3112) § 1. **Charters or Renewals Granted by County Board of Commissioners.**—When the charter of any ferry has expired or is about to expire, the same may be renewed or rechartered; and when a ferry is needed where no ferry has been heretofore chartered, the same may be chartered in the following manner: By application to the County Board of Commissioners, instead of to the General Assembly; and where the ferry is across a river at a point where such river is the boundary between two or more counties, then to the respective Board of Commissioners of the counties concerned. The application shall be by petition after the notice now required by law, and after strictly observing and complying with all prerequisites required by law before the granting of such charters.

Civ. '12, § 2158; Civ. '02, § 1428; G. S. 1120; R. S. 1238; 1899, XXIII, 85.

*Ferries have no legal or necessary connection with land, but are public franchises granted to private persons for a limited time. *Morse v. Garner*, 1 Strob. 514, 47 Am. Dec. 565. Rent reserved on lease of ferry is not extinguished by sale of land on one side to lessee. *Gourdine v. Davis*, 1 Bailey 469. They cannot be established without permission of the sovereign power. *Stork v. McGowan*, 1 Nott & McC. 337.

(3113) § 2. **How, to Whom and How Long Granted.**—Such charter shall be to the applicant (petitioner), his or her heirs and assigns, for a term not to exceed twenty-one years, and shall be subject to revocation at any time by the County Board of Commissioners which granted or renewed the same, for such cause or causes as to them may seem just and proper.

Civ. '12, § 2159; Civ. '02, § 1429; G. S. 1120; R. S. 1238; 1899, XXIII, 85.

Renewal of charter held to carry appendant right-of-way ferry with it. *Guignard v. Kinsler*, 4 Rich. 330.

(3114) § 3. **Rates of Toll.**—The following shall be the maximum rates of toll that shall be charged at each public ferry in this State chartered under the provisions of this Article: For every passenger, five (5) cents. Except in the case of public steam ferries, where the maximum rate of (10) cents for a single trip or passage may be charged; for every head of sheep, goats, hogs and other small animals, five (5) cents; for every horse, mule, and head of cattle, ten (10) cents; for every passenger with single

horse, mule, or ox or other riding animal, twenty (20) cents; for every single horse buggy, cart or other vehicle, twenty-five (25) cents; for every two-horse wagon or other vehicle, fifty (50) cents; for every three-horse wagon or other vehicle, sixty-five (65) cents; for every four-horse wagon or other vehicle, seventy-five (75) cents: *Provided*, That it shall be within the province and power of the County Board of Commissioners of the several counties of the State to fix lower rates of toll for any one or more specific ferries in any county as the special local conditions and circumstances may demand; and in cases of ferries crossing rivers or streams forming boundary lines between any two counties, the power and province aforesaid shall rest in the County Boards of Commissioners of said two counties.

Civ. '12, § 2160; Civ. '02, § 1430; G. S. 1120; R. S. 1238; 1899, XXIII, 85; 1901, XXIII, 722.

(3115) § 4. Charters Granted to Be Reported to Secretary of State.—The County Boards of Commissioners of the various counties of the State are hereby authorized and empowered to grant charters for ferries, and to establish ferries under the provisions of this Article and shall report all such charters to the Secretary of State immediately after they are granted.

Civ. '12, § 2161; Civ. '02, § 1431; 1899, XXIII, 85.

(3116) § 5. Form of Charter.—The following shall be a sufficient form for such charter: The State of South Carolina, County of, on the petition of, and it appearing that the public good will be observed thereby, the (or a) ferry across river at, known as (or to be known as) ferry, is hereby chartered (or rechartered), and vested in, the said petitioner, his (or her) heirs, executors, administrators or assigns, for the term of years, subject, however, to be revoked in the discretion of the County Board of Commissioners at any time. Given under our hands and seals of office, this the . . . day of, A. D. 19. . .

Civ. '12, § 2162; Civ. '02, § 1432; 1899, XXIII, 85.

(3117) § 6. Schedules of Trips at Public Steam Ferries—Hours—Penalty for Delay.—Each and every public steam ferry in this State, heretofore or hereafter chartered, or now existing under and by authority of any general or special Act, shall operate daily and with only such intermission as is reasonable, commencing at 6 a. m. and ending not earlier than 9 p. m. each day. If any person or persons shall meet with unreasonable delay at any of the public steam ferries established by law in this State, every such person or persons may, by action in any Court of competent jurisdiction, recover from the proprietors or owners of such ferry, the sum of ten (10) dollars for each and every hour of such unreasonable delay.

Civ. '12, § 2163; Civ. '02, § 1433; 1901, XXIII, 722.

(3118) § 7. Keepers of Ferries to Keep Banks in Order.—It shall be the duty of every person keeping a ferry to keep in good order the banks of the river or creek at such ferry. And in case of neglect, he shall be subject to a fine of three dollars for each and every day of such neglect; the same to be recovered before any Magistrate having competent jurisdiction.

Civ. '12, § 2164; Civ. '02, § 1434; G. S. 1121; R. S. 1239; 1809, IX, 443.

(3119) § 8. Aprons to Be Attached to Ferry Flats.—Each and every ferry owner or keeper in this State shall provide and keep attached to each end of his ferry flat or flats a good and sufficient apron, or, not having such aprons, shall keep, at each and every landing place, a good and sufficient abutment or inclined plane for the same; and for default or neglect in so doing he shall be fined in a sum not exceeding ten dollars for every three days' continuation of such default, to be recovered in any Court having competent jurisdiction of the same.; one-half thereof to the use of the State, and the other half to the informer.

Civ. '12, § 2165; Civ. '02, § 1435; G. S. 1122; R. S. 1240; 1824, IX, 544.
Miles v. James, 1 McC. 157.

(3120) § 9. Slips to Be Kept in Repair by Owners of Ferries.—All persons who may have charters for any ferry, where it is necessary that slips should be used, shall keep the same in repair at their private expense.

Civ. '12, § 2166; Civ. '02, § 1436; G. S. 1123; R. S. 1241; 1821, IX, 515.

Persons are forbidden to transport passengers within a mile of an established ferry, except in case of detention for a half hour at such ferry. See Criminal Code.
Generally, as to liabilities of ferrymen, common carriers. Clark v. Edisto Island Ferry Co., Riley 300; Rutherford v. McGowan, 1 N. & McC. 17; Cook v. Gourdin, 2 N. & McC. 19; even where property is under control of owner: Miles v. James, 1 McC. 157; Cohen v. Hume, 1 McC. 439; owner of private ferry: Littlejohn v. Jones, 2 McMul. 365, 39 Am. Dec. 132. As to rights of, McGowan v. Stark, 1 N. & McC. 387, 397; Frazer v. Drayton, 2 N. & McC. 471; Puckett v. Smith, 5 Strob. 26.

(3121) § 10. Tolls Remitted in Certain Cases.—It shall not be lawful to exact from the citizens of this State, nor shall any of them be compelled to pay, any toll for crossing any ferry within the limits of this State, or for the crossing of their horses, cattle or other property, at any such ferry, when the boat or boats, flat or flats, kept at said ferry, is or are not used by them for said purpose.

Civ. '12, § 2167; Civ. '02, § 1437; G. S. 1125; R. S. 1242; 1813, IX, 471.

(3122) § 11. Private Ferries to Pass Exempt Persons Free.—The keepers of all private ferries, usually putting over passengers for hire, shall be obliged to pass over, free of charge or expense, all such persons as are by law exempted from the payment of ferriage at ferries established and allowed by Act of the Legislature.

Civ. '12, § 2168; Civ. '02, § 1438; G. S. 1126; R. S. 1243; 1807, IX, 430.

(3123) § 12. Toll at Bridges and Ferries Chartered Since December 1, 1845.—At all ferries and bridges, chartered since the first day of December, 1845, the same and no higher toll shall be demanded, paid, or allowed on any wagon, buggy, barouche, or other carriage, drawn by a single horse, mule, or other animal, than is allowed, paid, or demandable for chairs, gigs, or sulkies, any law, custom, or usage to the contrary notwithstanding.

Civ. '12, § 2169; Civ. '02, § 1439; G. S. 1133; R. S. 1244; 1845, XI, 350.

(3124) § 13. Owners of Bridges Destroyed May Establish Temporary Ferries—Proviso.—Where any bridge has been, or shall hereafter be, erected over any river in this State, and the same has been, or shall hereafter be, destroyed or injured by freshets or otherwise, so as to be impassable, the company or individual owning such bridge is authorized to establish a ferry at some convenient place within one mile of the site of the said bridge, and to keep the same and receive the emoluments thereof, not

exceeding in amount of ferriage the established tolls receivable at said bridge during the time the said bridge shall be rebuilding and repairing: *Provided*, That the rebuilding or repairing of the said bridge shall be begun within six months, and shall be finished within two years, from the time the said bridge shall be destroyed or so injured; and, during the time aforesaid, all other persons shall be excluded from establishing any ferry within three miles of the site of the said bridge, excepting from the operation of this provision any ferry before that time established by law, and at the time of the destruction or injury of the said bridge, regularly kept and used: *Provided, also*, The company or individual, as the case may be, shall pay all the damages which may be sustained by any person, consequent upon the establishment of such ferry, to be assessed in the same manner as is established for the settlement of the damages done to individuals by turnpike roads passing through their lands.

Civ. '12, § 2170; Civ. '02, § 1440; G. S. 1134; R. S. 1245; 1831, IX, 594.

(3125) § 14. Tolls to Be Conspicuously Posted.—It shall be the duty of the managers and attendants of all public ferries and bridges, having the privilege by law to charge toll for the passage of persons, animals and vehicles, or other goods, to cause the rate chargeable for such passage to be posted in legible letters or characters in some conspicuous place, stating the legal amount to be paid, so as to be read for information without inconvenience, at the approach to such ferry or bridge.

Civ. '12, § 2171; Civ. '02, § 1441; G. S. 1135; R. S. 1246; 1799, IX, 396; 1807, IX, 429; 1869, XIV, 209.

Evidence to show violation, sufficiency. *Frazier v. Drayton*, 1 N. & McC. 471. Party accused to use ferry presumed to know the rates though not posted. *Addison v. Hard*, 1 Bailey 431.

(3126) § 15. Persons Fording Not to Pay Toll—Obstruction of Fords.—If the water at any bridge or ferry should be so low as to enable persons with their horses or cattle to ford the same, the proprietors of the ferry or bridge shall not be allowed to take any toll from the person or persons so fording the same. And no old accustomed ford, or the roads leading to or from such fords, within this State, shall be obstructed; and the Superintendents of highways, in their respective highway districts, are required to keep the roads leading to or from such old accustomed fords open and in good repair: *Provided*, Nothing herein contained shall infringe, or be construed to infringe, the charter granted to any companies to promote the inland navigation of this State.

Civ. '12, § 2172; Civ. '02, § 1442; G. S. 1137; R. S. 1247; 1792, XI, 357; 1879, XVII, 144.

(3127) § 16. Distance Between Ferries—How Ascertained.—In all disputed cases whatsoever, to arise under any Act for the establishment of ferries and bridges in this State, the disfranchising space, whether within three or more miles, shall be admeasured, either by the distance by water or the approachable road, and in no case by a straight line, except where a travelable and practicable road exists in such straight line, or might be as easily made, and at as little expense and inconvenience to the public, as in any other cause.

Civ. '12, § 2173; Civ. '02, § 1443; G. S. 1140; R. S. 1249; 1800, IX, 399.

Remedy for violation of ferry franchises. *Stark v. McGowan*, 1 Nott & McC. 387; *Gibbes v. Beau fort*, 20 S. C. 213. Measure of damages. *Puckett v. Smith*, 5 Strober, 26, 53 Am. Dec. 686.

(3128) § 17. Passengers at Ferries to Be Transported Immediately, Day and Night.—All managers and keepers of public ferries shall afford applicants immediate passage across the ferry at all hours, day and night, at the usual fees and charges.

Civ. '12, § 2174; 1904, XXIV, 443.

ARTICLE IV.

Miscellaneous Provisions.

(3129) § 1. Commissioners to Be Appointed to Superintend Works.—The proprietor or proprietors of each and every bridge, ferry, or turnpike road, and the County Board of Commissioners of the county to which the work is subject, shall appoint, immediately after the completion of the said work, and before any toll or ferriage is received thereat, and at the expiration of every three years thereafter, three persons, who shall be Commissioners of the said work; and where the above named parties do not agree, or whenever the Legislature shall, by Resolution or Act, order a new Commission, the Commissioners shall be appointed by the Court of Common Pleas of the county in which the whole or any part of the said work may be situated; but, before such appointment shall be made, the Attorney General or Solicitor of the Court shall have notice of the day on which application for such appointments will be made. And in case the proprietor or proprietors shall not apply for the appointment of Commissioners on or before the second day of the next term after such application to the Court shall become necessary, the Attorney General or Solicitor of the Circuit shall make application to the Court for such appointment, which may be made without notice to the proprietor or proprietors.

Civ. '12, § 2175; Civ. '02, § 1444; G. S. 1141; R. S. 1250; 1827, VI, 811.

(3130) § 2. Work Examined by Commissioners—Duty If Work Is in Dangerous Condition.—The Commissioners of each and every bridge, ferry and turnpike road shall have full power, in addition to the authority hereinbefore given them, and they, or a majority of them, are hereby required to examine the works for which they may be appointed; and in case they shall find the said work, or any part thereof, out of repair, or not in good order for traveling or passing, or in any way difficult or dangerous to be traveled or passed, it shall be the duty of the said Commissioners, or a majority of them, to make and publish in the nearest gazette, and to post up at all places where tolls or ferries are received, an order that the proprietor or proprietors shall not receive tolls for traveling over or passing the said bridge, ferry, or turnpike road, as the case may be; and after the said order shall be made and posted up, as aforesaid (whether published in the said gazette or not), and until the said order shall be repealed, each and every toll gate of the said work shall be kept open, and it shall not be lawful for the proprietor or proprietors thereof to receive any toll or ferriage for traveling or passing over the said work, or any part thereof; and the proprietor or proprietors, keeper or keepers, of a ferry, during the continuance of such order respecting it, shall give the same attendance

thereon, and convey all persons, horses, cattle and carriages over the same, as if no such order had been made. Whenever any member of the said Commission may know, of his own observation, or be informed by the affidavit of any other person, taken before any Magistrate, or any member of the said Commission (who, for the purpose, are hereby authorized to administer oaths), that the said works, or any part thereof, are out of repair, or difficult or dangerous, as aforesaid, he shall summon the other members to attend on the work complained of, and thereupon the said Commissioners shall make or reject the said order, as the nature of the case may require; and it shall also be the duty of the said Commissioners, on the written summons of the proprietor or proprietors, to attend and repeal said order, whenever the cause for making the same may have been removed. Whenever the said Commissioners may refuse to make or repeal such order, when they ought so to do, they may be compelled thereto by *mandamus*.

Civ. '12, § 2176; Civ. '02, § 1445; G. S. 1142; R. S. 1251; 1827, VI, 311.

(3131) § 3. Oath to Be Taken by Commissioners.—Each Commissioner of each and every bridge, ferry and turnpike road, before entering on the duties of his office, shall take and subscribe an oath or affirmation to the following effect: "I, A B, one of the Commissioners of the bridge (ferry, or turnpike road, as the case may be), do solemnly swear (or affirm) that I will, to the best of my judgment and ability, faithfully and impartially discharge the duties required of me by law, as Commissioner aforesaid."

Civ. '12, § 2177; Civ. '02, § 1446; G. S. 1143; R. S. 1252; 1827, VI, 311.

(3132) § 4. Tolls to Be Paid Before Passing Gate.—The tolls demandable and payable at the toll gate of any bridge, ferry, or turnpike road, now constructed, or hereafter to be constructed, by authority of the Legislature, shall be paid, if required, before passing the gate. The collector at a gate or ferry shall make change of all coins or bills offered him in payment of tolls, under the value of five dollars, except six and a quarter and five cent bills or coins, which shall always be paid to the collector where a less sum is due to him for tolls, unless the exact change shall be tendered him in the copper coin of the United States.

Civ. '12, § 2178; Civ. '02, § 1447; G. S. 1144; R. S. 1253; 1827, VI, 309.

(3133) § 5. Warrant May Be Issued to Collect Tolls.—In case the toll is not paid before passing the gate of any turnpike road, bridge, or ferry, and shall be refused or neglected to be paid immediately after, the collector may issue his distress warrant for the same, and cause it to be levied on the carriage, horse, animal, or other thing, which has incurred the demand for toll, or any article or thing conveyed in such carriage, or on such horse, animal, or thing, and the thing so distrained shall be disposed of in the same manner as goods under execution.

Civ. '12, § 2179; Civ. '02, § 1448; G. S. 1145; R. S. 1254; 1827, VI, 309.

(3134) § 6. Persons Exempt from Toll.—Exemption from the payment of toll at any bridge, ferry, and turnpike road, hereafter chartered, shall be granted to every regularly ordained or licensed minister of the gospel; to every member of the Legislature, going to or from its sittings; school

trustees, when they are traveling on official business; and all persons going to and returning from divine service on Sundays; and to every person traveling in the performance of any civil or military duty, for which he receives no salary or reward; and to every person whose duty it may be made by law to examine the said work, with not more than one servant, a carriage and two horses. In time of war or insurrection, troops, with their baggage, artillery, and munitions of war, exclusively in the service of this State, shall pass every bridge, ferry, and turnpike road, at one-half of the established toll or ferriage.

Civ. '12, § 2180; Civ. '02, § 1449; G. S. 1146; R. S. 1255; 1827, VI, 310; 1882, XVIII, 229.

(3135) § 7. Rate of Toll—Foot Passengers Exempt.—The rate of tolls receivable at any bridge, ferry, or turnpike gate, shall be as follows, unless otherwise expressed in the Act granting or authorizing the charter:

For every carriage with four wheels, for the conveyance of persons (except stage coaches running regularly on the road), drawn by four horses or mules.....	\$1.00
Drawn by three horses or mules.....	.75
Drawn by two horses or mules.....	.50
For every carriage with four wheels, drawn by six horses, oxen or mules	.75
Drawn by five horses, oxen or mules.....	.62½
Drawn by four horses, oxen or mules.....	.50
Drawn by three horses, oxen or mules.....	.37½
For every carriage with two wheels, for the conveyance of persons, drawn by two horses or mules.....	.50
For every carriage, other than for the conveyance of persons, drawn by four horses or mules.....	.50
Drawn by three horses or mules.....	.37½
For every other carriage.....	.25
For every person on horseback, or leading or driving a horse or mule	.12½
For every led horse or mule, accompanying a person on horseback..	.06¼
For every horse or mule in drove.....	.04
For every head of cattle.....	.03
For every hog, sheep or goat.....	.02
For every animal for show, in addition to the carriage in which it may be conveyed.....	.50
For every foot passenger crossing a bridge.....	.06¼

But no foot passenger shall be liable to pay toll for passing a turnpike gate.

Civ. '12, § 2181; Civ. '02, § 1450; G. S. 1147; R. S. 1256; 1827, VI, 308.

(3136) § 8. Penalty for Delaying Passengers.—If any person or persons shall meet with unnecessary delay at any of the public ferries, toll bridges, or causeways established by law, every such person or persons may recover from the persons keeping such ferry, bridge, or causeway, for every hour of such unnecessary delay, the sum of ten dollars, to be recovered, on application from the party aggrieved, by action before any neighboring Magistrate.

Civ. '12, § 2182; Civ. '02, § 1451; G. S. 1148; R. S. 1257; 1788, IX, 312.

CHAPTER XXXII.**The Saluda Mountain Road.**

(3137) § 1. Interests of State Vested in County of Greenville.—All the right, title and interest of the State of South Carolina in and to the State road known as the Saluda Mountain Road, running from Greenville County, in said State, across the Saluda Mountain, to Henderson County, in North Carolina, is hereby assigned, transferred and set over to Greenville County.
Civ. '12, § 2183; Civ. '02, § 1452; R. S. 1260; 1882, XVIII, 95.

(3138) § 2. Declared a Public Highway, Under Charge of County Board of Commissioners.—Said State road known as the Saluda Mountain Road is hereby declared a public highway, and the County Board of Commissioners of Greenville County are hereby authorized and required to maintain the same.
Civ. '12, § 2184; Civ. '02, § 1453; R. S. 1261; 1882, XVIII, 95; 1883, XVIII, 295.

(3139) § 3. Regulations as to Traveling on.—On the said road, road wagons drawn by four or more horses, mules or oxen shall be required to keep on the timbered ways, where the road is timbered, unless it shall be necessary for them to leave these ways for the purpose of passing other vehicles or avoiding broken places.
Civ. '12, § 2185; Civ. '02, § 1454; G. S. 1158; R. S. 1262; 1883, VI, 493.

(3140) § 4. Order of Traveling Prescribed—Exceptions.—In traveling on every part of the said road, the following order shall be preserved, to wit: All carriages of burthen, or for any other cause, shall keep on the right side of the center of the road, so as not to interfere with carriages traveling on the other side, except in the following cases, to wit: Where the center of the road is timbered less than fourteen feet wide, the following order shall be observed, to wit: The center or timbered part of the road may be kept—

1. By loaded wagons traveling toward the mountains, excluding all others therefrom.

2. All descending loaded wagons and carriages may keep the side of the road next to the mountain and farthest from the valley.

Civ. '12, § 2186; Civ. '02, § 1455; G. S. 1159; R. S. 1263; 1824, IX, 549.

CHAPTER XXXIII.**Dams and Drains, and Drainage Generally.**

ARTICLE 1. Dams and Drains, 917.

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ARTICLE I.

Dams and Drains.

(3141) § 1. Dams Erected or Water Let Off to Injury of Others.—No person shall be permitted or allowed to make or keep up any dams or banks to stop the course of any waters so as to overflow the lands of another person without the consent of such person first had and obtained; nor shall any person be permitted or allowed to let off any reserved water to injure the crops upon the grounds of other persons.

Civ. '12, § 2187; Civ. '02, § 1456; G. S. 1169; R. S. 1264; 1744, III, 609; 1783, IV, 540.

Damages for violation of. *O'Melvaney v. Jagers*, 2 Hill 364; *State v. Knotts*, 2 Speer 692; *Middleton v. Gregorie*, 2 Rich. 631; *Brisbane v. O'Neill*, 3 Strob. 348; *Garrett v. McKie*, 1 Rich. 444; *Lamar v. R. R.*, 10 S. C. 476; *Lynn v. Thompson*, 17 S. C. 137; *Hellams v. Switzer*, 24 S. C. 43; *Himes v. Jarrett*, 26 S. C. 480, 2 S. E. 393.

Right of riparian owner in waters, reasonable use. *White v. Whitney Mfg. Co.*, 60 S. C. 254, 38 S. E. 456.

Railroad having obtained right-of-way across stream, is not liable except for negligence in obstructing same. *Lampley v. A. C. L. R. R. Co.*, 71 S. C. 156, 50 S. E. 773.

(3142) § 2. Dams to Be Opened by March 10—Penalty.—Every person who shall keep water during the winter upon grounds on which rice shall be planted the ensuing spring, shall, on the tenth day of March in each year, open the dams which keep up the water in a sufficient manner for letting off the same; and if any person or persons shall neglect so to do on or before the time aforesaid, he or she shall forfeit and pay the sum of five hundred dollars for every such neglect, to be recovered upon the complaint of any person or persons through whose lands such water may pass, and it shall and may be lawful for such person to sue for the same, in any Court of competent jurisdiction in the county where such offense is committed, and the one-half thereof shall be paid to the informer, and the other half to the poor of such county.

Civ. '12, § 2188; Civ. '02, § 1457; G. S. 1170; R. S. 1264; 1786, IV, 722.

(3143) § 3. Mode of Redress If Dams Are Not Opened at Proper Time—Proviso.—Where any person has neglected to open his or her dams in a sufficient manner for letting the water off the grounds before described, on or before the tenth day of March in every year, in manner aforesaid, it shall and may be lawful for any person who may be affected thereby, at any time after the day aforesaid in every year, either by himself, or herself, or his or her overseer, agent, attorney, or trustee, to apply to any Magistrate in the county for a warrant of survey, who shall thereupon notify the defendant of the complaint made against him, with the time and place of meeting and summon three freeholders, disinterested persons, of the neighborhood where the cause of complaint shall lie, one of whom shall be chosen by the defendant, and, in case of his refusal, then by the Magistrate, another by the complainant, and the third by the Magistrate, who (being first sworn before such Magistrate to determine the matter in dispute justly and impartially) shall forthwith proceed to view the obstructions complained of, and if, on view thereof, the said freeholders, or a majority of them, shall be of the opinion that such obstructions do or may prevent the party complaining from planting his or her crop of rice in proper time then an in such case it shall and may be lawful for the said freeholders, or a majority of them, to cause the same to be immediately opened or

removed in any way or manner they shall think necessary for the purpose of giving the most effectual relief to the party complaining, whereupon the defendant shall be obliged to pay all expenses attending such survey: *Provided, always*, That nothing herein contained shall extend, or be construed to extend, to impose any penalty on any person or persons, or to cause his or her dams or banks to be opened, who shall have made through his or her own lands a sufficient drain or drains (of which the said freeholders shall be the judges) to carry off the waters passing through the same in as expeditious a manner as they could have passed through the natural course or channel in case no such banks had been erected.

Civ. '12, § 2189; Civ. '02, § 1458; G. S. 1171; R. S. 1266; 1744, III, 609; 1786, IV, 723.

(3144) § 4. Redress for Obstructing Surplus Water on Rice Ground.—It shall and may be lawful for any person, at any time between the tenth day of March and the first day of November in every year, to apply in manner aforesaid for a warrant of survey on any obstructions which he or she may conceive do impede the conveying off any surplus water on his or her rice grounds, and which, by remaining thereon, may prove any way injurious, or shall, at any time hereafter, make or keep up any dam or dams which shall stop the course of any water so as to overflow the lands of any other person or persons whatever, without the consent of such person or persons first had and obtained, and which shall be injurious to the said person or persons, then, in either of such cases, the said Magistrate and the freeholders by him appointed shall proceed in the same manner as is directed in the foregoing Section: *Provided, always*, That if, in either of the cases last mentioned, the defendant shall neglect or refuse to attend at the survey to choose a freeholder, as aforesaid, then the three freeholders who shall have been summoned by a Magistrate shall proceed to determine the matter in dispute in the same manner as if the defendant had been present and had chosen a freeholder, which said freeholder shall, in both cases, certify to the said Magistrate, under their hands, what shall have been done by them in the premises, the expenses attending which survey shall be paid by the party against whom the award of the said freeholders shall be given.

Civ. '12, § 2190; Civ. '02, § 1459; G. S. 1172; R. S. 1267; 1786, IV, 723.

(3145) § 5. Penalty on Replacing Obstructions and Opposing Openings of Dams.—If any person, either by himself or herself, or his or her overseer, agent, trustee, or attorney, or servant, or any other person or persons acting for him or her, shall presume to stop up any dam or dams, or replace any obstructions, in any manner whatsoever, which has or have been ordered to be opened or removed by any freeholders as aforesaid, or which has or have been opened or removed by himself or herself, or his or her overseer, agent, attorney, trustee, or by order of either of them, on the said tenth day of March, until the tenth of July, every person so offending shall forfeit and pay the sum of one thousand dollars, to be recovered and disposed of in manner as aforesaid; and if any person shall presume to obstruct, impede, or otherwise hinder or interrupt the opening of any dam or dams, or the removing of any obstructions ordered to be opened or removed by the freeholders as aforesaid, every person so offending shall forfeit and pay

for every such offense the sum of two thousand five hundred dollars, to be recovered and disposed of in manner aforesaid.

Civ. '12, § 2191; Civ. '02, § 1460; G. S. 1173; R. S. 1268; 1784, IV, 724.

(3146) § 6. Strengthening Inadequate Dams—Waste Ways—Penalty for Neglect or Omission — Proviso. — Where any dam or dams have been made, or shall hereafter be made, for the purpose of forming reservoirs of water, without a sufficient wasteway, and which now are, or shall hereafter be found, inadequate to sustain the weight of water against the same, the owner of such dam or dams shall immediately, or as soon as may be, cause the same to be enlarged and strengthened, where they are already made and are insufficient, and such as may hereafter be made, to be erected in a substantial manner, with a sufficient wasteway; and if any person shall neglect to strengthen his or her dam or dams already erected for the purposes aforesaid, where necessary, or shall hereafter erect any dam or dams for the purpose aforesaid, and which (in either case) in the opinion of three freeholders, or a majority of them (to be appointed and proceed in manner hereinbefore mentioned respecting surveys of dams across rice grounds), is or are not made and regulated in manner hereby prescribed, every person so offending shall, on complaint of any person or persons liable to be affected thereby, and on conviction thereof in any Court of record in the county where such offense is committed, forfeit and pay the sum of five hundred dollars for every such offense, which may be sued for, and, if recovered, be disposed of in manner aforesaid: *Provided always, nevertheless,* That nothing herein contained shall extend, or be construed to extend, to subject any persons who have made or shall make any banks or dams to reserve water, to pay any damages which may be sustained by the breaking of the said banks or dams when it is occasioned by such violent rains and floods as would have caused such damages to be sustained on the lands in question, though no such bank or dam had been made, whereof the freeholders aforesaid shall be the judges, anything herein to the contrary notwithstanding.

Civ. '12, § 2192; Civ. '02, § 1461; G. S. 1174; R. S. 1269; 1786, IV, 724; 1744, III, 610.

(3147) § 7. Only Residents to Be Summoned to Survey Rice Lands—Compensation — Penalty for Nonattendance. — Every person to be summoned as aforesaid shall be a resident in the county and neighborhood where his attendance shall be required, and, upon being duly summoned, and attending any survey as aforesaid, shall be entitled to receive the sum of one dollar and fifty cents per day, and five cents mileage going to and returning from the place of meeting, for every such attendance, to be paid by the person against whom the verdict of the freeholders shall be given; and in case of the nonattendance of any person, a resident, and summoned as aforesaid (unless prevented by sickness, or some reasonable excuse to be made, upon oath, to the satisfaction of such Magistrate), then, and in such case, every such person so neglecting to attend when summoned as aforesaid, and without sufficient excuse as aforesaid, shall forfeit and pay the sum of fifty dollars per day for every such neglect or refusal.

Civ. '12, § 2193; Civ. '02, § 1462; G. S. 1175; R. S. 1270; 1786, IV, 724; 1870, XIV, 399.

(3148) § 8. Penalty on Magistrate for Neglect of Duty Relating to Dams and Drains.—In case any Magistrate shall neglect or refuse to put the provisions of this Chapter in execution, he shall forfeit the sum of twenty dollars, which penalty shall and may be sued for and recovered by action in any Court of record in this State, and shall be applied one-half to the State, to be disposed of by the General Assembly, and the other half to him or them who will inform and sue for the same.

Civ. '12, § 2194; Civ. '02, § 1463; G. S. 1176; R. S. 1271; 1744, III, 610.

(3149) § 9. Persons Not to Keep Water on Other's Lands.—Nothing contained herein shall be construed to authorize any person or persons to keep water at any time on any lands other than his, her, or their own.

Civ. '12, § 2195; Civ. '02, § 1464; G. S. 1177; R. S. 1272; 1799, V, 356.

(3150) § 10. Provision for Drainage, Except in Certain Counties—Duty and Powers of Clerk of Court of Common Pleas.—The Clerk of the Court of Common Pleas of any county of the State of South Carolina, except the Counties of Abbeville, Aiken, Anderson, Cherokee, Chester, Chesterfield, Clarendon, Edgefield, Fairfield, Greenville, Laurens, Lee, Lexington, Marlboro, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union and York, shall have jurisdiction, power, and authority to establish a levee or drainage district or districts in his county, and to locate and establish levees, drains or canals, and cause to be constructed, straightened, widened or deepened, any ditch, drain or watercourse, and to build levees or embankments and erect tide gates and pumping plants for the purpose of draining and reclaiming wet, swamp or overflowed lands; and it is hereby declared that the drainage of swamps and the drainage of surface water from agricultural lands and the reclamation of tidal marshes shall be considered a public benefit and conducive to the public health, conveniences, utility and welfare: *Provided*, In Horry County the County Commissioners shall have the power and perform the duties required of the Clerk herein.

Civ. '12, § 2196; 1911, XXVII, 92; 1913, XXVIII, 16; 1914, XXVIII, 455, 460, 514; 1916, XXIX, 748; 1920, XXXI, 804.

(3151) § 11. Petition—Bond—Board of Viewers.—Whenever a petition, signed by a majority of the resident landowners in a proposed drainage district, or by the owners of more than half the land in acreage which will be affected by, or assessed for, the expense of the proposed improvements, shall be filed in the office of the Clerk of Court of Common Pleas of any county in which a part of said lands are located, setting forth that any specific body or district of land in the county and adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow or too wet for cultivation, and the public benefit or utility, or the public health, convenience or welfare will be promoted by draining, ditching or leveeing the same, or by changing or improving the natural watercourses, or by the installing of tile systems, and setting forth therein, as far as practicable, the starting point, route and terminus and lateral branches, if necessary, of the proposed improvement, and there is filed therewith a bond for the amount of one hundred (\$100.00) dollars per mile for each mile of the proposed improvement, signed by two or more

sureties, or by some lawful and authorized surety company, to be approved by the Clerk of said Court of Common Pleas, conditioned for the payment of all expenses and costs incurred in the proceedings in case the Clerk of Court does not grant the prayer of said petition; the said Clerk shall issue a summons, to be served on all the landowners who have not joined in the petition, and whose lands are included in the proposed drainage district, so far as the said Clerk has been able to ascertain the same: *Provided*, That the failure to serve those landowners whose names were unknown to the Clerk shall have no effect upon the proceedings, if they are made parties to the proceedings, as hereinafter provided. Upon the return day the said Clerk shall appoint a disinterested and competent Civil and Drainage Engineer, and two resident freeholders of the county or counties in which said lands are located, as a Board of Viewers, to examine the lands described in the petition and make a preliminary report thereon. The Board of Viewers shall have the right to borrow a sufficient sum of money to defray the costs and expenses aforesaid, including the compensation of the Engineer and his assistants, not exceeding the amount of said bond, and to pledge the same bond as security for such loan: *Provided*, Said sum so borrowed shall be deposited with the Clerk of Court to be disbursed by him from time to time in payment of the aforesaid costs and expenses, including the compensation of the Engineer and his assistants. If the proposed district is finally established, such loan, with interest, shall be repaid from the assessment hereinafter authorized, and if no such loan is procured, the aforesaid costs and expenses, including the compensation of the Engineer and his assistants, shall be paid from said assessment; but if the petition is dismissed at the cost of the petitioners the sureties on said bond shall be liable, to the extent of the amount of said bond, for the aforesaid costs and expenses, including the compensation of the Engineer and his assistants, together with interest on loan if procured as aforesaid. When the lands proposed to be drained and created into a drainage district are located in two or more counties, the Clerk of Court of Common Pleas of either county shall have and exercise the jurisdiction herein conferred, and the venue shall be in that county in which the petition is first filed. The law and rules of the Civil Code shall be applicable to this Act as far as may be practicable. The summons may be served by application as to any defendants who cannot be personally served, as provided by law. The service of such notice upon the station agent of any railroad, interurban, or other companies in any county in which the right of way of such company will be affected by such drainage will be sufficient notice to such railroad or other companies, and in case there be no agent of such companies in such county such companies shall be notified in the same manner as nonresident landowners.

Civ. '12, § 2197; 1911, XXVII, 92; 1914, XXVIII, 455; 1915, XXIX, 199; 1920, XXXI, 1089.

(3152) § 12. Examination—Preliminary Report.—The Board of Viewers shall proceed to examine the land described in said petition, and other land, if necessary, to locate properly such improvement or improvements as are petitioned for, along the route described in the petition, or any other route answering the same purpose if found more practicable or feasible, and may

make such surveys as may be necessary to determine the boundaries and elevations of the several parts of the district, and shall make and return to the Clerk of Court of Common Pleas within ninety days, unless the time shall be extended by the said Clerk, a written report, which shall set forth: "1. Whether the proposed drainage is practicable or not. 2. Whether it will benefit the public health or any public highway, or be conducive to the general welfare of the community. 3. Whether the improvements proposed will benefit the land sought to be benefited. 4. Whether or not all the lands benefited are included in the proposed drainage district. They shall also file with this report a map of the proposed drainage district, showing the location of the ditch or ditches, or other improvements to be constructed in the lands that will be affected thereby, and such other information as they may have collected that will tend to show the correctness of their findings."

Civ. '12, § 2198; 1911, XXVII, 92; 1920, XXXI, 1089.

(3153) § 13. Filing Preliminary Report.—The Clerk of Court, as aforesaid, shall consider this report. If the Viewers report that the drainage is not practicable, or that it will not benefit the public health or any public highway, or be conducive to the general welfare of the community, and the Clerk of Court shall approve such findings, the petition shall be dismissed at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable as aforesaid. Such petition or proceedings may again be instituted by the same or additional landowners at any time after six months, upon proper allegations that conditions have changed or that material facts were omitted or overlooked. If the Viewers report that the drainage is practicable, and that it will benefit the public health or any public highway, or be conducive to the general welfare of the community, and the Clerk of Court shall so find, then the said Clerk shall fix a day when the report will be further heard and considered.

Civ. '12, § 2199; 1911, XXVII, 92; 1914, XXVIII, 755; 1920, XXXI, 1089.

Linley et al v. Citizens National Bank of Anderson et al, 108 S. C. 372, 94 S. E. 874.

(3154) § 14. Notice.—If the petition is entertained by the aforesaid Clerk of Court, notice shall be given by publication for two consecutive weeks in some newspaper of general circulation within the county or counties, if one shall be published in such counties, and also by posting a written or printed notice at the door of the Court House, and at five conspicuous places within the drainage district, that on the date set, naming the day, the said Clerk of Court will consider and pass upon the report of the Viewers. At least fifteen days shall intervene between the date of publication and the posting of notices and the date set for the hearing.

Civ. '12, § 2200; 1911, XXVII, 92.

Linley et al v. Citizens National Bank of Anderson et al, 108 S. C. 372, 94 S. E. 874.

(3155) § 15. Hearing Preliminary Report.—At the date appointed for the hearing, the Clerk of Court, as aforesaid, shall hear and determine any objections that may be offered to the report of the Reviewers. If it appear that there is any land within the proposed levee or drainage district that will not be affected by the leveeing or drainage thereof, such lands shall be excluded and the names of the owners withdrawn from such proceedings; and if it shall be shown that there is any land not within proposed district

that will be affected by the construction of the proposed levee or drain, the boundary of the district shall be so changed as to include such lands, and such additional landowners shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided; and any landowners whose lands were within the original levee or drainage district, who were not summoned by the Clerk when the petition was filed, and whose names have since been ascertained by the Clerk, shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. After such change in the boundaries is made, the sufficiency of the petition shall be verified to determine whether or not it conforms to the requirements of the Statute as provided in Section 11. The efficiency of the drainage or levee may also be determined, and if it appears that the location of any levee or drain can be changed so as to make it more effective, or that other branches or spurs should be constructed, or that any branch or spur projected may be eliminated or other changes made that will tend to increase the benefits of the proposed work, such modification and changes shall be made by the Board. The Engineer and other two Viewers may attend this meeting and give any information or evidence that may be sought to verify and to substantiate their reports. If necessary, the petition, as amended, shall be referred by the Clerk of Court to the Engineer and two Viewers for further report. The above facts having been determined to the satisfaction of the Clerk of the Court, and the boundaries of the proposed district so determined, he shall declare the establishment of drainage or levee district, which shall be designated by a name or number, for the object and purpose as herein set forth.

Civ. '12, § 2201; 1911, XXVII, 92; 1915, XXIX, 199.

In re Cow Castle Drainage District. *Berry et al v. Ammons et al*, 107 S. C. 310, 92 S. E. 1036.

(3156) § 16. May Condemn Land.—If it shall be necessary to acquire a right of way or an outlet over and through lands not affected by the drainage, and the same cannot be acquired by purchase, then, and in such event, the proceeding to secure the condemnation of any right of way which may be necessary for the proper drainage of any drainage district, or any part thereof, and to fix the compensation of the same, shall be the same as that provided by Article IX, Section 20 of the Constitution of 1895, and the Statutes enacted pursuant thereto, except that such compensation shall be ascertained by a jury of twelve men, in a Court of record, and such drainages as may be awarded as compensation shall be paid by the Board of Drainage Commissioners out of the first funds which shall be available from the proceeds of sale of bonds or otherwise.

Civ. '12, § 2202; 1911, XXVII, 92.

(3157) § 17. Right of Appeal.—Any person or corporation owning lands within the drainage or levee district which he or it thinks will not be benefited by the improvement and should not be included in the district, may appeal from the decision of the Clerk of the Court of Common Pleas of such county, in term time or at chambers, by filing an appeal, accompanied by a bond conditioned for the payment of the costs, if the appeal should be decided against him, for such sum as the Court may require, not exceeding

two hundred dollars, signed by two or more solvent sureties, or in some approved surety company, to be approved by the Court.

Civ. '12, § 2203; 1911, XXVII, 92.

(3158) § 18. Complete Survey.—After the district is established, the Clerk of Court shall refer the report of the Engineer and Viewers back to them to make a complete survey, plans and specifications for the drains or levees or other improvements, and fix a time when said Engineer and Viewers shall complete and file their report.

Civ. '12, § 2204; 1911, XXVII, 92; 1916, XXIX, 932; 1920, XXXI, 1087.

(3159) § 19. Complete Report.—The Engineer and Viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately platted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established along the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the Engineer and Viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse, ditch or channel is being widened, deepened or straightened, it shall be accurately cross-sectioned, so as to compute the amount of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated town or village within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any work required to be done.

Civ. '12, § 2205; 1911, XXVII, 92.

(3160) § 20. Assessment of Damages.—It shall be the further duty of the Engineer and Viewers to assess the damages claimed by any one that is justly right and due to them for land taken or for inconvenience imposed because of the construction of the improvement, or for any other legal damages sustained, such damage shall be considered separate and apart from any benefit the land would receive because of the proposed work, and shall be paid by the Board of Drainage Commissioners when funds shall come into their hands.

Civ. '12, § 2206; 1911, XXVII, 92.

(3161) § 21. Classification of Land According to Benefits.—It shall be the further duty of the Engineer and Viewers to personally examine the land in the district and classify it with reference to the benefit it will receive from the construction of the levee, ditch, drain or watercourse or other improvement. In the case of drainage, the degree of wetness of the land, its proximity to the ditch or a natural outlet and the fertility of the soil and its effect upon health conditions in the district, shall be considered in determining the amount of benefit it will receive by the construction of the ditch. The land benefited shall be separated in five classes. The land receiving the highest benefit, "Class A;" that receiving the next highest benefit, "Class B;" that receiving the next highest benefit, "Class C;" that receiving the next highest benefit, "Class D," and that receiving the smallest benefit, "Class E." The holding of any one landowner need not necessarily be all in one class, but the number of acres in each class be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined. The total number of acres of each class in the entire district shall be obtained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the Engineer and Viewers shall be in the ratio of five, four, three, two and one; that is to say, as often as five mills per acre is assessed against the land in "Class A," four mills per acre shall be assessed against the land in "Class B," three mills per acre in "Class C," two mills per acre in "Class D," and one mill per acre in "Class E." This shall form the basis of the assessment of benefits to the lands for drainage purposes: *Provided*, That in the County of Richland the said Engineers and Viewers may classify and assess all lands included in said drainage district and benefited by the same as one class.

Civ. '12, § 2207; 1911, XXVII, 92; 1917, XXX, 338.

(3162) § 22. Cost of Survey.—The Engineer and Viewers shall keep an accurate account and report to the Clerk of the Court the name and number of days each person was employed on the survey and the kind of work he was doing and any expense that may have been incurred in going to and from the work, and the cost of any supplies or material that may have been used in making the survey.

Civ. '12, § 2208; 1911, XXVII, 92.

(3163) § 23. Delay—Extension of Time.—In case the work is delayed by high water, sickness or any other good cause, and the report is not completed at the time fixed by the Clerk of the Court, the Engineer and Viewers shall appear before the Clerk of Court, and state in writing the cause of such failure and ask for sufficient time in which to complete the work, and the Clerk of Court shall set another date by which the report shall be completed and filed.

Civ. '12, § 2209; 1911, XXVII, 92.

(3164) § 24. Final Report—Notice of Hearing.—When the final report is completed and filed it shall be examined by the Clerk of Court, and if it is found to be in due form and in accordance with the law, it shall be

accepted, and if not in due form it may be referred back to the Engineer and Viewers, with instruction to secure further information, to be reported at a subsequent date to be fixed by the Clerk of the Court. When the report is fully completed and accepted by the Clerk of the Court, a date, not less than twenty days thereafter, shall be fixed by the said Clerk of Court for the final hearing upon the report, and notice thereof shall be given by publication in a newspaper of general circulation in the county and by posting a written or printed notice on the door of the Court House and at five conspicuous places throughout the district, such publication to be made for at least two weeks before the final hearing: *Provided*, That if it shall appear at the time the final report is completed, filed and examined by the Clerk, as aforesaid, that certain landowners whose lands are included in the proposed drainage or levee district, have not been made parties to the proceedings, a summons as hereinbefore provided shall be served upon them and each of them, and at the same time a written or printed notice hereinbefore referred to shall be personally served upon them and each of them. During this time a copy of the report shall be on file in the office of the Clerk of the Court of Common Pleas, and shall be open to the inspection of any landowner or other persons interested within the drainage district.

Civ. '12, § 2210; 1911, XXVII, 92; 1915, XXIX, 199.

(3165) § 25. Adjudication—Final Report.—At the date set for hearing any landowner may appear in person, or by counsel, and file his objection in writing to the report of the Viewers; and it shall be the duty of the Clerk of the Court to carefully review the report of the Viewers, and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the Clerk, the cost of construction, together with the amount of damage assessed, is not greater than the benefits that will accrue to the land affected, the Clerk shall confirm the report of the Viewers. If, however, the Clerk finds that the cost of construction, together with the damages assessed, is greater than the resulting benefits that will accrue to the lands affected, the Clerk shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable as aforesaid.

Civ. '12, § 2211; 1911, XXVII, 92; 1920, XXXI, 1089.

(3166) § 26. Appeal.—Any party aggrieved may, within ten days after the confirmation of the assessor's report, appeal to the Court of Common Pleas in term time. Such appeal shall be taken and prosecuted as now provided by the Civil Code for appeals from a Magistrate's Court to the Court of Common Pleas.

Civ. '12, § 2212; 1911, XXVII, 92.

(3167) § 27. Drainage Record.—The Clerk of the Court of Common Pleas shall provide a suitable book to be known as the "Drainage Record," in which he shall transcribe every petition, motion, order, report, judgment or finding of the Board in every drainage transaction that may come before it, in such a manner as to make a complete and continuous record of the

case. Copies of all the maps and profiles are to be furnished by the Engineer and marked by the Clerk "official copies," which shall be kept on file by him in his office, and one other copy shall be pasted or otherwise attached to his record book.

Civ. '12, § 2213; 1911, XXVII, 92.

(3168) § 28. Appointment of Drainage Commission. — After the said drainage district shall have been declared established, as aforesaid, and the survey and plan thereof approved, the Clerk of Court shall appoint three persons, who shall be designated as the Board of Drainage Commissioners. Such Drainage Commissioners shall first be elected by the owners of the land within the drainage or levee district, or by a majority of same, in such manner as the Clerk of Court shall prescribe. The Clerk of Court shall appoint those receiving a majority of the votes. If any one or more of such proposed Commissioners shall not receive the vote of the majority of such landowners, the Clerk of Court shall appoint all of the remainder from among those voted for in the election, in the order of those receiving the greatest number of votes. The Drainage Commissioners shall receive compensation for their work at the rate of five (\$5.00) dollars per day for the days that they work. Any vacancy thereafter occurring shall be filled in like manner. Such three Drainage Commissioners, when so appointed, shall be immediately created a body corporate, under the name and style of "The Board of Drainage Commissioners of District," with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a Chairman and a Vice Chairman. They shall also elect a Secretary, either within or without their body. The Treasurer of the county in which the proceedings were instituted shall be *ex officio* Treasurer of such Drainage Commissioners. Such Board of Drainage Commissioners shall adopt a seal, which they may alter at pleasure. The Board of Drainage Commissioners shall have and possess such powers as are herein granted. The name of such drainage district, whether designated by number or otherwise, shall constitute a part of its corporate name, for illustration: "The Board of Drainage Commissioners of (No. 1, of McClellanville) District:" *Provided*, That in Charleston County the powers hereby vested in the Clerk of the Court by the provisions of this Article shall be exercised and vested in the Sanitary and Drainage Commission of Charleston County in lieu of the Clerk of Court of said county.

Civ. '12, § 2214; 1911, XXVII, 92; 1914, XXVIII, 455; 1920, XXXI, 1089.

Linley et al v. Citizens National Bank of Anderson et al, 108 S. C. 372, 94 S. E. 874.

(3169) § 29. Superintendent of Construction.—The Board of Drainage Commissioners shall appoint a competent person as Superintendent of Construction. Such person shall furnish a bond, to be approved by the Commissioners, in the penal sum of ten thousand dollars, conditioned upon the honest and faithful performance of his duties, such bond to be in favor of the Board of Drainage Commissioners.

Civ. '12, § 2215; 1911, XXVII, 92.

Linley et al v. Citizens National Bank of Anderson et al, 108 S. C. 372, 94 S. E. 874.

(3170) § 30. Notice of Letting Contract — Bond of Contractor.—The Board of Drainage Commissioners shall cause notice to be given for two consecutive weeks in some newspaper published in the county wherein such improvement is located, if such there be, and publication for the same length of time in at least one engineering or contracting journal of wide circulation, of the time and place of letting the work of construction of said improvement; and in such notice they shall specify the approximate amount of work to be done and the time fixed for the completion thereof; and in the date appointed for the letting, they, together with the Superintendent of Construction, shall convene and let to the lowest responsible bidder, either as a whole or in sections, as they may deem most advantageous for the district, the proposed work. No bid shall be entertained that exceeds the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. They shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by doing so. The successful bidder shall be required to enter into a contract with the Board of Drainage Commissioners and to execute a bond for the faithful performance of such contract, with sufficient sureties, in favor of the Board of Drainage Commissioners, for the use and benefit of the levee or drainage district, in an amount equal to twenty-five per centum of the estimated cost of the work awarded to him, and any person furnishing labor or material to such contractor or subcontractor, or furnishing board or lodging to the employees of such contractor or subcontractor in the construction of such work and failing to receive compensation therefor, shall have a right of action on such bond for the amount found due him or them.

Civ. '12, § 2216; 1911, XXVII, 92.

(3171) § 31. Payment of Work Done.—The Superintendent in charge of construction shall make monthly estimates of the amount of work done, and furnish one copy to the contractor and file the other with the Secretary of the Board of Drainage Commissioners, and the Board shall meet and direct the Secretary to draw a warrant in favor of such contractor for ninety per centum of the work done, according to the specifications and contract; and upon the presentation of such warrant, properly signed by the Chairman and Secretary, to the Treasurer of the drainage fund, he shall pay the amount due thereon. When the work is fully completed and accepted by the Superintendent, he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the drainage fund as before provided.

Civ. '12, § 2217; 1911, XXVII, 92.

(3172) § 32. Failure of Contractor—Reletting.—If any contractor to whom a portion of said work shall have been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the Board of Drainage Commissioners against such contractor and his bond in the Court of Common Pleas for damages sustained by the levee or drainage district, and recovery made against such contractor and

his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting.

Civ. '12, § 2218; 1911, XXVII, 92.

(3173) § 33. Right of Contractor.—In the construction of the work the contractor shall have the right to enter upon the lands necessary for this purpose and the right to remove private or public bridges or fences and to cross private lands in going to or from the work. In case the right of way of the improvement is through timber the owner thereof shall have the right to remove it, if he so desires, before the work of construction begins, and in case it is not removed by the landowners it may be removed by him.

Civ. '12, § 2219; 1911, XXVII, 92.

(3174) § 34. Highways Affected.—Where any public ditch, drain or watercourse, established under the provisions of this Article, crosses a public highway, the actual cost of constructing the same across the highway, or removing the same old bridges or building new ones, shall be paid for by the county. Wherever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district, it shall be the duty of the Viewers appointed to classify the land to give in their report the amount of benefit of such highways, and notice shall be given by the Clerk of the Board of County Commissioners in the county where the road is located of the amount of such assessment, and the County Commissioners shall have the right to appear before the Clerk of the Court and file its objections to the same as any landowner.

Civ. '12, § 2220; 1911, XXVII, 92; 1920, XXXI, 1089.

(3175) § 35. Railroad—Damage—Benefit.—Wherever the Engineer and the Viewers in charge shall make a survey for the purpose of locating a public levee or drainage district or changing a natural watercourse, and the same would cross the right of way of any railroad company, it shall be the duty of the Viewers in charge of the work to notify the railroad company, by serving written notice upon the agent of such company or its lessee or receiver, that they will meet the company at the place where the proposed ditch, drain or watercourse crosses the right of way of such company, said notice fixing the time of such meeting, which shall not be less than ten days after the service of the same, for the purpose of conferring with said railroad company with relation to the place where and the manner in which such improvement shall cross such right of way. When the time shall arrive fixed for such conference, unless for good cause more time is agreed upon, it shall be the duty of the Viewers in charge and the railroad company to agree, if possible, upon the place where and the manner and method in which such improvement shall cross such right of way. If the Viewers in charge and the railroad company cannot agree, or if the railroad company shall fail, neglect or refuse to confer with the Viewers, they shall determine the place and manner of crossing the right of way of said railroad company, and shall specify the number and the size of openings required, and the damages, if any, to said railroad company, and so specify

in their report. The fact that the railroad company is required by the construction of the improvement to build a new bridge or culvert, or to enlarge or strengthen an old one, shall not be considered as damages to said railroad company. The Engineer and Viewers shall also assess the benefits that will accrue to the right of way, roadbed and other property of said company by affording better drainage or a better outlet for drainage, but no benefits shall be assessed because of the increase of business that may come to said road because of the construction of the improvement. The benefits shall be assessed at a fixed sum, determined solely by the physical benefit that its property will receive by the construction of said improvement, and it shall be reported by the Viewers as a special assessment, due personally from the railroad company as a special assessment; it may be collected in the manner of an ordinary debt in any Court having jurisdiction.

Civ. '12, § 2221; 1911, XXVII, 92.

(3176) § 36. Notice to Railroad.—The Clerk of the Court of Common Pleas shall have notice served upon the railroad company of the time and place of the meeting to hear and determine the final report of the Engineer and Viewers, and the said railroad company shall have the right to file objections to said report and to appeal from the findings of the Board of Commissioners in the same manner as any landowner. But such an appeal shall not delay or defeat the construction of the improvement.

Civ. '12, § 2222; 1911, XXVII, 92.

(3177) § 37. Manner of Crossing Right of Way—Penalty for Delay—Cost.—After the contract is let and the actual construction is commenced, if the work is being done with a floating dredge, the Superintendent in charge of construction shall notify the railroad company of the probable time at which the contractor will be ready to enter upon the right of way of said road and construct the work thereon. It shall be the duty of said railroad to send a representative to view the ground with the Superintendent of Construction and arrange the exact time at which such work can be most conveniently done. At the time agreed upon the said railroad company shall remove its rails, ties, stringers, and such other obstructions, if such removal should be necessary, to permit the expeditious execution of the work across its right of way. The work shall be so planned and conducted as to interfere in the least possible manner with the business of said railroad. In case the railroad company refuses and fails to make the aforementioned provision for the execution of the work on its right of way, it shall be held as delaying the construction of the improvement, and such company shall be liable to a penalty of twenty-five dollars per day for each day of delay, to be collected by the Board of Drainage Commissioners for the benefit of the drainage district, as in the case of other penalties. Such a penalty may be collected in any Court having jurisdiction and shall inure to the benefit of the drainage district. Within thirty days after the work is completed, an itemized bill for the actual expenses incurred by the railroad company for opening its tracks shall be made and presented to the Superintendent of Construction of the drain-

age improvement. Such bill, however, shall not include the cost of putting in a new bridge or strengthening or enlarging an old one. The Superintendent of Construction shall audit this bill and, if found correct, approve the same and file it with the Secretary of the Board of Drainage Commissioners. The Commissioners shall deduct from this bill the cost of the excavation or other work done by the Drainage Commission on the right of way of said railroad company at the contract price, and pay the difference, if any, to said railroad company.

Civ. '12, § 2223; 1911, XXVII, 92.

(3178) § 38. Control and Repairs.—Whenever any improvement constructed under this Article is completed it shall be under the control and supervision of the Board of Drainage Commissioners: *Provided*, That such parts of public drains as are within the corporate limits of any city or town shall be kept in repair by such city or town, and also that any city or town may convert into a sewer any part of any drain within such corporate limits, and to that end may change the location of any such part of such drain on condition only that such change of location or conversion of such drain into a sewer shall not injuriously affect the general purposes of such drainage, and that no lands outside of such corporate limits shall be charged thereby with any additional burden. It shall be the duty of the said Board to keep the levee, ditch, drain or watercourse in good repair, and for this purpose they may levy an assessment on the lands benefited by the construction of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain or watercourse in perfect order: *Provided, however*, That if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs or other stock of said owner, employee or agent, then the cost thereof shall be assessed and levied against the lands of said owner alone, to be collected by proper suit instituted by the Drainage Commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence or flood gate in such a way as to injure or damage any levee, ditch, drain, or watercourse constructed or improved under the provisions of this Act, and any person causing such injury shall be guilty of a misdemeanor, and, upon conviction thereof, may be fined in any sum not exceeding twice the damage or injury done or caused.

Civ. '12, § 2224; 1911, XXVII, 92.

(3179) § 39. Outlet for Lateral Drains.—The owner of any land that has been assessed for the cost of the construction of any ditch, drain or watercourse, as herein provided, shall have the right to use the ditch, drain or watercourse as an outlet for lateral drains from said land; and if said land is separated from the ditch, drain or watercourse by the land of another or others, and the owner thereof shall be unable to agree with said other or others as to the terms and conditions on which he may enter their lands and construct said drain or ditch, he may file his auxiliary petition in such

pending proceeding to the Court, and the procedure shall be as now provided by law. When the ditch is constructed it shall become a part of the drainage system and shall be under the control of the Board of Drainage Commissioners and be kept in repair by them as herein provided.

Civ. '12, § 2225; 1911, XXVII, 92.

(3180) § 40. Assessment—Tax Roll.—After the classification of the land and the ratio of assessment of the different classes to be made thereon has been confirmed by the Clerk of Court, the Drainage Commission shall prepare an assessment roll or drainage tax duplicate, giving a description of all the land in said drainage district, the name of the owner, so far as can be ascertained from the public records, and the amount of assessment against each of the several tracts of land, and other property in the district which is benefited by the proposed works. In preparing this assessment roll the Board shall ascertain the total cost of the improvement, including the damages awarded and to be paid to the owners of lands, and all incidental expenses, and deduct therefrom any special assessment made against any railroad or highway, and the remainder shall be the amount to be borne and paid by the lands benefited. This amount shall be assessed against the several tracts of land, according to the benefit received, as shown by the classification and ratio of assessment made by the Viewers and confirmed by the Board of Drainage Commissioners. This drainage tax roll shall be made in duplicate, signed by the Chairman and Secretary, and one copy filed with the drainage record and the other delivered to the Sheriff or other tax collector, except where the land of the district lies in more than one county, when, in addition to the copy of the tax roll, which shall be filed with the drainage records, a copy thereof shall be delivered to the Treasurer of each of the said counties. There shall be appended an order to collect the said assessments, and the same shall have the force and effect of a judgment as in the case of State and county taxes.

Civ. '12, § 2226; 1911, XXVII, 92; 1917, XXX, 335.

(3181) § 41. Time of Payment.—If the total cost of the work is less than an average of twenty-five cents per acre on all the land in the district, the assessment made against the several tracts shall be collected in one installment, by the same officer and in the same manner as State and county taxes are collected, and payable at the same time. In case the total assessment exceeds the average of twenty-five cents per acre on all the lands in the district the said Board of Drainage Commissioners may give notice of three weeks by publication in some newspaper of general circulation in the district, if there be one, and also by posting a written or printed notice at the door of the Court House and at five conspicuous places in the drainage district, that they propose to issue bonds for the construction of said improvement, giving the amount of bonds to be issued, the rate of interest they are to bear and the time when payable. Any landowner having lands assessed in the district and not wanting to pay interest on the bonds may, within thirty days after the publication of said notice, pay the County Treasurer the full amount of his assessment and have his land released therefrom.

Civ. '12, § 2227; 1911, XXVII, 92.

(3182) § 42. Defense—Waiver.—Each and every person owning land in the district which is assessed for the construction of an improvement who shall neglect or fail to pay the full amount of his assessment to the County Treasurer within the time specified, shall be deemed as consenting to the issuing of said drainage bonds, and in consideration of the right to pay his assessment in installments he hereby waives his right to any defense against the collection of said assessment because of any irregularity, illegality or defect in the proceedings prior to this time, except in the case of an appeal, as heretofore provided, which is not affected by this waiver. The term “person,” as used in this Article, includes any firm, company or corporation.

Civ. '12, § 2228; 1911, XXVII, 92.

(3183) § 43. Bond Issue.—After the expiration of the thirty days after the publication the Board of Drainage Commissioners may issue bonds for the full amount of the assessment not paid into the County Treasury, together with the interest thereon, cost of collection or other incidental expenses. These bonds shall bear interest at a rate not exceeding six per cent. per annum, payable semiannually. The bonds shall be payable at a time not less than ten nor more than twenty-five years, and shall be paid up in full at maturity. In order to provide for the payment of bonds at maturity, a “sinking fund” shall be provided as follows: Five years from the date of bond issue and at the same time each succeeding year until maturity of said bonds, the Board of Drainage Commissioners shall collect from the several tracts assessed in the bond issue a sum of money, which, when placed in a bank and interest paid thereon at four per cent., compounded quarterly, shall equal the total assessment against all the tracts in the bond issue at the end of twenty years. This amount shall be placed in some State or National bank of reputable standing, and shall bear four per cent. interest, compounded quarterly. This sum shall be collected along with the interest on the bonds and at the same time and in the same manner as State and county taxes are collected. At the date of maturity of the bonds, the said sum shall be paid over to the bondholders in liquidation of the said bonds. Said funds to be drawn out of the banks of deposit by the Clerk of the Court. In no case shall bonds be issued until the tax levy has been made to meet them as they come due. The bonds issued shall be for the exclusive use of the levee of drainage districts specified on their face, and should be numbered by the Board of Drainage Commissioners and recorded in the drainage record, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full, and which land is assessed for the payment of the bonds issued and the interest thereon. The interest upon the said bonds shall be paid to the holders thereof by the County Treasurer, on warrant of the County Commissioners, who shall audit and approve the claims of the said bondholders. This assessment shall constitute the first and paramount lien, second only to State and county taxes, upon the lands assessed for the payment of said bonds and the interest thereon as they become due, and shall be collected in the same manner by the same officers as the State and county taxes are collected. If any installment of the principal or interest represented by

the said bonds shall not be paid at the time and in the manner when the same shall become due and payable, and such default shall continue for a period of six months, the holder or holders of such bond or bonds upon which default has been made may have a right of action against said drainage district or the Board of Drainage Commissioners of said district, and any Judge of the Court of Common Pleas may issue a writ of mandamus against the said drainage district, its officers, including the County Commissioners, Auditor or Treasurer, directing the levying of a tax or special assessment as herein provided, and the collection of same, in such sum as may be necessary to meet any unpaid installments of principal and interest and cost of action, and such other remedies are hereby vested in the holder or holders of said bond or bonds in default as may be authorized by law, and the right of action is hereby vested in the holder or holders of such bond, upon which default has been made, authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this Article. The official bonds of the County Commissioners and County Treasurer shall be liable for the faithful performance of the duties herein assigned them.

Civ. '12, § 2229; 1911, XXVII, 92; 1917, XXX, 335; 1918, XXX, 767.

(3184) § 44. Relevy.—Where the Clerk of the Court has confirmed an assessment for the construction of any public levee, ditch or drain, and such assessment has been modified by the Court of superior jurisdiction, but for some unforeseen cause it cannot be collected, the Board of Drainage Commissioners shall have power to change or modify the assessment as originally confirmed to conform to the judgment of the Court of Common Pleas, and to cover any deficit that may have been caused by the order of said Court or unforeseen occurrence. The said relevy shall be made for the additional sum required, in the same ratio on the lands benefited as the original assessment was made.

Civ. '12, § 2230; 1911, XXVII, 92.

(3185) § 45. Fees and Expenses.—Any Engineer employed under the provisions of this Article shall receive such compensation per diem for his services as shall be fixed and determined by the Clerk of Court and the Viewers, other than the Engineer. The Viewers, other than the Engineer, shall receive five (\$5.00) dollars per diem; the rodman, axmen, chainmen and all other laborers shall receive such compensation as shall be fixed by the Board of Viewers. All other fees and costs incurred under the provisions of this Article shall be the same as provided by law for like services in other cases. If the proposed district is finally established, said costs and expenses shall be paid by order of the Clerk of Court, out of the drainage fund, and the Board of Drainage Commissioners shall issue warrants therefor when funds shall be in the hands of the Treasurer: *Provided*, That if the petition is dismissed at the cost of petitioners, said costs and expenses shall be paid by the petitioners or out of the bond, as hereinbefore set forth: *And provided, further*, That if a loan is procured on the bond as hereinbefore set forth, the same shall be repaid in like manner.

Civ. '12, § 2231; 1911, XXVII, 92; 1920, XXXI, 1089.

(3186) § 46. Defects in Proceedings.—The provisions of this Article shall be liberally construed to promote the leveeing, ditching, draining and reclamation of wet and overflowed lands. The collection of the assessment shall not be defeated, where the proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the Clerk of the Court confirming the final report of the Viewers; but such order or orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the Court shall deem it just and proper to release any person or to modify his assessment or liability, it shall in no manner affect the rights and legality of any person other than the appellant, and the failure to appeal from the order of the Clerk of the Court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this Article shall exclude all other remedies.

Civ. '12, § 2232; 1911, XXVII, 92.

(3187) § 47. Border States Affected by Drainage.—Whenever it may be desirable to construct, widen, deepen, straighten or change any ditch, drain, watercourse, or levee, lying on or along, across or near the State line between the State of South Carolina and the adjoining States, or whenever it may be desirable to construct, repair or improve any work of drainage as provided for in this Article, which ditch, drain, watercourse, or other work of drainage cannot be constructed, repaired or improved in the best manner without affecting land in such adjoining States, the Board of Drainage Commissioners in the county in which such work is located shall have authority to join with the proper officers of such adjacent counties of other States in the construction, widening, deepening, straightening, repairing or improving of any such drain, ditch, watercourse, or other work of drainage. Such Drainage Commissioners in any county of this State are given power jointly to enter into contracts with the proper officers of such counties in adjoining States to construct, repair, or improve any such work of drainage, each to pay such proportion of costs and expenses of the work as the contracting officials shall deem just. Such work of drainage shall be made on petition of landowners or corporations, as provided for in this Article in relation to other works of drainage, and all other provisions of this Article, so far as applicable, shall govern the Drainage Commissioners and other officers of this State in relation to such joint work of drainage: *Provided*, Such adjoining county or counties in other States shall pay their proper share of necessary costs and expenses.

Civ. '12, § 2233; 1911, XXVII, 92.

(3188) § 48. United States Government Aid.—In the event that the United States Government makes provision for loans to prosecute drainage and reclamation work, or provides for such work to be done under the supervision of its officials, the drainage districts created under this Article are empowered to avail themselves of such provision at any time, turning over to the United States Government for completion any work begun prior to such provision being made, and said drainage district is empowered to levy and collect in the manner herein provided the taxes against the land

and to pledge and pay to the United States Government the receipts from such levy in liquidation of the loan made as aforesaid by the United States Government. It shall be the duty of the officials of this State to solicit the cooperation of the various bureaus of the United States Government in the prosecution of all work undertaken under this Article.

Civ. '12, § 2234; 1911, XXVII, 92.

(3189) § 49. Payment of County Officers.—Inasmuch as under the provisions of this Article much additional work is thrown on the county officials, they are empowered to collect from the Board of Drainage Commissioners such reasonable fees as are usual in such cases; same to be included in the general costs of the work.

Civ. '12, § 2235; 1911, XXVII, 92.

(3190) § 50. Proceedings Ex Parte or Advisory—Clerk of Court May Remove for Cause.—Proceedings under this Article may be *ex parte* or advisory. Any Engineer, Viewer, Superintendent of Construction or other person appointed under this Article may be removed by the Clerk of the Court, upon petition, for corruption, negligence of duties, or other good and satisfactory cause shown.

Civ. '12, § 2236; 1911, XXVII, 92.

(3191) § 51. Existing Drainage Laws Not Repealed.—This Article shall not repeal or change any local drainage laws already enacted by the General Assembly, or affect existing laws as to the Sanitary and Drainage Commission of Charleston County. The said Commission is hereby vested with full authority, in the name of Charleston County, to bring any proceedings, suit or action for inquiry or damage to the roads or bridges in said county, or affecting the rights in any way thereto, and to defend any proceedings, suit or action against said county, the subject of which involves the roads or bridges, or the use thereof, in said county.

Civ. '12, § 2237; 1911, XXVII, 92; 1917, XXX, 40.

(3192) § 52. Laws in Conflict Repealed.—All laws in conflict with this Article, except as otherwise provided in this Code, are hereby repealed: *Provided*, That proceedings now pending by virtue of any statute now or heretofore in force in this State, in any county, shall not be affected by this Article, but that such proceedings may be continued in force with such statute.

Civ. '12, § 2238; 1911, XXVII, 92.

ARTICLE II.

Right of Way for Drainage.

(3193) § 1. Right to Open Waterway for Drainage.—Any person owning lands which can only be properly drained through or over lands of other persons through or over which there is no right of way, sufficient waterway or ditch cut, are authorized, as hereinafter provided, to enter, construct and

cut a waterway or ditch through and over such lands to the nearest waterway, ditch, stream or outlet then existing.

Civ. '12, § 2266; Civ. '02, § 1489; 1891, XX, 1050.

(3194) § 2. Proceedings Where Servient Tenant Objects—Notice—Referees.—If any owner or owners of such surrounding or adjacent lands shall signify his or their refusal to the opening of a sufficient waterway or ditch through such lands without previous compensation, the person or persons requiring such waterway or ditch shall give ten days' notice in writing to the person or persons through whose lands such waterway or ditch is required of his intention to cut, open and establish such waterway or ditch, naming in such notice a person who will act as referee for him in the location thereof, and such owner or owners shall, within ten days thereafter, appoint a referee for the same purpose.

Civ. '12, § 2267; Civ. '02, § 1490; 1891, XX, 1050.

(3195) § 3. Notice to Nonresidents—Proof of Notification.—In case the owner of such adjacent land shall be a nonresident of the State, such notice shall be a twenty days' notice, and shall be served by delivering the same personally to the agent of such owner, if any there shall be residing in the county in which said land lies; and if there be no such resident agent, then by publishing the same once a week for three weeks in the county newspaper having the largest circulation in said county, and also by mailing a copy of such notice to the owner at his last known place of abode, and no proceedings had under this Article shall be valid or effectual to conclude the rights of such owner unless proof of compliance with the provisions of this Section shall be made under oath, approved by the said referees and recorded, together with their finding.

Civ. '12, § 2268; Civ. '02, § 1491; 1891, XX, 1050.

(3196) § 4. Proceedings in Cases of Minors, Lunatics, Etc.—If the owner or owners, or either or any of them, of such adjacent lands be a minor or minors, or *non compos mentis*, such proceedings shall be had to bar the rights of such minor or minors, or persons *non compos mentis*, as are now provided by law in the case of condemnation of lands for streets by municipal corporations.

Civ. '12, § 2269; Civ. '02, § 1492; 1891, XX, 1050.

(3197) § 5. Board of Referees—Action by—Appeal.—The referees so appointed shall, within ten days thereafter, meet at some convenient place and appoint a third referee, and the three referees so appointed shall constitute a Board of Referees for the location of such waterway or ditch, and to determine the compensation and damages for the same, from whose decision an appeal shall lie as in cases in Magistrates' Courts.

Civ. '12, § 2270; Civ. '02, § 1493; 1891, XX, 1050.

(3198) § 6. Meetings of Board of Referees—Duties.—Within ten days after the appointment of a third referee, in compliance with the foregoing Section, the said referee shall meet, and proceed, faithfully and impartially, to determine the question of location, compensation and damages submitted

to them, for which purpose they shall inspect the premises in reference to the proposed waterway or ditch, and the quantity of land which shall be required therefor, with respect alone to the quantity and value and location of the land which shall be required, and to the special damage the owner may sustain by reason of the construction of the waterway or ditch through his land, and the amount of compensation which shall be made to the owner thereof, and shall render their verdict in writing for the same.

Civ. '12, § 2271; Civ. '02, § 1494; 1891, XX, 1050.

(3199) § 7. Rights Flowing from the Judgment—Record of Proceedings.

—Upon the payment of the compensation thus ascertained, the right of way over said lands shall be established, and the right to open and to repair the waterway or ditch from time to time shall forever remain inviolate; and the finding by the referees shall be recorded in the office of the Register of Mesne Conveyance of the county, at the expense of the party demanding such right of way, waterway or ditch.

Civ. '12, § 2272; Civ. '02, § 1495; 1891, XX, 1050.

(3200) § 8. Proceedings in Case Servient Tenant Refuses to Appoint Referee.—If the owner or owners of the lands over which such waterway or ditch is required shall not, in compliance with Section 2 above, appoint a referee within the time required, the referee appointed by the person requiring such waterway or ditch shall proceed the same as if all three referees had been appointed, and his action therein, in compliance with Section 3, shall have the same force and effect as if the full Board of Referees had acted.

Civ. '12, § 2273; Civ. '02, § 1496; 1891, XX, 1050.

ARTICLE III.

Sanitary and Drainage Commissions.

(3201) § 1. Governor Shall Appoint Sanitary and Drainage Commission for Any County Requesting It.—The Governor, upon the request of the Senator and Representatives, or a majority of them, of any county in the State, shall appoint in and for said county (by and with the advice and consent of the Senator and members of the House of Representatives for each county, respectively, or a majority of them) not less than three nor more than five discreet and responsible and resident freeholders, who shall be known as the Sanitary and Drainage Commission of County, and whose term of office shall be for four years, and until their successors shall have been appointed and shall have qualified. In case of vacancy, the Governor shall appoint likewise for the unexpired term: *Provided*, That there shall be seven members in Charleston County, to be appointed as herein provided. In the County of Horry, however, the duties herein imposed shall be performed by the County Commissioners and they shall have all the rights and authority of Sanitary and Drainage Commissioners under this Article.

Civ. '12, § 2274; 1907, XXV, 524; 1916, XXIX, 748; 1917, XXX, 62.

(3202) § 2. **Powers of Commission—Charleston County.**—The functions of every such Commission shall be sanitary drainage, public utility drainage, and agricultural drainage, in each county respectively: *Provided*, That in the County of Charleston the said Commission shall be empowered, in addition to the functions hereinabove set forth, to construct and repair roads, bridges and ferries.

Civ. '12, § 2275; 1907, XXV, 524; 1915, XXIX, 249.

(3203) § 3. **Duties and Powers.**—The duties and powers of every such Commission, in each county respectively, shall be as follows:

1. **TO HAVE CONTROL OVER DRAINS, ETC.**—To have and exercise exclusive control (outside of the limits of incorporated cities and towns) of and over all public drainage canals, ditches, drains, trunks, culverts, etc., and the care and management thereof, with the right to establish the grades of public roads and roadside ditches within the area of its operations, and to alter or repair same.

1907, XXV, 524.

2. **TO MAKE SURVEYS.**—To employ engineers to make appropriate topographic drainage surveys, maps, profiles, estimates, etc., of the territory to be drained.

1907, XXV, 524.

3. **TO MAKE ALTERATIONS AND IMPROVEMENTS.**—To repair, alter or abolish any public drainage canals, ditches, drains, culverts, trunks, etc., and to dig and construct such additional ones as the Commission may deem essential to sanitary and drainage purposes.

1907, XXV, 524.

4. **TO COMPEL DRAINS TO BE KEPT IN GOOD ORDER.**—To require any person or corporation (through whose lands private ditches or drains have been dug and opened) to connect with the public drainage canals, ditches or drains, and to keep the same open and in good order, and in harmony with the general system of drainage in the territory where said system may be established by the Commission; and in case of the failure of any such person or corporation so to do, to have the same done after thirty days' notice to such person or corporation, or his, her or its agent; and all expenses and charges paid or incurred by the Commission therefor shall and may be recovered with interest and costs of suit, in an action of debt to be brought by the Commission in the Court of Common Pleas against such person or corporation: *Provided*, That said expenses and charges do not exceed more than one-fourth of the value of said lands.

1907, XXV, 524.

5. **SAME.**—To require any person or corporation, whose lands, in their judgment, are in an unsanitary condition and require drainage, to dig and open drains or ditches, or lay underdrains, and connect the same with the public drainage canals, ditches or drains, and to keep the same open and in good order, and in harmony with the said general system of drainage, and in case of the failure of any such person or corporation so to do, to have the same done after ten days' notice to such person or corporation, or his,

her or its agents, and upon such notice being filed in the office of the Clerk of the Court of the county in which said land is situated, subsequent purchasers of said lands pending such work shall be liable to the said Commission, and all expenses and charges paid or incurred by the Commission therefor shall and may be recovered, with interest and costs of suit, in an action of debt to be brought by the Commission in the Court of Common Pleas against such person or corporation: *Provided*, That said expenses and charges do not exceed more than one-half the value of said land.

1910, XXVI, 703.

6. TO UTILIZE THE COUNTY CHAINGANG.—To utilize the county chaingang, in whole or in part, in any kind of work for drainage purposes, when not needed for road purposes, and to hire convicts from other counties and from the State for any such work.

1907, XXV, 524.

7. TO DO ALL WORK FOR DRAINAGE PURPOSES.—To do any and all work for drainage purposes, with convict labor or otherwise, or else to enter into and make contracts for such work, or any part thereof, after advertisement and award to the lowest responsible bidder: *Provided*, That the aggregate expenses for any fiscal year shall not exceed the amount that may be apportioned by law or otherwise provided for drainage purposes for the fiscal year.

1907, XXV, 524.

8. TO PREPARE ESTIMATES.—To prepare an estimate of the amount necessary to pay the expenses to be incurred by the Commission for drainage purposes and report the same to the Comptroller General for the State, on or before the 5th day of January of each year, to be by him submitted to the General Assembly in order to provide the necessary county or township taxation therefor.

1907, XXV, 524.

9. TO CONDEMN LANDS.—To condemn all lands necessary for the proper drainage of swamp and lowlands; and also to equitably assess all lands so drained for the purpose of paying the expenses of such condemnation and drainage and report the same to the Comptroller General of the State, on or before the 5th day of January of each year, to be by him submitted to the General Assembly, who shall provide therefor.

1907, XXV, 524.

10. TO REPORT TO THE GENERAL ASSEMBLY.—To make a report to the General Assembly, on the first day of each regular session, of its actings and doings, including a full statement of the moneys received and expended by it, together with its recommendations as to the work proper to be done, and money expended under the provisions of this Act, with such other recommendations as it may deem proper.

Civ. '12, § 2276; 1907, XXV, 524.

(3204) § 4. **How Moneys Shall Be Paid Over to Commission.**—Any and all moneys appropriated to any such Commission shall be paid by the County Treasurer of the county from said appropriation, on a certificate sworn to

and signed by the Secretary and Treasurer of the Commission and countersigned by the Chairman thereof, who shall be elected by the Commissioners, or a majority of them. The said Secretary and Treasurer shall be bonded, and the amount of his bond shall not be less than the amount of the appropriation for the current year; said bond to be given to the State of South Carolina, to be approved by and filed with the Clerk of the Court for the county.

Civ. '12, § 2277; 1907, XXV, 524.

(3205) § 5. May Apply for Authority to Issue Bonds.—Every such Commission shall have the right at any time, if necessary, to apply to the General Assembly for an issue of county or township bonds, in order to fully prosecute the work of drainage throughout the county or any township thereof.

Civ. '12, § 2278; 1907, XXV, 524.

(3206) § 6. Not to Affect Existing Drainage Laws.—Nothing in this Article contained shall be construed as affecting any duties and powers (other than those herein specified) lawfully existing for the purposes of drainage in any county of the State.

Civ. '12, § 2279; 1907, XXV, 524.

(3207) § 7. Canal Duty in St. Helena Township of Beaufort County.—The Drainage Commission of St. Helena Township, Beaufort County, be, and is hereby, authorized and empowered, when deemed necessary, for sanitary or agricultural purposes, to construct or clean out public canals or ditches in said township, to summon all able-bodied residents, who are liable for road duty in said township, and who reside on the lands through which said public canals or ditches run or will run through, or who live on lands contiguous to ditches or canals, into which the surface waters of said lands drain or should drain, to appear and work on the said canals or ditches for not more than eight days in each year.

1920, XXXI, 956.

(3208) § 8. Failure to Work a Misdemeanor—Penalty.—Any person so summoned who shall fail or refuse to appear at the time and place named in the summons, or shall fail or refuse to faithfully work as required by the said Drainage Commission, or by the person or persons placed in charge of the work by the said Drainage Commission, shall be deemed guilty of a misdemeanor, and, if found guilty, shall be fined not more than one hundred dollars or imprisonment for not more than thirty days.

1920, XXXI, 956.

(3209) § 9. Existing Laws Unrepealed.—That the provisions of the two foregoing Sections are in addition to the laws now in force in said township and is not to be construed as repealing any existing law.

1920, XXXI, 956.

(3210) § 10. Commissioners of Certain Counties Act as Commissioners of Health and Drainage—Powers and Duties.—The County Board of Road Commissioners of the Counties of Abbeville, Beaufort, Chester, Colleton, Darlington, Dillon, Florence, Greenville, Horry, Laurens, Marion,

Mariboro, Oconee, Pickens, Spartanburg, York and Union, respectively, are authorized, in addition to the duties now imposed on them by law, to act as Commissioners of Health and Drainage, and are empowered as such Commissioners of Health and Drainage to act as follows, to wit:

1. LAND OWNER WITHOUT NECESSARY OUTLET THROUGH ADJOINING LANDS.—In all cases where a landowner desires to drain his land and is refused a necessary outlet upon or through adjoining lands, the said Commissioners are hereby empowered to hear the case on petition and personal service, and to decide and fix either compensation on one side or assessment on the other, and their decision in such case shall have the force of a legal judgment.

2. ONE-THIRD OF LAND OWNERS DESIRING DRAINAGE.—In all cases where one-third of the landowners upon any watercourse for a distance of not less than five miles up and down the stream in said county, or (except in Laurens County) where the watercourse is less than five miles in length, then when one-third of the citizens along the entire length of said stream shall desire to drain the lands upon such watercourse, the said Commissioners shall, upon petition, personal service and the testimony of one or more competent engineers, be empowered to make contracts for such drainage and impose the proper assessment upon the various properties benefited by the same, and the said assessment shall have the force of a legal judgment; but, in both of the above mentioned cases, should any party feel aggrieved by the decision or action of the Commissioners in the premises, it shall be lawful for him to appeal to the Judge of the Circuit Court at the term of the Court next ensuing, whose decision in the matter shall be final

Non-petitioning land owners not benefited cannot be assessed. Moore v. Barry. 30 S. C. 530, 9 S. E. 589, 4 L. R. A. 294.

3. GENERAL HEALTH AFFECTED BY WATER COURSE.—In cases where the general health is seriously affected by the condition of any watercourse, the County Board of Commissioners shall, upon petition and proof of at least one-third of the landowners upon such watercourse, or of one-third of the landowners within two miles on either side of such watercourse, and not less than five miles up and down the stream, which proof shall contain the affidavits of two physicians, one of whom shall practice in the neighborhood, make an estimate of the cost and proceed to drain such watercourse as in cases heretofore provided for; but if, in the opinion of the County Board of Commissioners, the cost of such drainage imposes too heavy an assessment upon the individual landowners upon such watercourse, they shall make a report in writing of the estimate and opinion to the Judge of the Circuit Court at the next ensuing term thereof, and if he approves of such report and estimate, which approval shall be in writing, the County Board of Commissioners shall contract for such drainage, and after levying a fair assessment upon all such property they shall charge the surplus of the cost of such drainage to the county, to be carried into their estimate for the county expenses for the next ensuing year, to be defrayed by a tax levy on all property in said township, to be collected as the State and county taxes are collected.

4. **GENERAL HEALTH AFFECTED BY MILL DAM.**—In cases where the general health of the county or neighborhood be seriously affected by the condition of any mill dam, the County Commissioners of said county shall have the power to remove the cause of such nuisance; but a fair compensation must be paid to the owner thereof, the same to be assessed upon the property of those benefited by the removal of such nuisance. They shall further regulate the condition of all mill dams in said county by requiring the owners thereof to furnish such mill dams with a substantial floodgate, if in their judgment the health of the neighborhood or the drainage of the land above the dams requires a floodgate to be placed in the dam, to be opened at and kept open for such times as the said County Commissioners shall direct: *Provided*, That in Darlington, Florence and Pickens Counties the powers herein conferred shall apply to mill ponds and dams only: *And further*, That this subdivision shall not be construed to oust the Court of General Sessions of jurisdiction to abate any mill pond as a nuisance. Any person or persons ordered by the Board of County Commissioners to put in a floodgate in any mill dam under the provisions of this subdivision who shall fail to do so shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed one thousand dollars, or be imprisoned for not exceeding one year.

Civ. '12, § 2265; Civ. '02, § 1488; G. S. 1183; R. S. 1279; 1881, XVII, 888; 1882, XVIII, 48; 1883, XVIII, 563; 1888, XX, 59; 1889, XX, 373; 1893, XXI, 481; 1896, XXII, 257; 1913, XXVIII, 65; 1914, XXVIII, 11; 1916, XXIX, 748.

ARTICLE IV.

Drainage Districts.

(3211) § 1. **Formation of Drainage Districts—Petition.**—The Sinking Fund Commission of this State, or a majority, either in numbers or in acreage, of the holders of any contiguous body of swamp, wet or overflowed lands, or lands subject to overflow, situate in one or more counties in this State, may form a drainage district for the purpose of having such lands reclaimed and protected from the effects of water, for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience or welfare, or of public utility or benefit, by drainage or otherwise, and for that purpose the said Sinking Fund Commission, or a majority of the owners, or the owners of a majority of the acreage of said lands may make and sign a petition, in which shall be stated the name of the proposed drainage district, and the number of years the same is to continue; the boundaries of the proposed drainage district; the names so far as known, and the last known postoffice address of the owners of lands in said district, together with the approximate number of acres owned by each; when the name or postoffice address of the owners of any said lands is unknown to the petitioners shall be set out in said petition; said petition shall further state that the owners of the lands within said district whose names are subscribed to said petition are willing to and do obligate and bind the lands owned by them situated in the proposed drainage district to pay the tax or taxes which may be assessed against their respective lands to pay the expense

of organizing and of making and maintaining the improvements that may be necessary to effect the reclamation of said lands, so formed into a drainage district, and to drain and protect the same from the effects of water, and said petition shall contain a prayer asking that the lands described therein be declared a drainage district under the provisions of this Article; said petition may be signed by the Sinking Fund Commission, or by a majority of the owners, or the owners of a majority of the acreage of said lands, or same be signed by both said Commission and owners of lands. After said petition has been so signed the same shall be filed in the office of the Clerk of the Court of Common Pleas of the county in which such lands or the greater part thereof are situate.

1920, XXXI, 663.

(3212) § 2. Publication of Notice—Form—Proof of Publication—Jurisdiction of Cause.—Immediately after such petition shall have been filed, the Clerk in whose office the same has been filed, shall give notice by causing publication to be made once a week for four consecutive weeks in some newspaper published in each county in which the lands referred to in the petition are situate, the last publication to be not less than twenty days before the appearance day fixed in said notice, and said notice shall be substantially in the following form; and it shall be deemed sufficient for all purposes of this Article:

NOTICE OF APPLICATION TO FORM A DRAINAGE DISTRICT.—Notice is hereby given to all persons interested in the following described lands in County, South Carolina, viz.: (here describe the property as set out in the petition), that a petition asking that the foregoing lands be formed into a drainage district under an Act of the Legislature entitled (here insert title of Act), approved....., 1920, has been filed in this office, and that the foregoing lands will be affected by the formation of said drainage district and rendered liable to assessment for the purpose of paying the expenses of organization, and making and maintaining the improvements that may be necessary to effect the reclamation of the lands included in such district, and you and each of you are hereby notified to appear on the day of, at the office of the Clerk of the Court of Common Pleas of County, and show cause, if any there be, why said drainage district as set forth in said petition shall not be organized as a public corporation of the State of South Carolina. Date of first publication 192... Clerk of the Court of Common Pleas of County, South Carolina. The certificate of the Clerk or the affidavit of another, with a copy of said notice affixed, showing that said notice has been published as required by this Article, shall be sufficient evidence of such fact. The Court of Common Pleas of the county in which said petition has been filed shall thereafter maintain and have original and exclusive jurisdiction, coextensive with the boundaries and limits of said districts, without regard to county lines, for all purposes of this Article.

1920, XXXI, 663.

(3213) § 3. **Hearing—Objections—Decision and Decree—Written Consent of Landowners—Amendment of Petition—Filing of Records.**—Any owner of lands in said proposed district who may not have signed said petition, may appear on or before the appearance day stated in said notice and advocate or resist the organization and incorporation of said drainage district; if he shall desire to resist the establishment of the district, he shall file his objection in writing, stating therein his reasons why the said drainage district should not be included therein, or he may deny the statements in said petition. Such objections, if any there be, shall be heard by the Court either in open Court, or at chambers within or without the county or counties where said lands lie, in a summary manner, without unnecessary delay, on a day to be named by the Court or Judge thereof, upon application of the petitioners or any of those signing the said petition. Upon the hearing, which may be adjourned from time to time for good cause shown, of the said objections, if any have been filed, if the Court shall be of the opinion that the establishment of the said drainage district and the improvements to be made thereunder will be for the advantage of the owners of the real property therein or that the same would be in the interest of the public health, convenience or welfare, he shall overrule said objections; and, in case all such objections are overruled, or in case no such objections have been filed, the Court thereupon shall, by its order duly entered of record, declare and decree said drainage district a public corporation of this State, for a term not exceeding the time mentioned in said petition: *Provided*, That no drainage district shall be established or consolidated under any provisions of this Article until there shall have been first obtained the written approval or consent of a majority of the owners, or the owners of a majority in acreage, of the lands within said district; such written approval or consent to be evidenced by the signing of the petition or otherwise. If the Court finds that the lands set out in said petition should not be incorporated into a drainage district, it shall dismiss said proceedings and adjudge the costs against the said petitioners in proportion to the acreage represented by each. Any person having signed the petition shall have no right to have such proceedings dismissed as to him without the written consent of the majority in acreage of the owners who signed said petition. The petition may be amended as any other pleading. Immediately after the said district has been declared a corporation by the Court, the Clerk thereof shall transmit to Secretary of State a certified copy of the findings and decree of the Court incorporating said district, and the same shall be filed in the office of the Secretary of State. A copy of said findings and decree together with a plat of the district showing the outside boundary lines shall also be filed in the office of the Clerk of the Court of Common Pleas in each of the counties having land in said district, where the same shall become a permanent record, and each such Clerk shall receive a fee of \$1.00 for filing and preserving the same.

1920, XXXI, 663.

(3214) § 4. **Election of Supervisors—Terms of Office—Powers of Sinking Fund Commission.**—Within twenty days after any drainage district shall have been organized and incorporated under the provisions of the

previous Sections of this Article the Clerk of the Court in which the petition has been filed shall, upon giving notice by causing publication thereof to be made once a week for two consecutive weeks in some newspaper published in each county in which lands of the district are situate, the last insertion to be not less than ten nor more than fifteen days before the day of such meeting, call a meeting of the owners of the lands situate in said district, at a day and hour specified, at some public place in the county in which the district was organized, for the purpose of electing a Board of three Supervisors, to be composed of owners of the lands in said district, two of whom at least shall be residents of the county or counties in which such district is situate, or some adjoining county; the landowners, when assembled, shall organize by the election of a Chairman and a Secretary of the meeting, who shall conduct the election; at such election each and every acre of land in the district shall represent one share, and each owner shall be entitled to one vote in person or by proxy in writing duly signed, for every acre of land owned by him in such district, and the three persons receiving the highest number of votes shall be declared elected as Supervisors; and said landowners shall at such election determine the length of the terms of each Supervisor so elected by them, which shall be, respectively, one, two and three years, and they shall serve until their successors shall have been elected and qualified. The Sinking Fund Commission of this State at any such meeting may represent the State of South Carolina, and shall have the right to vote for Supervisors or upon any matter that may come properly before said meeting to the extent of the acreage owned by the State in such district, which vote may be cast by any person designated by said Sinking Fund Commission; guardians may represent their wards, executors and administrators may represent estates of deceased persons, and private corporations may be represented by their officers or duly authorized agents: *Provided, however,* That the owners of a majority of the acreage included in such district shall be necessary to constitute a quorum for the purpose of holding such election or any election thereafter, and in case the owners of a majority of the acreage included in such district are not present in person or duly represented at the time and place stated in the notice calling such meeting, then no election shall be held, and notice of such failure shall be given in writing by any person interested to the Sinking Fund Commission of this State, which shall, as soon as practicable, appoint three competent persons who own land in such district as such Supervisors for the term of one, two and three years, respectively, and who shall hold their office until their successors are elected or appointed and qualified. Any such Supervisor so appointed by the Sinking Fund Commission may be removed by the said Board for dishonesty, incompetency or failure to perform the duties imposed upon him by this Article, and any vacancies which may occur in any such office so filled by appointment shall be filled by the said Sinking Fund Commission as soon as practicable.

1920, XXXI, 663.

(3215) § 5. Annual Elections—Vacancies.—Every year in the same month after the time for the election of the first Board of Supervisors, they shall call a meeting of the landowners in the district in the same manner

as is provided for in Section 4, and the owner of land in such district shall meet at the stated time and place and elect one Supervisor therefor, or in case of their failure to elect, the Sinking Fund Commission shall appoint such Supervisor, in like manner as prescribed in the preceding section, who shall hold his office for three years or until his successor is elected and qualified; and in case of a vacancy in an office of Supervisor elected by the landowners, the remaining Supervisors, or if they fail to act within thirty days, the Sinking Fund Commission of this State may fill such vacancy until the next annual meeting, when a successor shall be elected for the unexpired term.

1920, XXXI, 663.

(3216) § 6. Oath of Supervisors.— Each Supervisor before entering upon his official duties shall take and subscribe to an oath before some officer authorized by law to administer oaths, that he will honestly, faithfully and impartially perform the duties devolving upon him in office as Supervisor of the drainage district in which he was elected or appointed and that he will not neglect any of the duties imposed upon him by this Article.

1920, XXXI, 663.

(3217) § 7. Organization of Board of Supervisors—Secretary—Seal—Records—Compensation.— The Board of Supervisors immediately after their election or appointment shall meet at some convenient place and choose one of their number President of the Board, and elect some suitable person Secretary, who may or may not be a member of the Board, and who may be required to execute bond for the faithful performance of his duties as the Board of Supervisors may require. Such Board may adopt a seal with a suitable device, and shall keep a record of all its proceedings in a substantially bound book to be kept for the purpose, which shall be open to inspection by any interested person, his agent or attorney. The Board of Supervisors shall report to the landowners at the annual meeting held under the provisions of Section 5 of what work has been done, either by engineers or otherwise. The members of the Board shall receive their actual expenses incurred in attending the meetings of the Board, and for attending any business for and in behalf of said district, which expense account shall be audited by the Board before payment, but said Board shall receive no compensation for their services unless the landowners at the annual meeting shall determine to pay a compensation, which in no event shall exceed five dollars per day for the time actually engaged in work for the district, and five cents per mile for miles not to exceed one hundred miles actually traveled; mileage, if allowed, shall in no case exceed one hundred miles, and shall be in lieu of all other expenses in attending sessions of the Board: *Provided, however,* That if the Secretary be a member of the Board he shall be entitled to compensation as hereinafter provided.

1920, XXXI, 663.

(3218) § 8. Appointment of Chief Engineer—Bond—Powers—Surveys and Maps.— Within thirty days after organizing the Board of Supervisors shall appoint a Chief Engineer, who may be an individual, copartnership

or corporation, and who shall engage such assistants as the Board of Supervisors may approve. Such Chief Engineer shall enter into a bond with good surety, in a sum to be named by said Board, and which bond and surety shall be approved by said Board, conditioned that he will faithfully and honestly perform all the duties required of him by said Supervisors, and deliver to his successor all instruments, papers, maps, documents and other things that may have come into his hands by virtue of his employment. The Chief Engineer shall have control of the engineering work in said district, and he may, whenever he deems it necessary, confer with the Chief Engineer of this State, or the Sinking Fund Commission, and he may, by and with the consent of the Board of Supervisors, consult any eminent engineer or engineers and obtain his or their opinion and advice concerning the reclamation of lands in said districts. The said Engineer and Engineers shall make all necessary surveys of the land within the boundary lines of said district, as described in the petition, and of all lands adjacent thereto that will be improved or reclaimed in part or in whole by any system of drainage that may be outlined and adopted, and said Engineers shall make a report in writing to the Board of Supervisors, with maps and profiles of said surveys, which report shall contain a full and complete plan for draining, and reclaiming the lands described in the petition or adjacent thereto from overflow or damage by water, with the length, width and depth of such canals, ditches, dykes or levees or other works that may be necessary, in conjunction with any canals, drains, ditches, dykes, levees or other works heretofore constructed or built by any other person or persons, that may now be in process of construction, or which may be hereafter built by them, that may be necessary or which can be advantageously used in such plan for reclamation, and also an estimate of the costs of carrying out and completing the plan of reclamation, including the cost of superintending the same and all incidental expenses in connection therewith; said maps and profiles shall also indicate so far as necessary the physical characteristics of the lands, and location of any public roads, railroads and other rights of way, roadways and other property or improvements located on such lands.

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(3219) § 9. Report of Chief Engineer — Plan of Reclamation. — The Chief Engineer shall make a report in writing to the Board of Supervisors once every twelve months and oftener if said Board shall so require. Upon receipt of the final report of said Engineer concerning the surveys made of the lands contained in the district organized and the lands adjacent thereto, and plans for reclaiming the same, the Board of Supervisors shall adopt such report or any modification thereof approved by the Chief Engineer, after consulting with him or someone representing him, and thereafter such adopted report shall be the plan for draining or reclaiming such lands from overflow or damage by waters, and it shall, after such adoption, be known and designated as "The Plan of Reclamation," which plan shall be filed with the Secretary of the Board of Supervisors and by him copied into the records of the district.

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(3220) § 10. Assessment for Preliminary Expenses—Provisos.—The Board of Supervisors of any drainage district organized under the provisions of this Article shall as soon as they have organized as provided under the provisions of this Act shall, as soon as they have organized as provided under Section 7 of this Article, levy a uniform assessment (hereafter called a tax) of not exceeding fifty cents per acre upon each acre of land within such drainage district, as defined in the petition and decree incorporating said district, to be used for the purpose of paying expenses incurred or to be incurred in organizing said district, making surveys of the same and assessing benefits and damages, and to pay other expenses necessarily incurred, as may be estimated by said Board and Chief Engineer, before said Board shall be empowered by subsequent provisions of this Article to provide funds to pay the total costs of works and improvements of the district. In case the boundary lines of the district be extended under the provisions of a subsequent section of this Article, so as to include lands not covered by the petition, the same uniform assessment shall be made on such other lands as soon as the same shall have been annexed and included in the district. Such tax shall be due and payable as soon as assessed and become delinquent ninety days thereafter. It shall become a lien upon the land against which it is assessed from the date of assessment and shall be collected in the same manner as the annual installment of tax. In case the sum received for such assessment exceeds the total cost of items for which the same has been levied, the surplus shall be placed in the general fund of the district and now used to pay cost of construction: *Provided*, That if the incorporation of the district be dissolved, as provided in the subsequent sections of this Article, the amount or surplus, if there be any, shall be prorated and refunded to the landowners paying such assessment: *Provided*, That if it shall appear as necessary to obtain funds to pay any expense incurred or to be incurred in organizing said districts before a sufficient sum can be obtained by the collection of said uniform tax, the Board of Supervisors may borrow a sufficient amount of money to meet emergencies at a rate of interest not exceeding eight per cent. per annum, and may issue negotiable notes therefor, signed by the members of the Board, and may pledge any and all assessments made under the provisions of this Section for the repayment thereof. Said Board of Supervisors may issue to any person or persons performing work or services, or furnishing anything of value in the organization of said district, negotiable evidence of debts, bearing interest at not exceeding six per cent.

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(3221) § 11. Appointment of Appraisers.— Within twenty days after the adoption of "The Plan of Reclamation" the Secretary of the Board of Supervisors shall prepare and transmit a certified copy thereof to the Clerk of the Court of Common Pleas organizing said drainage district, and at the said time the Board of Supervisors shall file with the said Clerk a petition asking the Judge of said Court to appoint three Commissioners to appraise the lands within and without said district to be acquired for rights of way, holding basins and other drainage works of the district, and to assess benefits and damages accruing to all lands in the district by reason

of the execution of "The Plan of Reclamation." Immediately after the filing of such petition the Judge of said Court, either in open Court or at chambers within or without the county or counties where the lands of said district lie shall, by an order, appoint three Commissioners, who shall be freeholders residing within the State of South Carolina, and who shall not be landowners in said district, nor of kin within the fourth degree of consanguinity to any person owning land in said district. A majority of said Commissioners shall constitute a quorum and shall control the action of the Board on all questions.

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(3222) § 12. Meeting of Appraisers—Oath—Organization.—Said Clerk, upon the filing of said order of appointment, shall notify each of said Commissioners of his appointment by written or printed notice, and in the same he shall state the time and place for the first meeting of said Commissioners; the Secretary of the Board of Supervisors or his Deputy shall attend such meeting and shall furnish to said Commissioners a complete list of lands covered by the petition or adjacent thereto, that will be affected by carrying out and putting into effect "The Plan of Reclamation," and the names of the owners of such lands, as shown in the petition and the decree of the Court incorporating the district. Said Secretary shall also furnish to said Commissioners a copy of "The Plan of Reclamation," with maps and profiles in his office. The Commissioners at said meeting, or within ten days thereafter, shall each take and subscribe to an oath that they will impartially discharge their duties as such Commissioner and make a true report of the work done by them. The said Commissioners shall also at said meeting elect one of their own number as Chairman, and the Secretary of the Board of Supervisors, or his deputy, shall be *ex officio* Secretary of said Board of Commissioners during their continuance in office.

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(3223) § 13. Duties of Appraisal Commissioners—Assessment of Benefits and Damages—Reports of Commissioners—Compensation—Extension of Boundary Lines of District.—Immediately after qualifying as provided in the previous Section, the Commissioners shall begin their duties; they may at any time call upon the attorney of the district for legal advice and information relative to their duties, and the Chief Engineer or one of his assistants shall accompany said Commissioners when engaged in the discharge of their duties and shall render his opinion in writing when called for. Said Commissioners shall proceed to view the premises and determine the value of all lands, within or without the district, to be acquired and used for rights of way, holding basins or other works set out in "The Plan of Reclamation;" they shall assess the amount of benefits and the amount of damages also, if any, that will accrue to each tract or lot of land according to ownership, public highways, railroads and other rights of way, from carrying out and putting into effect "The Plan of Reclamation" theretofore adopted. The Commissioners in assessing the benefits to lands, public highways, railroads and other rights of way, not traversed by such works and improvements, as provided for in "The Plan

of Reclamation," shall not consider what benefits will be derived by such property after other ditches, improvements, or other plans for reclamation shall have been constructed, but they shall assess only such benefits as will be derived from the construction of the works and improvements set out in "The Plan of Reclamation," or as the same may afford an outlet for drainage or protection from overflow of such property. The Commissioners shall give due consideration and credit to any other canal or canals, drain or drains, ditch or ditches, dyke or dykes, levee or levees, or other systems of reclamation which may have already been constructed and which affords partial or complete protection to any tract or parcel of land in the new district. The public highways, railroads and other rights of way shall be assessed according to the increased physical efficiency and decreased maintenance cost of roadways by reason of the protection to be derived from the proposed works and improvements. The Commissioners shall have no power to change "The Plan of Reclamation" heretofore provided for. The Board of Commissioners shall prepare a report of their findings, which shall be arranged in tabular form, the columns of which shall be headed as follows: Column one, "Owner of property assessed;" column two, "Description of property assessed;" column three, "Number of acres assessed;" column four, "Amount of benefits assessed;" column five, "Amount of damages assessed;" column six, "Number of acres to be taken for rights of way, holding basins, etc.;" column seven, "Value of property to be taken." They shall also, by and with the advice of the Engineer of the district, estimate the costs of the works set out in "The Plan of Reclamation," which estimate shall include the cost of property required for rights of way, holding basins and other works and damages, and the probable expense of organization and administration, as estimated by the Board of Supervisors, and shall tabulate the same. Said report shall be signed by at least a majority of the Commissioners and filed in the office of the Clerk of the Court of Common Pleas organizing such drainage district. The Secretary of the Board of Supervisors, or his Deputy, shall accompany said Commissioners while engaged in their duties, and shall perform all clerical work for said Board; he shall, also, under the advice, supervision and direction of the attorney for the district, prepare their report. Said Board of Commissioners shall report to the Board of Supervisors the number of days each have been employed and the actual expenses incurred. Each Commissioner shall be paid five dollars per day for his services, and necessary expenses in addition thereto. In case the report of said Commissioners shall contain assessments of benefits and damages to lands not included in the original petition as signed and filed, the Board of Supervisors shall file in the office of said Clerk a petition praying that the Court grant permission for the extension of the boundary lines of said district, so as to embrace all lands that will be benefited, as shown by the report of said Commissioners, and after such petition has been filed, the same shall be proceeded with in accordance with the provisions of the Section of this Article governing the extension of boundary lines of districts.

(3224) § 14. Notice of Filing of Report—Form of Notice—Publication.

—Upon the filing of the report of the Commissioners, the Clerk of said Court of Common Pleas shall give notice thereof by causing publication to be made once a week for two consecutive weeks in some newspaper published in each county in the district, the last publication to be made at least ten days before the day to be named in such notice, on which exceptions may be filed. It shall not be necessary for the Clerk to name the parties interested, but it shall be sufficient to say: NOTICE OF FILING COMMISSIONERS' REPORT FOR DRAINAGE DISTRICT. Notice is hereby given that all persons interested in the following described real estate in County (or counties), in the State of South Carolina, viz.: (here give boundaries of district), included within "..... Drainage District," that the Commissioners heretofore appointed to assess benefits and damages to the property and lands situate in said drainage district and to appraise the cash value of the land necessary to be taken for rights of way, holding basins and other works of said district within or without the limits of said district, filed their report in this office on the day of, 19.., and you and each of you are hereby notified that you may examine said report and file exception to all or any part thereof, on or before the first Monday in, 19... First publication, 19... Clerk of the Court of Common Pleas, ... County: *Provided*, That where lands in different counties are contained in said report, the said notice shall be published in some newspaper in each county in which such lands so affected are situate.

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(3225) § 15. Exceptions to Report—Hearing and Decision—Condemnation of Lands Needed—Provisos—Acquiescence in Findings—Appeals—Refund of Preliminary Uniform Assessment to Owners of Lands Not Benefited.

—The Board of Drainage Commissioners, the drainage district or any owner of land or other property to be affected by said report may file exceptions to any part or all of the report of said Commissioners within the time specified in the preceding section. All exceptions shall be heard and determined by the Court in a summary manner so as to carry out liberally the purposes and needs of the district. If no exceptions are filed or if it is shown upon the hearing of all of said exceptions that the estimated cost of construction of improvements contemplated in the plan for reclamation is less than the benefits assessed against the lands in said district, the Court shall approve and confirm said Commissioners' report, but if the Court, upon hearing the objections filed, finds that any or all such objections should be sustained it shall order the report changed to conform with such findings, and when so changed the Court shall approve and confirm such report and enter its decree accordingly. The Court shall adjudge and apportion the costs incurred by the exceptions filed, and there shall be condemned any land or other property, within or without the boundary lines of the district, that is shown by the report of the Commissioners to be needed for rights of way, holding basins or other works, or that may be needed for material to be used in constructing said works, following, as nearly as possible, the procedure that is now provided for by law for the

appropriation of land and other property taken for railroads: *Provided*, however, That any property owner may accept the assessments of damages in his favor made by the Commissioners, or acquiesce in their failure to assess damages in his favor, and shall be construed to have done so, unless he gives the Supervisors of the district on or before the time shall have expired for filing exceptions, as heretofore provided, notice in writing that he demands an assessment of his damages by a jury: *Provided*, Any person or party aggrieved may, within ten days after the rendition of final judgment by said Court of Common Pleas, prosecute an appeal to the Supreme Court: *Provided*, That it shall be ascertained and determined that any tract or lot of land or parts thereof upon which the uniform tax authorized and levied as provided in Section 10 of this Article has been paid, will not be benefited by or receive any benefit from the completion of the plan for improvement, then the uniform tax so paid upon such tract, lot or part thereof, shall be refunded and paid to the person paying same.

The Clerk of said Court of Common Pleas shall transmit a certified copy of the Court decree and copy of the Commissioners' report, as confirmed or amended by the Court, to the Secretary of the Board of Supervisors of the district; and the Clerk of said Court shall also transmit a certified copy of the said decree and that part of the said report affecting land in each county to the Clerk of the Court of Common Pleas of each county having lands in the district, or affected by the said report, where the same shall be filed and become a permanent record, and each such Clerk shall receive a fee of one dollar for receiving, filing and preserving same.

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(3226) § 16. **Powers of Board of Supervisors; of Chief Engineer—Reports.**—The Board of Supervisors of said district shall have full power and authority to build, construct, excavate and complete any and all works and improvements which may be needed to carry out, maintain and protect "The Plan of Reclamation." To accomplish that end the said Board of Supervisors are hereby authorized and empowered to employ men and teams and to purchase machinery, employ men to operate same and directly have charge of and construct the works and improvements in such manner, or by the use of other or more efficient means than provided for in the plans adopted. They may, in their discretion, let the contract for such works and improvements either as a whole or in sections, and when such contract or contracts are let they shall be advertised and let to the lowest and best bidder, who shall give a good and approved bond with ample security, conditioned that he will well and promptly carry out the contract for such work and improvements, which contract shall be in writing, and to which shall be attached and made a part thereof, complete plans and specifications of the work to be done and improvements to be made under such contract, which plans and specifications shall be prepared by the Chief Engineer and shall be incorporated in and attached to the contract, which contract shall be prepared by the Attorney for the district and approved by the Board of Supervisors and signed by its President and the contractor, and executed in duplicate. The Chief Engineer shall be the Superintendent of all the works and improvements, and shall at least once

each year, and when required, make a full report to said Board of all work done and improvements made, and make suggestions and recommendations to the Board as he may deem proper.

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(3227) § 17. Levy of Assessments—Payments of Assessments on Lands of the State—Drainage Tax Record.—After the list of lands, with the assessed benefits and the decree and judgment of Court, have been filed in the office of the Clerk of the Court of Common Pleas, as provided in Section 15 of this Article, then the Board of Supervisors shall, without any unnecessary delay, levy an assessment (hereinafter called a tax) of such portion of said benefits on all lands, railroads and other property in the district to which benefits have been assessed, as may be found necessary by the Board of Supervisors to pay the costs of the completion of the proposed works and improvements as shown in said "Plan of Reclamation" and in carrying out the objects of said districts, and in addition thereto ten per cent. of said total amount for emergencies. The said tax shall be apportioned to and levied on each tract of land in said district in proportion to the benefits assessed and not in excess thereof, and in case bonds are issued as provided hereinafter, then the amount of the interest (as estimated by said Board of Supervisors) which will accrue on said bonds shall be included and added to the said tax, but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the costs of construction in determining whether or not the expenses and costs of making said improvements are or are not equal to or in excess of the benefits assessed. All lands in said district belonging to the State shall be assessed to, and the taxes thereon shall be paid by the State out of the funds on hand, or which may hereafter be obtained, derived from the sale of lands belonging to the State, and this provision shall apply to taxes assessed for preliminary work and expenses, as provided for in this Section. The Secretary of the Board of Supervisors, as soon as said total tax is levied, shall, at the expense of the district, prepare a list of all taxes levied, in the form of a well-bound book, which book shall be endorsed and named "Drainage Tax Record of Drainage District, ... County, South Carolina," which endorsement shall be printed or written at the top of each page in said book, and shall be signed and certified by the President and the Secretary of the Board of Supervisors, attested by the seal of the district, and the same shall thereafter become a permanent record in the office of said Secretary.

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(3228) § 18. Determination of Annual Installments—Form of Certificate.—The said Board of Supervisors shall each year thereafter determine, order and levy the amount of the annual installments of the total taxes levied under the preceding Section, which shall become due and be collected during said year at the same time that State and county taxes are due and collected, which said annual installment and levy shall be evidenced and certified by the said Board not later than October 1st of each year to the County Treasurer of each county in which lands and other

property of said district are situated. The certificate of said installment tax shall be in substantially the following form:

STATE OF SOUTH CAROLINA, }
County of..... }

This is to certify that by virtue and authority of the provisions of an Act of the Legislature entitled "An Act relating to the creation, organization and maintenance of drainage districts, etc.," as enacted by the General Assembly of the State of South Carolina, approved March 17, 1920, the Board of Supervisors of "..... Drainage District of South Carolina," have, and do hereby, levy the sum of \$..... as the annual installment of tax for the year 19.. of the total tax levied under the provisions of Section 17 of said Act, which said total tax has heretofore been certified to the Clerk of the Court of Common Pleas of your county; and said Board of Supervisors of said drainage district, by and with the authority of Section 41 of the same Act, has levied also the sum of \$..... as a maintenance tax for said year; said annual installment of tax and maintenance tax on the real estate and other property situate in your county are set out in the following table, in which are: First, the names of the owners of said lands as they appeared in the decree of the Court organizing said district; second, a brief description of said lands and other property opposite the names of said owners; third, the amount of said installment of tax levied on each tract of land and other property, and fourth, the said amount of maintenance tax levied against the same.

The said taxes shall be collectible and payable the present year at the same time that State and county taxes are due and collected, and you are directed and ordered to demand and collect the said taxes at the same time you demand and collect the State and county taxes due on the same lands and other property, and this "Drainage Tax Book" shall be your warrant and authority for making such demand and collection.

Witness the signature of the President of the said Board of Supervisors, attested by the seal of said district, and the signature of said Board this day of, A. D. 19...

[Seal.]
President of District.

.....
Secretary of District.

Then shall follow a table or schedule showing in properly ruled columns, first, the names of the owners of said lands as they appeared in the decree of the Court organizing said district; second, a brief description of the said lands and other property opposite the names of said owners; third, the amount of said annual installment tax levied on each tract of land and other property; fourth, the amount of maintenance tax; fifth, a blank column in which the collector shall record the several amounts as collected by him; sixth, a blank column in which the collector shall record the date of payment of the different sums; seventh, a blank column in which the collector shall record the names of the person or persons paying the several amounts. The columns in which the annual installment tax and the main-

tenance tax, if any appear, shall be correctly totaled and the total amount shall correspond to the amount set out in the above mentioned certificate. The said certificate and table shall be prepared in the form of a well bound book, which shall be endorsed and named "Drainage Tax Book Drainage District, ... County, South Carolina, for the year 19. .," which endorsement shall also be printed at the top of each page in said book.

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(3229) § 19. Collection of Drainage Tax—Duties of County Treasurer—Bond.—It shall be the duty of the County Treasurer of each county in which lands of any drainage district organized under this Article are situated, to receive the "Drainage Tax Book" each year, and he is hereby empowered, and it shall be his duty to promptly and faithfully collect the tax therein set out and to exercise all due diligence in so doing. He is further directed and ordered to demand and collect such taxes at the same time that he demands and collects State and county taxes due on the same lands. Where any tract or part thereof has been divided and sold or transferred, the County Treasurer shall receive taxes on any part of any tract, piece or parcel of land, charged with such taxes and give his receipt accordingly: *Provided*, The Board of Supervisors shall ascertain and determine the amount of such taxes to be paid by each of such owners. The above and foregoing "Drainage Tax Book" shall be the warrant and authority of the County Treasurer for making such demand and collection. The said County Treasurer shall make due return of all "Drainage Tax Books" immediately after the 31st day of December of each year to the Secretary of the Board of Supervisors of the aforesaid drainage district and shall pay over and account for all moneys collected thereon each year to the Treasurer of said district. Said County Treasurer shall in said "Drainage Tax Book" verify by affidavit his said return. The said Secretary shall each year, within ten days after the return of said County Treasurer is delivered to him, prepare and certify to said County Treasurer a "Drainage Tax Book" containing the list of lands so returned by said County Treasurer as delinquent, deliver the same to him and take his receipt therefor, and said County Treasurer shall proceed to collect such delinquent drainage taxes and demand payment therefor in the manner as herein provided for the collection of current drainage taxes. Before receiving the aforesaid "Drainage Tax Book" the County Treasurer of each county in which lands of the drainage district are located, shall execute to the Board of Supervisors of the district a bond, with at least two good and sufficient sureties, or some surety or bonding company approved by said Board, in a sum that is double the probable amount of any annual installment of said tax to be collected by him during any one year, conditioned that said County Treasurer shall pay over and account for all taxes so collected by him according to law. Said bond, after approval by the said Board of Supervisors, shall be deposited with the Secretary of the Board of Supervisors, who shall be custodian thereof and who shall produce same for inspection and use as evidence whenever and wherever lawfully requested so to do.

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(3230) § 20. Delinquent Drainage Taxes—Penalty.—All taxes provided for in this Article remaining unpaid after December 31st of the year for which said taxes were levied shall become delinquent and bear a penalty of two per cent. per month on the amount of said taxes from date of delinquency until paid. In computing said penalty each fractional part of a month shall be counted as a full month.

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(3231) § 21. Penalty for Neglect of County Treasurer—Compensation.—If any County Treasurer refuses, fails or neglects to make prompt payment of the tax or any part thereof collected under this Article to the aforesaid District Treasurer, then he shall pay a penalty of ten per cent. on the amount of his delinquency; such penalty shall at once become due and payable and both he and his securities shall be liable therefor on his aforesaid bond. The said County Treasurer shall retain for his service one per centum of the amount he collects on current taxes and two per centum of the amount he collects on delinquent taxes.

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(3232) § 22. Lien for Drainage Taxes — Subdrainage Districts — Certificate of Lien.—All drainage taxes provided for in this Article, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee fixed by the Court and taxed as costs in the action brought to enforce payment, shall, from the date of assessment thereof until paid, constitute a lien, to which only the lien of the State for general State, county, school and road taxes shall be paramount upon all lands against which such taxes shall be levied as is provided in this Article: *Provided*, That if any drainage district or districts organized or established under the provisions of this Article shall be within the boundaries of a district or districts theretofore established under any law of this State, the district or districts last organized and established shall be designated as subdrainage districts, and the lien for taxes assessed or levied for the purposes of such subdrainage districts, with the penalties for default in the payment thereof and all costs incurred, shall be subject to the prior lien for drainage taxes assessed or levied for the district or districts first established, as well as the lien for State and county taxes, and the certificates asserting such lien shall so state. Such lien shall be evidenced by a certificate substantially in the following form, to wit:

STATE OF SOUTH CAROLINA, }
County of..... }

To....., Clerk of the Court of Common Pleas of Said County:

This is to certify that by virtue and authority of the provisions of an Act of the Legislature entitled "An Act relating to the creation, organization and maintenance of drainage districts, etc," as enacted by the South Carolina General Assembly in 1920, the Board of Supervisors of Drainage District, in which are situated lands in the Counties of, in the State of South Carolina, have and do hereby certify the tax authorized by the said Act, which tax and the lands and other property against which the same are levied in your county, are described in the following table,

in which table are: First, the names of the owners of said land as they appeared in the decree of the Court organizing said district; second, brief description of the said lands and other property opposite the names of said owners, and third, the amount of said taxes levied on each tract of land or piece of property. (Here insert such table.) The said tax shall be payable in annual installments, the amount of each installment as well as the amount of the maintenance tax will be determined and certified to the County Treasurer of your county not later than the first day of October of each year. The aforesaid tax and such maintenance taxes as may be levied from time to time are hereby declared a lien, to which only the lien of the State for general State, county, school and road taxes shall be paramount upon all land herein and heretofore described.

Witness the signature of the President of said Board of Supervisors, attested by the seal of said district and the signature of the Secretary of said Board this day of, A. D. 19...

[Seal.]

....., President.

Attest:,

Secretary.

The certificate and tables specified in this Section shall be prepared in a well bound book and filed in the office of each of the Clerks of the Court of Common Pleas of the counties having lands in said districts as the same may affect the land in his county, where the same shall become a permanent record of the office. The said book or books shall be prepared by the Secretary of the Board of Supervisors at the expense of the drainage district, shall be designated as the "Drainage Tax Record," and each Clerk shall receive a fee of one (\$1.00) dollar for filing said book and preserving the same.

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(3233) § 23. **Drainage Tax Bond Prima Facie Evidence—Suits to Enforce Lien—Sales of Real Estate—Deeds—Suits by Bondholders—Proceedings in Rem—Joinder of Suits as to All Lands in One County—Publication of Notice Before Decree for Sale—Form of Notice—Title Acquired Subject to Subsequent Installments.**—The "Drainage Tax Book" of the district, as returned by the County Treasurer to the Secretary of the Board of Supervisors of the drainage district, shall be *prima facie* evidence in all Courts of all matters therein contained. The liens established and declared in the preceding Section may, and shall, be enforced by an action on delinquent tax statements made and certified by the County Treasurer, which action shall be instituted in the Court of Common Pleas without regard to the amount of the claim without twelve months after the date same becomes delinquent. The suit shall be brought in the corporate name of the district by its attorney against the land or lands, property or properties on which such drainage tax has not been paid. The suit shall be brought in the county in which the property is situated, except when the tract or property sued upon be in more than one county, in which event the suit may be brought on the whole tract in any county

in which any portion thereof may be situated. The pleadings, process, proceedings, practice and sales, in cases arising under this Article shall, except as herein provided, be the same as in an action for the enforcement of other liens or mortgages upon real estate. All sales of real estate made under this Section shall be by the Sheriff, who shall execute a deed or deeds to the purchaser or purchasers for the property sold. All deeds executed and delivered pursuant to this Article shall have the same probative force as deeds executed under judicial sales in other civil actions.

In case said district shall fail to commence suit within ninety days after the taxes have been delinquent, the holder of any bond or bonds issued by the district shall have the right to bring suit for the collection of the delinquent taxes, in which event said district shall be included as a defendant, and the proceedings in such suit brought by any bondholder shall in all respects be governed by the provisions applicable to suits by the said districts. All suits for the enforcement of the lien on lands for such delinquent taxes, whether by the district or a bondholder, shall be in chancery, and said proceedings and any judgment or decree that may be rendered therein, shall be in the nature of proceedings *in rem*, and it shall not be material that the ownership of said lands or other property be correctly alleged in said proceedings, and the judgment or decree rendered shall be enforced wholly against such real estate.

All or any part of said delinquent lands situate in one county may be included in one suit for said county, instituted in one suit for said county, instituted for the collection of said delinquent taxes; and notice of the pendency of such suit shall be given by publication once each week for four consecutive weeks before judgment is entered for the sale of said lands in some newspaper published in the county where such suits may be pending, which notice may be in the following form:

NOTICE.

In the Court of Common Pleas, ... County, South Carolina.

..... Plaintiff.

vs.

....., Defendants.

Notice is hereby given that all persons having or claiming any interest in the following lands that suit is pending in the Court of Common Pleas of County, South Carolina, to enforce the collection of certain drainage taxes on the following list of lands situated in drainage district in said county, the name or names of the owners, so far as known, having been set opposite the lands owned by them, together with the amounts severally due from each, to wit: (Here follows a list of owners, so far as can be ascertained, with a descriptive list of said delinquent lands, and amounts due thereon respectively.)

Any and all persons and corporations interested in said lands or any part thereof, are hereby notified that they are required by law to appear within twenty days after this notice has been published four weeks, and make defense to said suit or the same will be taken for confessed, and final judgment and decree will be entered directing the sale of all or any part

of said lands for the purpose of collecting said taxes, together with the payment of interest, penalty and costs allowed by law, including a reasonable attorney's fee.

First publication, 19.

Clerk of the Court of Common Pleas,

. County, South Carolina.

The title acquired through any sale of lands under the aforesaid proceedings shall be subject to the lien of all subsequent annual installments of drainage tax. In all suits for collection of delinquent taxes, the judgment for said delinquent taxes and penalty shall include all costs of suit and a reasonable attorney's fee to be fixed by the Court, recoverable the same as the delinquent tax in the same suit. The proceeds of sale made under and by virtue of this Article shall be paid at once to the aforesaid District Treasurer and shall be accounted for by him the same as the drainage taxes; and any surplus that may remain after payment of said delinquent taxes, penalties, costs and attorney fees, shall be paid over to or held subject to the order of the defendants or as may be ordered in the judgment or decree of sale. The term "land" or "lands" as used in this Article shall be held to cover and include railroads and all property assessed for benefits.

1920, XXXI, 663.

(3234) § 24. Proceedings Against Delinquent Lands—Sales Deeds—Rights of Redemption—Irregularities No Defense—Provision for Taxes.

—All suits instituted under the preceding Sections shall stand for trial as other equitable actions, unless a continuance be granted for good cause shown within the discretion of the Court; and such continuance, for good cause shown, may be granted as to a part of said lands or defendants without affecting the duty of the Court to dispose finally of the others as to whom no continuance may be granted; and in all cases where no answer has been filed on or before the time for filing same as stated in said notice, said notice having been published as required by the preceding Section, or if answer is filed and the cause shall be decided for plaintiff, the Court by its decree shall grant the relief prayed for; and it shall direct the Sheriff to sell the lands described in the complaint to the highest bidder for cash in hand at public outcry at the Court House door of the county wherein the suit is pending, after having first advertised such sale (such advertisement may include all the lands described in the decree and ordered sold), once each week for three consecutive weeks in some newspaper published in the county; and if all the lands so advertised for sale be not sold on the day as advertised, such sale shall continue from day to day until completed; and said Sheriff shall by proper deeds convey to the purchaser or purchasers the lands so sold, and the title to said land shall thereupon become vested in such purchaser as against all others whomsoever, subject, however, to the liens for all subsequent annual installments of drainage tax: *Provided*, Any landowner shall have the right to redeem any and all lands sold at such sale within one year after the day when the lands are offered for sale: *Provided*, All such suits may be disposed of on oral testi-

mony, and this law shall be liberally construed so as to give to said lien for said drainage tax the effect of a *bona fide* mortgage for a valuable consideration and a first lien upon all said lands as against all persons having an interest therein. In such suits it shall be sufficient to allege generally and briefly the organization of the district, and the levy, and nonpayment of the taxes, setting forth the descriptions of the lands proceeded against, and the amount chargeable to each tract: *Provided*, That no informality or irregularity in holding any of the meetings provided herein, or valuation or assessment of the lands, or in the name of the owners, or the number of acres therein shall be a valid defense: *Provided, further*, That in any case where the lands are offered for sale by such Sheriff, as provided by this Article, and the sum of the tax due, together with interest, costs and penalty, is not bid for the same, it shall be the duty of said Sheriff making such sale to bid the whole amount due thereon as aforesaid in the name of the district, and shall sell same to such district, and shall execute his deed therefor, conveying to such district such lands so sold to it, which said lands may be held and disposed of by the Board of Supervisors as the interest of said district may demand: *Provided*, That in all judgments, decrees and orders or sale of such delinquent lands the Court may make proper and equitable provisions for ascertaining the amount, and for the payment of all unpaid State and county taxes with the penalties and costs thereon, against the lands ordered sold, to be paid either out of the proceeds of sale thereof or by the purchaser or purchasers.

1920, XXXI, 663.

(3235) § 25. District Treasurer, Appointment and Duties—Bond—Disbursement of Funds.—The Board of Supervisors in any drainage district shall select and appoint some competent person as Treasurer of such district, who shall receive and receipt for all the drainage taxes collected by the County Treasurer or Treasurers, and he shall also receive and receipt for the proceeds of all tax sales made under the provisions of this Article. Said District Treasurer shall receive such compensation as may be fixed by the Board of Supervisors. Said Board of Supervisors shall furnish the Secretary and the District Treasurer with necessary office room, furniture, stationery, maps, plats, typewriter and postage. The Secretary and the District Treasurer, or either of them, may appoint, by and with the advice and consent of the Board of Supervisors, one or more Deputies as may be necessary. Said District Treasurer shall give bond in such amount as shall be fixed by the Board of Supervisors, conditioned that he will well and truly account for and pay out, as provided by law, all moneys received by him as taxes from the County Treasurer or Treasurers, and the proceeds from tax sales for delinquent taxes, and from any other source whatever on account of said district, which bond shall be signed by at least two sureties, or by some surety or bonding company, approved and accepted by said Board of Supervisors, and said bond shall be in addition to the bond for proceeds of sales of bonds, which is required by a subsequent Section of this Article. Said bond shall be placed and remain in the custody of the President of the Board of Supervisors, and shall be kept separate from all papers in the custody of the Secretary or District Treasurer.

Said District Treasurer shall keep all funds received by him from any source whatever deposited at all times in some bank, banks or trust company to be designated by the Board of Supervisors. All interest accruing on such funds shall, when paid, be credited to the district. It shall be the duty of the Board of Supervisors to audit or have audited the books of the said Treasurer of said district at least once each year and make report thereof to the landowners at the annual meeting and publish a statement within thirty days thereafter, showing the amount of money received, the amount paid out during such year, and the amount in the Treasury at the beginning and end of the year. The aforesaid Treasurer of the district shall pay out funds of the district only on warrants issued by the district, said warrants to be signed by the President of the Board of Supervisors and attested by the signature of the Secretary. All warrants shall be in the following form:

\$..... Fund..... No. of warrant..... Treasurer of
..... Drainage District, State of South Carolina.

Pay to dollars out of the money in
fund.. of drainage district. For

By order of Board of Supervisors of Drainage District,
South Carolina.

.....,
President of District.

Attest:
Secretary of District.

1920, XXXI, 663.

(3236) § 26. **Construction of Necessary Works—Use of Streams, Etc.—Condemnation—Power Plants.**—In order to effect the drainage, protection and reclamation of the land in the district subject to tax, the Board of Supervisors is authorized and empowered to clean out, straighten, open up, widen, or change the course and flow, alter or deepen any canal, ditch, drain, river, watercourse, or natural stream, and to concentrate, divert or divide the flow of water in or out of said district; to construct and maintain main and lateral ditches, canals, levees, dykes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations and syphons, and may connect same or any of them with any canals, drains, ditches, levees or other works that may have been heretofore or which may be hereafter constructed by the Sinking Fund Commission of the State, and with any natural stream, lake or watercourse in or adjacent to said district, and to build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of said district; to construct or enlarge or cause to be constructed or enlarged any and all bridges that may be needed in or out of said district, across any drain, ditch, canal, floodway, holding basin, excavation, public highway, railroad right of way, track, grade, fill or cut; to construct roadways over levees and embankments; to construct any and all of said works and improvements across, through or over any public highway, railroad right of way, track, grade, fill or cut in or out of said district; to remove any fence, building or other improvements in or out of said district, and shall have the right to hold,

control and acquire by donation or purchase, and if need be, condemn any land, easement, railroad right of way, sluice, reservoir, holding basin or franchise in or out of said district for rights of way, holding basins or for any of the purposes herein provided, or for material to be used in constructing and maintaining said works and improvements for draining, protecting and reclaiming the lands in said district. Said Board of Supervisors shall also have the power and authority to develop, hold and control all water created by the construction of works of said district, and shall have power to construct and maintain hydro-electric power plant or plants for the purpose of developing such power for the use of said district, and to use any funds in the treasury of said district not otherwise appropriated for the construction and maintenance of such power plant or plants, and the said Board of Supervisors shall have the right and authority to lease any surplus power in excess of that required for the uses of said district, and the proceeds of such lease or leases shall be paid into the treasury of said district. Said Board shall also have the right to condemn for the use of the district, any land or property within or without said district not acquired or condemned on the report of the Commissioners assessing benefits and changes, and shall follow the procedure that is now provided by law for the appropriation of land or other property taken for railroad rights of way.

1920, XXXI, 663.

(3237) § 27. Attorney.—The Board of Supervisors within thirty days after organizing shall employ an attorney to act for the district and to advise said Board. Such employment shall be evidenced by an agreement in writing, which, as far as possible, shall specify the amount to be paid to said attorney for all services and expenses. Such attorney shall conduct all legal proceedings and suits in Court where the district is a party or interested, and shall in all legal matters advise the said Board of Supervisors, all officers, employees or agents of said district and Board, and generally look after and attend to all matters of a legal nature for said Board and district. When the said Board may deem it necessary, they may, by and with the advice of said attorney and under the like terms and conditions as above set forth, employ another attorney or attorneys.

1920, XXXI, 663.

(3238) § 28. Records of Board of Supervisors.—The Board of Supervisors of any district organized under this Article shall cause to be kept a well bound book, entitled "Record of Board of Supervisors of District," in which shall be recorded minutes of all meetings, proceedings, certificates, bonds given by all employees, and any and all corporate acts, which record or records shall at all times be open to the inspection of any one interested, whether taxpayer or bondholder.

1920, XXXI, 663.

(3239) § 29. Payment for Lands Taken.—The Board of Supervisors of drainage districts organized under this Article shall not have the right to enter upon or appropriate any land for rights of way, holding basins or other works of the districts, until the prices awarded to the owners of

such land shall have been paid to such owners or into the hands of the Clerks of the Courts of Common Pleas organizing such districts for the use of such owners; and if the sums awarded be not paid within five years from the date of filing the Commissioners' reports, all proceedings as to the taking of such property for rights of way, holding basins and other works not so paid for shall abate at the cost of said district. Whenever any land is acquired by any district under the provisions of this Article and the price of such property has been paid the owner by the district, the title, use, possession and enjoyment of such property shall pass from the owner and be vested in the district, and subject to its use, profit, employment and final disposition. The price awarded for all lands acquired by any district for rights of way, holding basins, or other works and the amount of damages assessed by the Board of Commissioners and confirmed by the Court to any tract or parcel of land or other property in the district, shall be paid in cash to the owner thereof or to the Clerk of the Court for the use of such owner, and that portion of any tract or parcel of land not taken for use for the district shall be assessed for the benefits accruing in accordance with provisions of previous Sections in this Article.

1920, XXXI, 668.

(3240) § 30. Bridges—Drains Across Highways.—All bridges contemplated by this Article and all enlargements of bridges already in existence shall be built and enlarged according to and in compliance with the plans, specifications and orders made or approved by the Chief Engineer of the district. If any such bridge shall belong to any corporation, or be needed over a public highway or right of way of any corporation, the Secretary of said Board of Supervisors shall give such corporation notice by delivering to its agent or officer, in any county wherein said district is situate, a copy of the order of the Board of Supervisors of said district declaring the necessity for the construction or enlargement of said bridge. A failure to construct or enlarge such bridge within the time specified in such order shall be taken as a refusal to do said work by said corporation, and thereupon the said Board of Supervisors shall proceed to let the work of constructing or enlarging the same at the expense of the corporation for the cost thereof, which costs shall be collected by said Board of Supervisors from said corporation, by suit therefor if necessary. But before said Board of Supervisors shall let such work, it shall give some agent or officer of said corporation now authorized by laws of this State to accept service of summons or upon whom service of summons for said corporation might be made, at least twenty days' actual notice of the time and place of letting such work. Any owner of land within or without the district, may, at his own expense, and in compliance with the terms and provisions of this Article, construct a bridge across any drain, ditch, canal or excavation in or out of said district. All drainage districts shall have full authority to construct and maintain any ditch or lateral provided in its "plan of reclamation" across any of the public highways of this State, without proceedings for the condemnation of the same, or being liable for damages therefor. Within ten days after a dredge boat or any other excavating machine shall have completed

a ditch across any public highway, a bridge shall be constructed and maintained over such drainage ditch where the same crosses such highway: *Provided*, The word corporation as used in this Section shall be held to apply to municipal corporations and counties.

1920, XXXI, 663.

(3241) § 31. Interest on Warrants Unpaid for Lack of Funds.—Any warrant issued under this Article that is not paid when presented to the Treasurer of the district, because of lack of funds in the treasury, such fact shall be endorsed on the back of such warrant; and such warrant shall draw interest thereafter at the rate of six per cent. per annum, until such time as there is money on hand to pay the amount of such warrant and the interest then accumulated, but no interest shall be allowed on warrants after notice to the holder or holders thereof that sufficient funds are in the treasury to pay said endorsed warrants and interest.

1920, XXXI, 663.

(3242) § 32. Sureties on Bonds—Liability for Defaults of Appointees.—The sureties required on any or all bonds required to be given by this Article may be a surety or bonding company approved by the Board of Supervisors and shall be made payable to the district by its corporate name, in which name all suits shall be instituted and prosecuted. All penalties herein named shall be payable to and recoverable by said district. All bonds required by this Article shall cover defaults of Deputies, Clerks or assistants of the officers appointing them.

1920, XXXI, 663.

(3243) § 33. Actions Not to Abate—Revival—Proviso as to Nonresidents.—No action in this Article shall abate by reason of the death or disability of any party to any proceeding, but upon suggestion of such death or disability the cause shall be immediately revived in the name of the heirs, devisees or their legal representatives, and summons shall be served on such heirs, devisees and legal representatives at least five days before the day set for hearing the cause. If the heirs, devisees or legal representatives of the deceased party are nonresidents, notice by publication shall be given them in the manner and for the time provided for in Section 2 of this Article, and the cause shall then proceed in all respects as in the case of the original parties being in Court: *Provided*, This Section shall not be construed to limit the notice provided for in Section 2 of this Article to nonresidents.

1920, XXXI, 663.

(3244) § 34. Appeal Not to Act as Supersedeas.—No appeal from any action of the Circuit Court had under this Article shall be permitted to act as *supersedeas* or to delay any action or the prosecution of any work begun under the provisions of this law.

1920, XXXI, 663.

(3245) § 35. Dissolution of District If Cost Adjudged Excessive.—If, after determining the objections made to the Commissioners' report, the

Court shall find that the estimated costs of works and improvements as reported by the Board of Commissioners, or as amended by the Court, exceed the estimated benefits, the Court shall then render its decree declaring the incorporation of the district to be dissolved as soon as all costs incurred, which shall include Court costs and all obligations and expenses incurred, in behalf of the district by the Board of Supervisors shall have been paid, and if the uniform tax levied under the provisions of Section 10 of this Article be found insufficient to pay all such costs the Board of Supervisors shall make such additional uniform tax levies as will be necessary to pay such deficiency: *Provided*, That in estimating the cost of constructing the work and improvements of the district the amount of interest that might accrue upon bonds that may be issued by the Board of Supervisors under the provisions of this Article shall not be considered as a part of the cost of construction.

1920, XXXI, 663.

(3246) § 36. Compensation of Employees and County and Court Officers.

—The Board of Supervisors, except where otherwise provided, shall, by resolution, at the time of hiring or appointing, provide for the compensation for work done and necessary expense incurred by any officer, engineer, attorney or other employee and shall also pay the fees, per diem and necessary expenses of all Court and county officers who may by virtue of this Article render service to said district. It is understood that the ordinary fee statute does not apply to services rendered under this Article by any county officer, but each such officer shall receive only a reasonable compensation for services actually rendered, the same to be fixed by the Court in which the proceeding is pending, except where otherwise provided in this Article; that said drainage districts or petitioners for such corporations may prepare, write or print all copies of petitions, writs, orders and decrees or other papers, and furnish same to the Clerk or other officer for his use, and in such event said officer shall be entitled to receive as compensation for issuing the said writs and copies of petitions, decrees, orders or other papers, only the reasonable value of the services actually rendered.

1920, XXXI, 663.

(3247) § 37. Definition of "Owner."—The word "owner" as used in this Article shall mean the owner of the freehold estate, as appears by the deed record, and it shall not include reversioners, remaindermen, trustees or mortgagees, who shall not be counted and need not be notified by publication, or served by process, but shall be represented by the present owners of the freehold estate in any proceedings under this Article.

1920, XXXI, 663.

(3248) § 38. Correction of Errors—Extension of Boundaries—Notice of Hearing—Objections—Decree.—The Board of Supervisors or the Board of Drainage Commissioners, for and in behalf of any drainage district organized under the provisions of this Article, or the owners of land adjacent to such district, shall have the right to file a petition in the office of the Clerk of the Court organizing said district praying the Court to amend its former decree incorporating the district, by correcting the names of the

landowners, by striking out any such names, or in any other manner amend its decree; said petition may ask permission of the Court to amend or change "the plan of reclamation," or to correct any errors, omissions or other mistakes that have been discovered in "the plan of reclamation;" or said petition may ask that the boundary lines of said district be extended so as to include lands not included in the petition and decree of the Court incorporating the district. If such petition asks the Court's permission to change "the plan of reclamation," or that the boundary lines of such district be in any manner changed, it shall also ask the Court to appoint three Commissioners as provided for under the provisions of Section 11 to appraise the land that shall be taken for rights of way, holding basins, or other works, or assess the benefits and damages to any or all lands, public highways, railroad and other property already in the district or that may be annexed to the district by the proposed amendments, and changes to "the plan of reclamation" or the proposed change in the boundary lines of said district. As soon as said petition shall have been filed the Clerk of the Court shall give notice in the manner and for the time provided for in Section 2 of this Article, said notice to be substantially in the following form:

NOTICE OF DRAINAGE HEARING.

To the owners and all persons interested in the lands, corporate and other property in and adjacent to Drainage District:

You and each of you are hereby notified that (here state by whom petition was filed) has filed in the office of the Clerk of the Court of Common Pleas of County, ..., a petition praying said Court for permission to (here insert the prayer of said petition), and unless you show cause to the contrary on or before the day of, the prayer of said petition may be granted.

Date of publication day of, 19....

.....
Clerk of Court of Common Pleas of County.

Any owner of land or other property located in the district or any owner of land or property located outside of the district that will be affected by the proposed changes, amendments, and corrections enumerated in the petition, shall have the right to file objections to the granting of the prayer of said petition on or before the date fixed in said notice. The Court shall hear said petition and all objections that may have been filed against said petition in a summary manner on a day to be named by said Court or Judge thereof upon application of any party interested and enter its decree according to its findings. The Clerk of said Court shall, within ten days after the granting of such decree, transmit a certified copy of the petition to the Secretary of the Board of Supervisors and also shall transmit a copy of the same to each of the Clerks of the Courts of Common Pleas of the counties having land in the district and to the Secretary of State. Each such Clerk shall file and preserve the same in his office, and for such filing and preserving he shall receive a fee of one dollar (\$1.00). If said decree of the Court provides that "the plan of reclamation" may be amended, changed or corrected or the boundary lines of the district extended, the Court shall appoint three Commissioners, possessing the same qualifications as the Commissioners

appointed under the provisions of Section 11 of this Article, to appraise property to be taken, assess benefits and damages and estimate the cost of improvements the same is required of Commissioners acting under the provisions of Section 13 of this Article. Said Commissioners shall make their report in writing and file the same with the Clerk, after which the same shall be proceeded with in the same manner as is now provided for in the previous Sections of this Article for the organization of drainage districts: *Provided*, That if the petition be dismissed the district shall pay the costs, but if the petition be sustained in whole or in part the objectors shall pay the Court costs incurred by reason of such objections.

1920, XXXI, 663.

(3249) § 39. Overseers for Maintenance.—For the purpose of preserving any ditch, drain, dyke, levee or other work constructed or erected under the provisions of this Article, the Board of Supervisors shall have power to appoint an overseer or overseers of the district, who shall hold their positions at the will of the Board. It shall be the duty of such overseer or overseers to keep the canals, ditches, drains, levees, dykes and other works of the district in good repair, and remove all obstructions from canals, ditches, drains, or watercourses within or without said district that may affect the works of the district, and to perform such other duties as may be prescribed by said Supervisors.

1920, XXXI, 663.

(3250) § 40. Issue of Bonds—Denomination—Interest—Maturities—Execution—Sale—Levies for Payment.—The Board of Supervisors may, if in their judgment it seems best, issue bonds not to exceed ninety per cent. of the total amount of the taxes levied under the provisions of Section 17 of this Article, in denominations of not less than one hundred dollars, bearing interest from date at a rate not to exceed six per cent. per annum, payable semiannually, to mature at annual intervals within thirty years, commencing after a period of years not later than ten years, to be determined by the Board of Supervisors, both principal and interest payable at some convenient banking house or trust company's office to be named in said bonds, which said bonds shall be signed by the President of the Board of Supervisors, attested with the seal of said district and by the signature of the Secretary of the said Board. All of said bonds shall be executed and delivered to the Treasurer of said district, who shall sell the same in such quantities and at such dates as the Board of Supervisors may deem necessary to meet the payments for the works and improvements in the district. Said bonds shall not be sold for less than ninety-five cents on the dollar, with accrued interest, shall show on their face the purpose for which they are issued, and shall be payable out of money derived from the aforesaid taxes. A sufficient amount of drainage tax shall be appropriated by the Board of Supervisors for the purpose of paying the principal and interest of the said bonds and same shall, when collected, be preserved in a separate fund for that purpose and no other. All bonds and coupons not paid at maturity shall bear interest at the rate of six per centum per annum from maturity until paid, or until sufficient funds have been deposited at the place of

payment, and the said interest shall be appropriated by the Board of Supervisors out of the penalties and interest collected on delinquent taxes or any other available funds of the district. Any expense incurred in paying said bonds and interest thereon and a reasonable compensation to the bank or trust company for paying same, shall be paid out of other funds in the hands of the District Treasurer and collected for the purpose of meeting the expenses of administration. It shall be the duty of said Board of Supervisors in making the annual tax levy, as heretofore provided, to take into account the maturing bonds and interest on all bonds, and to make provision in advance for the payment thereof. In case the proceeds of the original tax levy made under the provisions of Section 17 of this Article are not sufficient to pay the principal and interest on all bonds issued, then the Board of Supervisors shall make such additional levy or levies upon benefits assessed as are necessary for this purpose, and under no circumstances shall any tax levies be made that will in any manner or to any extent impair the security of said bonds or the fund available for the payment of the principal and interest of the same. Said District Treasurer shall, at the time of the receipt by him of said bonds, execute and deliver to the President of the Board of the said district, a bond with good and sufficient sureties to be approved by the said Board of Supervisors, conditioned that he shall account for and pay over as required by law and as ordered to do by said Board of Supervisors any and all money received by him on the sale of such bonds, or any of them, and that he will only sell and deliver such bonds to the purchaser or purchasers thereof under and according to the terms herein prescribed, and that he will return, duly cancelled, any and all bonds not sold to the Board of Supervisors when ordered by said Board to do so, which said Board shall remain in the custody of said President of said Board of Supervisors, who shall produce the same for inspection or for use as evidence whenever and wherever legally requested so to do. The said District Treasurer shall promptly report all sales of bonds to the Board of Supervisors, which Board shall at reasonable times thereafter prepare and issue warrants in substantially the forms provided in Section 25 of this Article for the payment of the maturing bonds so sold and the interest payments coming due on all bonds sold. Each of said warrants shall specify what bonds and accruing interest it is to pay, and the said District Treasurer shall place sufficient funds at the place of payment to pay the maturing bonds and coupons when due as well as a reasonable compensation to the bank or trust company for paying same. The successor in office of any such District Treasurer shall not be entitled to said bonds or the proceeds thereof until he shall have complied with all the foregoing provisions applicable to his predecessor in office. The aforesaid bond of said District Treasurer may, if the said Board shall so direct, be furnished by a surety or bonding company, which may be approved by said Board of Supervisors: *Provided*, If it should be deemed more expedient to the Board of Supervisors as to money derived from the sale of bonds issued, said Board may by resolution select some suitable bank or banks or other depository as temporary treasurer or treasurers, to hold and disburse said moneys on the orders of the Board as the work progresses, until

such fund is exhausted or transferred to the District Treasurer by order of the said Board of Supervisors. The funds derived from the sale of said bonds or any of them shall be used for the purpose of paying the cost of the drainage works and improvements and such costs, expenses, fees and salaries as may be authorized by law and used for no other purpose.

1920, XXXI, 663.

(3251) § 41. Maintenance Tax.—To maintain and preserve the ditches, drains, or other improvements made pursuant to this Article and to repair and restore the same, when needed, and for the purpose of defraying the current expenses of the district, the Board of Supervisors may, upon the completion of said improvements and on or before the first day of October in each year thereafter, levy an assessment upon each tract or parcel of land within the district, to be known as a "maintenance tax." Said maintenance tax shall be apportioned upon the basis of the net assessments of benefits accruing for original construction, shall not exceed ten per cent. thereof in any one year, and shall be certified to the County Treasurer of each county in which lands of said district are situate in the same time as the annual installment tax is certified, but in a separate column, under the heading "maintenance tax." Said County Treasurer shall demand and collect the maintenance tax and make return thereof and shall receive the same compensation therefor and be liable for the same penalties for failure or neglect so to do as is provided herein for the annual installment tax.

1920, XXXI, 663.

(3252) § 42. Readjustment of Assessments—Petition—Notice—Commissioners — Provisos. — Whenever the owners of twenty-five per cent. or more of the acreage of the lands in the district shall file a petition with the Clerk of the Court organizing the district, stating that there has been a material change in the value of the property in the district since the last previous assessment of benefits and praying for a readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of the maintenance tax, the said Clerk shall give notice of the filing and hearing of said petition in the manner and for the time provided for in Section 2 of this Article. Such notice may be in the following form:

Notice is hereby given to all persons interested in the lands included within the Drainage District that a petition has been filed in the office of the Clerk of the Court of Common Pleas of County praying for a readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of the maintenance tax in said district, and that said petition will be heard by said Court on the first day of the next term of said Court.

Date of first publication, 19...

.....
Clerk of the Court of Common Pleas County.

Upon the hearing of said petition if said Court shall find that there has been a material change in the values of the lands in said district since the last previous assessment of benefits the Court shall order that there be made a readjustment of the assessment of benefits for the purpose of providing

a basis upon which to levy the maintenance tax of said district. Thereupon the Court shall appoint three Commissioners, possessing the qualifications of Commissioners appointed under Section 11, to make such readjustment of assessments in the manner provided in Section 13 of this Article said Commissioners shall make their report, and the same proceedings shall be had thereon as nearly as may be, as are herein provided for the assessment of benefits accruing for original construction: *Provided*, That in making the readjustment of the assessment of benefits said Commissioners shall not be limited to the aggregate amount of the original or any previous assessment of benefit, and that after the making of such readjustment the limitation of ten per cent. of the annual maintenance tax which may be levied shall apply to the amount of benefits as readjusted: *And provided, further*, That there shall be no such readjustment of benefits oftener than once in five years.

1920, XXXI, 663.

(3253) § 43. **Consolidation of Districts.**—Any two or more adjacent districts, established under this Article whether incorporated in the same or different counties, may be united and consolidated in one district, and such new district and the Board of Supervisors thereof shall have the rights, powers and privileges of any district organized under this Article. In order to effect such consolidation, the Board of Supervisors of each of the original districts shall call an election in the same manner as elections for Supervisors, stating the time, place and object of such election. If a majority of the acreage voting in each district vote in favor of the proposition to unite and consolidate such districts, the Board of Supervisors of each district shall present a petition to the Court of Common Pleas of the county in which the greatest amount of the lands is located, accompanied with a complete return of said election, in which petition shall be stated the names of the original districts, when incorporated, the names of the owners of the lands and the boundaries of the districts. When said petition has been filed the Clerk of said Court shall give notice of such filing in the manner provided for giving notice in Section 2 of this Article, said notice to state substantially the contents of said petition and the objects sought and the term of Court at which said matter is to be heard. Any person owning land in either of said districts, on or before the first day of said Court, may file objections to the regularity or sufficiency of any of the proceedings had in the premises, and if such objections are overruled, or if no objections are made, the Court shall make an order that any two or more of the several districts so asking to be united shall be united and consolidated as one district, under some appropriate designation, with all the rights, powers and privileges of such districts organized under this Article, and the lands so included in the new district shall be subject to all liens, liabilities and obligations of the original districts, and a new Board of Supervisors shall be elected as is now provided in case of election of Supervisors, and all orders made in regard to extension of time, boundaries or uniting districts shall be spread on the records of the Court of Common Pleas and a certified copy thereof shall be filed with the Clerk of the Court of Common Pleas of each county in which any of such lands is located, and also with the Sec-

retary of State, and said Clerk shall receive a fee of one dollar for filing and preserving such certificates.

1920, XXXI, 663.

(3254) § 44. **Extension of Duration of Drainage District.**—Whenever the Board of Supervisors of any district organized under this Article finds that in order to either raise funds to complete “the plan of reclamation,” pay for works already completed, pay bonds outstanding and interest thereon, or interest on the same, restore any works or construct new work or for any other cause, the time for which any such drainage district has been incorporated should be extended, such Board shall call a meeting of landowners of the district in the same manner as is provided for in Section 4 of this Article; the notice shall state the time, place and purpose of such meeting, and that if the majority of acres represented at said meeting be cast in favor of such extension of the district’s corporate existence a petition will be presented to the Court organizing the district, asking for such extension of time. Such meeting shall be conducted in the same manner as is provided in Section 4 of this Article for the election of Supervisors, except that one member of the Board of Supervisors shall act as Chairman of such meeting and the Secretary of the Board or his Deputy shall act as Clerk; and if a majority of the acreage represented at such meeting shall vote in favor of such extension the Board of Supervisors shall, not less than ten days before the next term of the Court of Common Pleas, file a petition with the Clerk of said Court, praying for the extension of the corporate existence of the district, and after filing the said petition the same proceedings shall be had as is provided for in previous Sections of this Article relating to the incorporation of the district. If such petition be granted by the Court, within ten days thereafter, the said Clerk shall transmit a copy of the decree to the Secretary of the Board of Supervisors, a copy of the same to the Secretary of State and to the Clerk of the Court of Common Pleas of each county having land in the district, who shall file and preserve the same in his office, and for such service he shall receive a fee of one dollar (\$1.00). In case the Court should find that such extension should not be allowed said petition shall be dismissed and the cost incurred in the case be paid by the district.

1920, XXXI, 663.

(3255) § 45. **Addition to “Plan of Reclamation”—Additional Tax for Expenses—Not to Exceed Total Benefits.**—Where the work set out in “the plan of reclamation” of any drainage district is found insufficient to reclaim in whole or in part any or all of the lands of the district the Board of Supervisors shall have the right to formulate new or amended plans containing new canals, ditches, levees or other works, and additional assessments may be made in conformity with the provisions of Section 13, the same to be made in proportion to the increased benefits accruing to the lands because of the additional works. If it should be found at any time that the amount of total tax levied under the provisions of Section 17 is insufficient to pay cost of works set out in “the plan of reclamation” or additional work done under the provisions of this Section the Board of Supervisors

may make an additional levy to provide funds to complete the work: *Provided*, The total of all levies of such tax does not exceed the total amount of benefits assessed.

1920, XXXI, 663.

(3256) § 46. Officers and Employees Subject to Removal.—The Board of Supervisors may at any time remove any officer, attorney, Chief Engineer or other employee appointed or employed by said Board.

1920, XXXI, 663.

(3257) § 47. Connection With Existing Drains—Consent of Supervisors.—At the time of the construction in any district incorporated under this Article of "the plan of reclamation" hereinbefore referred to, all canals, ditches or systems of drainage already constructed in said district and all watercourses shall, if necessary to the drainage of any lands in said district, be connected with and made a part of the works and improvements of the plan of drainage of said district. But no canals, ditches, drains, or systems of drainage constructed in said district shall be connected therewith unless the consent of the Board of Supervisors shall be first had and obtained, which consent shall be in writing and shall particularly describe the method, terms and conditions of such connection, and shall be approved by the Chief Engineer. Said connection, if made, shall be in strict accord with the method, terms and conditions laid down in said consent. If the landowner or owners wishing to make such connection are refused by the Board of Supervisors or decline to accept the consent granted, the said landowner or owners may file a petition for such connection in the Court of Common Pleas having jurisdiction in said district, and the matter in dispute shall in a summary manner be decided by said Court, which decision shall be final and binding on the district and landowner or owners. No connection with the works or improvements of said district or with any canal, ditch, drain or artificial drainage wholly within said district shall be made, caused or effected by any landowner or owners, company or corporation, municipal or private, by means of or with any ditch, drain, cut, fill, road-bed, levee, embankment or artificial drainage, wholly without the limits of said district, unless such connection is consented to by the Board of Supervisors, or in the manner hereinbefore provided.

1920, XXXI, 663.

(3258) § 48. Payment of Assessments in Full.—Any person or corporation, copartnership or other parties owning land assessed for the construction of any canal, ditch, or other improvement under the provisions of this Article, shall have the privilege of paying such assessment to the Treasurer of the Board of Supervisors at any time on or before a date to be fixed by the Board of Supervisors and the amount to be paid shall be the full amount of the tax levied, less any amount added thereto to meet interest. When such tax assessment has been paid, the Secretary of the Board shall enter upon the drainage tax record opposite each tract for which payment is made the words "paid in full," and such tax assessment shall be deemed satisfied, and the Secretary of the Board of Supervisors shall also make or

cause to be made the same entry opposite each tract for which payment is made in the table included in the certificate filed in the office of the Clerk of the Court of Common Pleas under the provisions of Section 22 of this Article.

1920, XXXI, 663.

(3259) § 49. Tributary Ditches — Condemnation Over Intervening Lands.—Any landowner within a drainage district organized under this Article may construct ditches to drain his lands into the public ditches; and if any intervening landowner should refuse permission to cross his land with such ditch, the landowner seeking to construct such ditch may by proceedings, to be conducted in the same manner as condemnation proceedings instituted by railroads, condemn a right of way for ditch. In such proceedings the jury shall deduct from the damages the benefits that will accrue to such intervening landowner by the construction of such ditch, and such intervening landowner shall have the right to use such ditch for the drainage of his own land.

1920, XXXI, 663.

(3260) § 50. Bonds a Lien—Enforcement of a Tax Levy by Mandamus.—All bonds issued by any Board of Supervisors under the provisions of this Article shall be secured by a lien on all lands and other property benefited in the district, and the Board of Supervisors shall see to it that a tax is levied annually and collected under the provisions of this Article, so long as it may be necessary to pay any bond issue or obligation contracted under its authority; and the making of said assessment and collection may be enforced by mandamus.

1920, XXXI, 663.

(3261) § 51. Obstruction of or Injury to Drainage Works a Misdemeanor—Penalty.—Whoever shall wilfully obstruct any canal, drain, ditch, or watercourse, or shall damage or destroy any drainage works constructed under the provisions of this Article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding five hundred dollars, or be confined in the county jail for a period not exceeding six months, and in addition thereto shall be liable to the district or the person or persons injured for double the cost of removing such obstructions or repairing such damage, and for the full amount of injury occasioned to any lands or crops or other property by reason of such misconduct.

1920, XXXI, 663.

(3262) § 52. Clauses of Article Independent.—Any clause of this Article which may for any reason be declared unconstitutional or invalid may be eliminated from this Article, and the remaining portion or portions of said Article shall remain in force and be valid as if such invalid portion thereof had not been incorporated therein.

1920, XXXI, 663.

(3263) § 53. Provisions of Article Cumulative — Reorganization of Existing Districts.—This Article shall not be construed to be repugnant to, in conflict with, or as repealing any other law or laws of this State relating to the organization or incorporation of levee or drainage districts, but shall be held and construed to be cumulative thereto: *Provided*, Any drainage district in this State heretofore organized, in process of organization, or that may hereafter be organized under the provisions of any previous or existing laws of this State, either general or special, may elect to become and be reorganized under the provisions of this Article; and any proceedings now pending for the organization or establishment of any drainage district under the provisions of any such laws may be discontinued, if it be deemed desirable, and proceedings commenced under this Article, and any work previously done, if the same be useful in complying with the terms of this Article, may be adopted and utilized by the Board of Supervisors, upon payment of the reasonable value thereof, payable out of the funds herein provided for expenses.

1920, XXXI, 663.

(3264) § 54. Article Remedial — To Be Liberally Construed.— This Article shall be declared to be remedial in character and purpose, and shall be liberally construed in carrying out this legislative intent and purpose.

1920, XXXI, 663.

ARTICLE V.

Disbursement of Drainage Funds and Relating to Drainage Generally.

(3265) § 1. All Drainage Funds to Be Deposited With County Treasurer.—All sums of money arising from the sale of bonds, collection of assessments, or otherwise, for drainage districts or purposes, shall be paid over to the County Treasurer of the county wherein the drainage district is situate, to be distributed by him as hereinafter provided.

1920, XXXI, 1023.

(3266) § 2. Disbursement on Warrant of Drainage Commissioners.—That all bills, claims or other demands against a drainage district shall be paid by the County Treasurer upon the warrant of the Board of Drainage Commissioners, signed by not less than two of the members thereof, and countersigned by the Clerk of the Board.

1920, XXXI, 1023.

(3267) § 3. Issue of Warrants.—That the Board of Drainage Commissioners shall issue their warrant, directed to the County Treasurer, for all bills, claims or demands against the drainage district for all work, services, contracts, damages, or otherwise, including the expenses incurred in the formation of the drainage district.

1920, XXXI, 1023.

(3268) § 4. Assessment Rolls.—That the Board of Drainage Commissioners shall furnish the County Auditor with an assessment roll showing

the names of the property owners and the amounts assessed, respectively, for drainage purposes, and the County Auditor shall make up an original book and a duplicate thereof as for other taxes or assessments, and shall furnish the County Treasurer with a duplicate.

(3269) § 5. Collection of Assessments.—The County Treasurer shall collect the assessments shown by such duplicate in the same manner as taxes.
1920, XXXI, 1023.

(3270) § 6. Executions Upon Default.—In case of the default in the payment of any assessments the County Treasurer shall issue his warrant to the Sheriff, who shall collect the same as in the case of a defaulting taxpayer; and the same costs shall be allowed for the collection of a drainage assessment as for collecting defaulted taxes.

1920, XXXI, 1023.

(3271) § 7. Fees of County Auditor and County Treasurer — York County.—The County Auditor shall receive twenty-five cents for each entry in the original assessment book each year; and the County Treasurer shall receive twenty-five cents for each assessment collected each year, and in addition thereto shall receive one per centum upon all disbursements made by him; and the Board of Drainage Commissioners shall pay the same annually by warrant: *Provided*, The Treasurer and Auditor of York County shall receive the sum of twenty-five cents, each year for each and every person, firm and corporation name entered on their books and against whom assessments are made for such drainage district.

1920, XXXI, 1023; 1921, XXXII, 228.

(3272) § 8. Adjustment of Assessments Upon Lands Conveyed.—The Board of Drainage Commissioners, during February in each year, shall furnish the County Auditor with a report showing all transfer or conveyances of land within a drainage district appearing of record, together with an equitable reassessment and classification of the land conveyed if deemed necessary, so that the burden of the assessment shall be equitably distributed in case of subdivision.

1920, XXXI, 1023.

(3273) § 9. Correction of Assessment Books.—The County Auditor shall make the original and duplicate assessment book conform each year with such report and changes.

1920, XXXI, 1023.

(3274) § 10. Assessments of Less Than \$25 00 Payable in Cash.—Where the original assessment for drainage purposes is less than twenty-five dollars upon a property, the owner must pay the same in cash, so that there will be no necessity to issue bonds thereon for drainage purposes.

1920, XXXI, 1023.

(3275) § 11. Extension of Time for Payment.—The Board of Drainage Commissioners may extend the time for the payment of the original assessment or any annual assessment for drainage purposes.

1920, XXXI, 1023.

CHAPTER XXXIV.**General Stock Law.**

(3276) § 1. Unlawful to Allow Domestic Animals to Run at Large—Subject to Election in Berkeley, Colleton, Jasper and Dorchester Counties—Time and Conduct of Election—When Effective in Certain Counties.—It shall be unlawful for the owner or manager of any horse, mule, ass, jennet, swine, sheep, goat, or neat cattle of any description to wilfully permit the said animals, or any of them, or any other domestic animal to run at large beyond the limits of his own land, or the land leased, occupied or controlled by him.

Civ. '12, § 2280; Civ. '02, § 1497; G. S. 1184; R. S. 1288; 1898, XX, 800; 1908, XXV, 1048; 1905, XXIV, 959; 1906, XXV, 116; 1913, XXVIII, 29; 1917, XXX, 330; 1918, XXX, 848; 1919, XXXI, 152; 1920, XXXI, 719, 877, 1051; 1921 XXXII, 200.

McLendon v. City of Columbia, 101 S. C. 48, 85 S. E. 284.

(3277) § 2. Penalty for Violation.—Any owner, manager or person violating the provisions of Section 1 of this Article shall be subject to a fine for each offense of not more than twenty-five (\$25.00) dollars, or be imprisoned for not more than twenty-five days.

1920, XXXI, 1051; 1921, XXXII, 200.

(3278) § 3. Liability of Owners of Stock Trespassing.—Whenever any of said stock or animals shall be found upon the lands of any other person than the owner or manager of the same, the owner of such trespassing stock shall be liable for all damages sustained, and for the expenses of seizure and maintenance, the said damages and expenses to be recovered, when necessary, by action in any Court of competent jurisdiction; and the said trespassing stock shall be held liable for the same, in preference to all other liens, claims, or encumbrances upon it.

Civ. '12, § 2281; Civ. '02, § 1498; G. S. 1185; R. S. 1289; 1881, XVII, 592.

Plaintiff entitled to such damages, whether he had conformed to law or not. *Utsey v. Hiott*, 30 S. C. 360, 9 S. E. 338. As to pasture across railroad. *Simkins v. R. R. Co.*, 20 S. C. 263; *Molair v. R. R. Co.*, 29 S. C. 152, 7 S. E. 60; *Harmon v. R. R. Co.*, 32 S. C. 127, 10 S. E. 877.

(3279) § 4. Stock Trespassing May Be Seized—Penalty.—Any freeholder or tenant of land, his agent or representative, may seize and hold possession of any of the foregoing animals which may be trespassing upon his premises, and as compensation for such seizure, may demand of the owner of every horse, mule, ass, jennet, bull, ox, cow, calf, or swine, the sum of fifty cents, and for every sheep, goat, or other animal not herein named, the sum of twenty-five cents, together with just damages for injuries sustained, which reclamation shall, when possible, be laid before the owner of the trespassing stock within forty-eight hours after seizure.

Civ. '12, § 2282; Civ. '02, § 1499; G. S. 1186; R. S. 1290; 1881, XVII, 592.

(3280) § 5. Liability of Owner for Maintenance—Recovery of Possession.—In case the claim shall not be amicably or legally adjusted, and the trespassing animals recovered by the owner within twelve hours after the receipt of such notification, the owner shall further become liable in a sum sufficient to cover the maintenance and care of his stock up to the time of its removal; but the owner shall be entitled to recover immediate possession

of his stock on due execution of such bond to cover expenses and claimed damages as any Magistrate shall decide to be good and sufficient.

Civ. '12, § 2283; Civ. '02, § 1500; G. S. 1187; R. S. 1291; 1881, XVII, 592.

(3281) § 6. Proceedings When Owner Unknown—Advertisement—Sale—Disposition of Proceeds.—When the owner of trespassing stock is unknown, said stock may be detained for the space of one week, awaiting the owner's action. It shall then be reported to and become subject to the orders of any Magistrate in the county where the stock is taken up, who shall take such action in the premises as will effectuate the purpose of this Chapter, by advertising the said stock upon the Court House door and in two other public places in the said county, giving a full description of the same and the causes of seizure, together with the damages, costs and other allowances indicated by this Chapter, for the space of ten days; and at the expiration of that time, should the owner of the stock not have appeared and paid all the expenses, damages, and costs properly adjusted, as in this Chapter required, then the said Magistrate shall order his Constable to make public sale of the same to the highest bidder for cash, and out of the proceeds of such sale he shall pay the costs, damages, expenses, and adjusted claims as in this Chapter allowed, and the surplus, if any there be, shall be turned over by said Constable to the Clerk of the Circuit Court for the said county, to be by him paid to the owner of such stock upon proper proof of such ownership; and should the proper owner of such stock or animal not appear and obtain such surplus within one year from the time the same was turned over to the said Clerk of the Court, then the said Clerk shall return and pay over the same to the County Treasurer of the said county, to be by him disbursed as county funds.

Civ. '12, § 2284; Civ. '02, § 1501; G. S. 1188; R. S. 1292; 1881, XVII, 592.

(3282) § 7. Proceedings When Owners Neglect to Adjust Penalties.—In cases where known owners shall, after notification, neglect for the period of three days, to adjust the legal demands against them provided in this Chapter according to the plan of adjustment in Section 5, all further proceedings shall be taken under Section 6 of this Article, as though the owners were unknown.

Civ. '12, § 2285; Civ. '02, § 1502; G. S. 1189; R. S. 1293; 1881, XVII, 592.

TITLE XI.

Of the Regulation of Trade in Certain Cases.

CHAPTER XXXV. Regulations Respecting Commercial Fertilizers; Cotton; the Inspection and Sale of Provisions and Other Merchandise; and the Inspection and Taxation of Timber and Lumber, 979.

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CHAPTER XXXV.

Regulations Respecting Commercial Fertilizers, Cotton, the Inspection and Sale of Provisions and Other Merchandise, and the Inspection of Timber and Lumber, and Other Commodities.

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ARTICLE I.

Commercial Fertilizers.

(3283) § 1. **Fertilizers to Be Analyzed.**—The Board of Trustees of Clemson Agricultural College, to prevent the practice of fraud and imposition in the manufacture and sale of cotton seed meal, fertilizers and fertilizing material containing nitrogen, potash, or phosphoric acid, sold or offered or exposed for sale, whether manufactured or mined within or without the State, shall cause the same to be analyzed and inspected.

Civ. '12, § 2315; Civ. '02, § 1529; 1896, XXII, 93; 1904, XXIV, 476; 1909, XXVI, 197. *Germofert Mfg. Co. v. Cathcart*, 104 S. C. 125, 88 S. E. 535; *Richmond Guano Co. v. Kirkpatrick*, 111 S. C. 469, 98 S. E. 327.

(3284) § 2. **Clemson College to Analyze Fertilizers Without Requiring Name of Manufacturer.**—It shall be the duty of Clemson Agricultural and Mechanical College to analyze samples of commercial fertilizers, manure, or cotton seed meal furnished by a citizen of this State, as now required by law, without requiring the purchaser of said fertilizers to give the name of the manufacturers or the manufacturers' analysis. The person sending such sample shall furnish the said college with the name of the manufacturer of such fertilizer and the ingredients thereof immediately

after the receipt of the analysis of such fertilizer: *Provided, however,* That it shall be the duty of any citizen sending samples to Clemson College for analysis to give to the college the names of the fertilizer ingredients represented to be in said fertilizer.

Civ. '12, § 2316; 1911, XXVII, 121.

(3285) § 3. Copy of Label of Brands of Fertilizers to Be Filed With Board of Trustees of Clemson Agricultural College—Contents of Certificates—Sale of Unregistered Fertilizer Unlawful—Waiver by Purchaser No Defense.—Every person or corporation engaged in the manufacture and sale of fertilizers or commercial manures or cotton seed meal in this State, before selling or offering for sale, shall file with the Board of Trustees of Clemson Agricultural College of South Carolina true and correct copy of the printed label, or stamp, required by a subsequent Section, to be printed on each and every bag, barrel or package of fertilizer, or fertilizing material, of the various brands, which the said person or corporation proposes to offer for sale within the State until the first of November next following; also a certificate showing the source from which the phosphoric acid, ammonia and potash guaranteed in each of the said brands of fertilizers or commercial manures so offered for sale is derived. And, in addition stating that any filler used in said brands of fertilizer is harmless, and if soil has been used, that the same was not taken nearer than twelve (12) inches from the surface of the ground. It shall be unlawful for any manufacturer, mixer, or other person, either by themselves or through their agents, to sell or offer for sale in this State any fertilizer or fertilizing materials which have not been registered with the said Board of Trustees, as required by this Article. The fact that the purchaser waives any of the provisions of this Article shall be no protection to said party selling or offering the same for sale.

1920, XXXI, 1150.

(3286) § 4. Contents of Labels.—Every person or corporation, before selling or offering for sale in this State any commercial fertilizer or fertilizing material, shall brand on each bag or package the brand name of the fertilizer, the weight of the package, the name and address of the manufacturer, and the minimum percentage only guaranteed to be present of available phosphoric acid, of nitrogen (ammonia equivalent), and of potash soluble in water. The items shall be printed on the package in the following order:

Weight of each package.

Brand name or trade-mark.

Guaranteed analysis:

Available phosphoric acid..... per cent.

Ammonia equivalent of nitrogen..... per cent.

Potash soluble in water..... per cent.

Name and address of the manufacturer.

In addition to the above there must be printed on the package, or on a tag attached thereto, the per cent. of water soluble nitrogen (ammonia equivalent), guaranteed, within such limits as the said Board of Trus-

tees, or a committee thereof, may prescribe. And, in addition, further, it must be stated whether the potash is derived from muriate or sulphate. And, in addition, further, the per cent. of borax or other substance, or substances, injurious to plants must be stated, if in excess of limits prescribed by the Board of Trustees, or a committee thereof: *Provided*, The said Board of Trustees, or a committee thereof, shall have power to direct in what manner the branding and labeling shall be done.

Civ. '12, § 2822; Civ. '02, § 1537; G. S. 596; R. S. 1299; 1879, XVII, 75; 1898, XXII, 767; 1904, XXIV, 476; 1909, XXVI, 197; 1915, XXIX, 195; 1920, XXXI, 1150.

Southern States Phosphate Co. v. Arthurs, 97 S. C. 358, 81 S. E. 663.

(3287) § 5. Specifications for Kinds of Fertilizer to Be Marked "High Grade," "Standard," "Low Grade."—The words "High Grade" shall not appear upon any package of any complete fertilizer which contains, by its guaranteed analysis, less than ten per cent. of available phosphoric acid, one and sixty-five one-hundredths of nitrogen (equivalent to two per cent. of ammonia), and two per cent. of potash, or a grade of analysis of equal total commercial value; the word "Standard" shall not appear upon any package of any complete fertilizer which contains, by its guaranteed analysis, less than eight per cent. available phosphoric acid, one and sixty-five one-hundredths of nitrogen (equivalent to two per cent. of ammonia), and two per cent. of potash, or a grade of analysis of equal commercial value; the words "High Grade" shall not appear upon any package of any acid phosphate with potash, which shall contain, by its guaranteed analysis, less than thirteen per cent. of available phosphoric acid and one per cent. potash, or a grade of analysis of equal total commercial value; the word "Standard" shall not appear upon any package of any acid phosphate with potash which contains, by its guaranteed analysis, less than eleven per cent. of available phosphoric acid and one per cent. potash, or a grade of analysis of equal total commercial value; the words "High Grade" shall not appear upon any package of any plain phosphate which shall contain, by its guaranteed analysis, less than fourteen per cent. of available phosphoric acid; the word "Standard" shall not appear upon any package of plain acid phosphate which shall contain, by its guaranteed analysis, less than twelve per cent. of available phosphoric acid. If the words "High Grade" or "Standard" or "Low Grade" are printed on packages, they shall appear as to classification and in such manner as the Board of Trustees, or a committee thereof, may prescribe.

Civ. '12, § 2322; 1920, XXXI, 1150.

(3288) § 6. Marking of Grades of Cotton Seed Meal—Ammonia from Other Source Forbidden.—All cotton seed meal manufactured and offered for sale as fertilizer in this State shall be known and branded as "High Grade," "Standard," or "Low Grade." "High Grade" meal must contain not less than six and fifty-eight one-hundredths per cent. of nitrogen equivalent to eight per cent. of ammonia; "Standard" meal must contain not less than five and seventy-six one-hundredths per cent. of nitrogen equivalent to seven per cent. of ammonia, and any cotton seed meal containing less than five and seventy-six per cent. of nitrogen, equivalent to seven per cent. of ammonia, shall be known and branded as "Low Grade:"

Provided, That all meal manufactured from Sea Island cotton seed shall be branded "Sea Island Cotton Seed Meal," and the guaranteed analysis shall not be less than three and seven-tenths per cent. of nitrogen, equivalent to four and one-half per cent. of ammonia, and the same shall be printed on the package. That in all cases where cotton seed meal is sold purely as cotton seed meal, there shall be no other source of ammonia than that derived from the cotton seed, and in the event that any other kind of ammonia is put into said cotton seed meal sold purely as cotton seed meal, the person, firm, or corporation or manufacturer offering same for sale, or selling same, shall be liable to a penalty of one dollar per bag of every lot of cotton seed meal so sold or offered for sale.

Civ. '12, § 2322; 1920, XXXI, 1150.

(3289) § 7. Inspection Tax.—For the purpose of defraying the expenses connected with the inspection of commercial fertilizers sold, or exposed or offered for sale, in this State, and experiments relative to the value thereof, all companies, corporations, or persons engaged in the manufacture or sale of commercial fertilizers shall pay to the State Treasurer an inspection tax of twenty-five cents per ton (2,000 pounds) for such commercial fertilizers sold, or exposed, or offered for sale in this State, in order to entitle the same to inspection and delivery, and shall attach to each package a tag, furnished by the said Board of Trustees, or a committee thereof, as evidence that said tax has been paid. Nothing contained in this Section shall interfere with fertilizers passing through the State in transit, nor restrict or avoid sales of acid phosphate, cotton seed meal, or other fertilizing materials to each other by importers, manufacturers, or manipulators who mix fertilizers for sale and have registered their brands, as required by the provisions of this Act.

Civ. '12, § 2319; Civ. '02, § 1533; G. S. 595; R. S. 1298; 1896, XXII, 93; 1904, XXIV, 476; 1909, XXVI, 197; 1920, XXXI, 1150.

(3290) § 8. Tags to Be Cancelled.—All persons, companies or corporations engaged in the manufacture or sale of fertilizers or commercial manures or cotton seed meal shall cancel all tags or stamps used as evidence that said inspection tax has been paid by stamping such tags or stamps with the name of the person or persons, company or corporation selling, shipping or manufacturing, also the date of shipment or delivery. No railroad or common carrier shall receive for shipment or delivery from any person or persons, company or corporation any fertilizers or commercial manures or cotton seed meal with the tags or stamps bearing date of cancellation thirty or more days prior to delivery for shipment.

Civ. '12, § 2321; Civ. '02, § 1535; G. S. 595; R. S. 1298; 1896, XXII, 93; 1904, XXIV, 476; 1909, XXVI, 197.

(3291) § 9. "Commercial Fertilizer" Defined—Proviso.—For the purpose of this Article a commercial fertilizer is hereby defined as any material, substance or mixture which contains, or is claimed to contain, more than one per cent. of total phosphoric acid, or of potash or of nitrogen: *Provided*, That the following substances, lime, limestone, marl, unground bones, stock-pen manure, barnyard manure, or the excrement of any domestic animal

shall be exempt from the provisions of this Article, in case that said manure or excrement has not been dried or manipulated or otherwise treated, or is not claimed to have a value of more than four dollars a ton.

1920, XXXI, 1150.

(3292) § 10. Analysis.—The Board of Trustees of the Clemson Agricultural College of South Carolina shall cause one or more analyses to be made annually of such commercial fertilizers sold, or offered for sale, under the provisions of this Article, as may be sampled under their direction, and in accordance with such regulations as they may adopt. For this purpose the said Board of Trustees, or a committee thereof, shall appoint or cause to be appointed a sufficient number of inspectors, who shall secure for the Board samples of said commercial fertilizers, and shall cause said samples to be forwarded to the Clemson Agricultural College, there to be analyzed in accordance with the methods of the Association of Official Agricultural Chemists, and otherwise experimented with, and who shall perform such other duties as the said Board may direct. And the said Board of Trustees shall also employ a Chief Chemist, with such assistants skilled in agricultural chemistry as may be necessary, whose duty it shall be to analyze said fertilizers and other materials as may be required by said Board, and who shall make regular reports to the Board of the results of all the analyses of officially drawn samples of fertilizers and fertilizing materials, which shall be published in bulletins, and shall be ready for distribution as directed by the said Board.

Civ. '12, §§ 2317, 2318; Civ. '02, §§ 1531, 1532; 1896, XXII, 93; 1904, XXIV, 476; 1909, XXVI, 197; 1920, XXXI, 1150.

(3293) § 11. Certificate of Chief Chemist as Evidence.—In the trial of any suit or action, wherein is called in question the value or composition of any fertilizer, a certificate, signed by the Chief Chemist, setting forth the analysis made by the Chief Chemist, or under his direction, of the sample of said fertilizer analyzed under the provisions of this Article, shall be *prima facie* proof that the fertilizer was of the value and consistency shown by the said analysis.

Civ. '12, § 2325; Civ. '02, § 1539; 1893, XXI, 504; 1904, XXIV, 476; 1909, XXVI, 197; 1920, XXXI, 1150.

(3294) § 12. Tax Tags.—The Board of Trustees of the Clemson Agricultural College, or their agents, shall issue inspection tags or stamps for such person, company or corporation engaged in the manufacture or sale of commercial fertilizers in this State, as shall present receipts or other evidences from the State Treasurer that sufficient funds have been paid into the State Treasury to cover such issue. And said person, company or corporation shall cancel all stamps or tags used, as evidence that said inspection tax has been paid, by stamping such tags or stamps with the name of the person, company or corporation selling, offering for sale, or shipping, also the date of shipment or delivery of such fertilizers. No railroad or common carrier shall receive for shipment or delivery from any person, company or corporation any commercial fertilizers or fertilizing materials with tags or

stamps bearing date of cancellation thirty or more days prior to delivery for shipment.

Civ. '12, § 2320; Civ. '02, § 1534; 1896, XXII, 93; 1904, XXIV, 476; 1909, XXVI, 197; 1920, XXXI, 1150.

(3295) § 13. Inspection of Fertilizer Factories, Etc.—That in order to carry out the provisions of this Article, any officer or agent of the said Board of Trustees, or of a committee thereof, authorized by them for the purpose, may, at any hour during the daytime or nighttime, enter any factory, plant, car or other place, in which any fertilizer or substances designed or intended for use as a fertilizer is stored, to be shipped or sold, and may inspect the contents and operation thereof; and it is hereby made a condition to the shipment or delivery for shipment of any fertilizer from any such factory, plant or car, that such inspection be permitted by the owner or operator thereof.

1914, XXVIII, 661; 1920, XXXI, 1150.

(3296) § 14. Annual Table of Values to Be Published by Board of Trustees of Clemson Agricultural College—Liability for Deficiency—Penalties—Collection and Division Among Consumers.—That on or before the first day of January, any year, the said Board of Trustees of the Clemson Agricultural College shall publish the relative values per pound and per unit of the various ingredients of a complete fertilizer, viz.: Available phosphoric acid, ammonia equivalent of nitrogen and potash soluble in water, and furnish the same to any person or corporation engaged in the manufacture of or sale of commercial fertilizers in this State upon application therefor; and that said valuation shall be the guide by which the party selling fertilizers shall estimate the value thereof for the next succeeding twelve months. That any vendor or manufacturer of commercial fertilizers, manures or cotton seed meal, whose goods or wares shall fall short in commercial value guaranteed by the analysis appearing on sack, tag or vessel holding the same when delivered to the consumer, shall be liable to the consumer for the same per centum in selling price as the goods have fallen short in per centum of the commercial value found upon analysis made of the goods: *Provided*, That if the fertilizer or fertilizing materials fall short ten per cent. of the commercial value guaranteed by the analysis appearing on the sack, tag or vessel holding the same when delivered to the consumer, that then the seller or manufacturer shall be liable to the consumer for one-third of the selling value thereof, which amount is to be deducted from the amount of the consumer's indebtedness; and if the consumer has paid for the said goods, then the consumer can collect the same from the seller or manufacturer by due process of law: *Provided, further*, That if any of the ingredients constituting any brand of fertilizer, or fertilizing materials, or cotton seed meal sold in this State, fall short of the guaranteed analysis appearing on the sack, tag or vessel holding the same as follows: In available phosphoric acid, thirty points (which shall mean three-tenths of one unit) on goods guaranteed up to ten per cent.; forty points (which shall mean four-tenths of one unit) on goods guaranteed over ten per cent. of available phosphoric acid: in ammonia or potash as follows: Fifteen points

(which shall mean fifteen one-hundredths of one unit) on goods guaranteed up to one and one-half per cent., inclusive; ten per cent. of the ingredients on goods guaranteed above one and one-half per cent. up to and including three per cent. goods; thirty-five points (which shall mean thirty-five one-hundredths of one unit) on goods guaranteed four per cent.; forty points (which shall mean four-tenths of one unit) on goods guaranteed above four per cent., up to and including eight per cent.; fifty points on goods guaranteed over eight per cent., that then the manufacturer or seller shall be liable to the consumer for four times the commercial value of the entire deficiency in available phosphoric acid or potash as found by analysis, and three times the commercial value of the entire deficiency in ammonia, as found upon analysis of the goods, to be deducted from the consumer's indebtedness; and if the consumer has paid for the said goods, then the consumer can collect the same from the seller or manufacturer by due process of law. The penalty herein provided for shall apply to each ingredient, respectively, that may fall short as herein provided: *And provided, further*, That the seller of any fertilizer or fertilizing material falling short of the per cent. of ingredients at which the same may be billed or charged, shall be subject to a penalty of at least three times the value of such difference thereof, to be recovered in any Court of jurisdiction by the consumer, but this proviso shall not apply to mixed fertilizers, or to cotton seed meal, to be recovered in any Court of competent jurisdiction of this State by the purchaser of same, and if the purchaser be a dealer in such materials, and have sold same to consumers of same, he shall disburse *pro rata* to such consumers to whom he sold the same penalties he recovers: *Provided, further*, That all penalties herein imposed for deficiencies in guaranteed analysis of any fertilizer, fertilizing material or cotton seed meal shall be entirely for the benefit of the ultimate consumer of such fertilizer, fertilizing material or cotton seed meal, and no such penalty, or part thereof, except as hereinafter authorized, shall accrue to any dealer in fertilizer, fertilizing material or cotton seed meal: *Provided*, That upon the assessment of a fine or penalty by the Board of Trustees of Clemson College, or a committee thereof, or by judgment in an action at law as herein provided, the net total of such fine or judgment shall be paid over to the dealer who sold or offered for sale such deficient fertilizer, fertilizing material or cotton seed meal, which said dealer shall, within thirty days thereafter, distribute *pro rata* ninety per cent. of such penalty, fine or judgment to the consumer to whom such goods as shall have been found deficient were sold; said dealer retaining ten per cent. of such penalty, fine or judgment for his services. And any dealer who received such fine, penalty or judgment, and who shall refuse so to distribute the records thereof upon demand within thirty days after the receipt thereof, or any dealer who shall refuse or neglect to accept and distribute said penalties or judgment shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one hundred (\$100.00) dollars, or imprisoned not exceeding ten days, or both, in the discretion of any Court of competent jurisdiction: *Provided*, That nothing herein contained shall relieve any manufacturer, manipulator or mixer who shall have sold his goods direct to the consumer, from paying

over to such consumer the full amount of any fine, penalty or judgment which may have been imposed or found on account of any deficiency in guaranteed analysis.

Civ. '12, §§ 2324, 2329; 1904, XXIV, 476; 1909, XXVI, 197; 1920, XXXI, 1150.

(3297) § 15. Weight of Packages—Penalties for Short Weight.—All fertilizers or fertilizing materials sold or offered for sale for use within this State, shall be in a package of one hundred or two hundred pounds each, except as hereinafter provided (Section 18): *And provided, further,* That this Section shall not apply to foreign imported goods in original packages. The weight of the package of fertilizers shall be ascertained at the time of the delivery to the purchaser in the presence of at least two disinterested witnesses, one chosen by purchaser and one by seller, and the purchaser shall, within five days thereafter, notify the seller to make good such deficiency, and upon failure of the seller to do so within twenty days thereafter, he shall pay a penalty equal to the value of the goods, which penalty shall become recoverable by the State, one-half of the penalty so recovered to be paid to the purchaser, in the case of a sale, and the other half to be paid into the State Treasury, subject to the order of the Board of Trustees of Clemson College: *Provided,* If any such seller shall refuse, decline or neglect to choose a witness as herein prescribed, after having been notified or requested to do so, then he, or they, shall have forfeited their right to do so, and the purchaser shall select two witnesses who shall in turn select a third, and they shall proceed to ascertain said weight.

Civ. '12, § 2324; 1920, XXXI, 1150.

(3298) § 16. Sale, Transportation or Receipt of Fertilizers Not Properly Branded and Tagged Cause of Forfeiture—Recovery.—Every person, company, common carrier, or corporation who shall sell, offer for sale or transport in this State, or receive after sale, any commercial fertilizer or fertilizing material, without being properly branded, or having attached thereto such labels and tags as required by law, or who shall use, or permit to be used, the required label or tag for a second time, and any person who shall receive any such fertilizer, shall forfeit to the State a sum equal to the selling price of each separate package sold, offered for sale, or received, to be recovered by suit brought in the name of the State in any Court of competent jurisdiction; such forfeitures, when collected, shall be paid to the State Treasurer, who shall hold the same subject to the order of the Board of Trustees of the Clemson Agricultural College of South Carolina: *Provided, further,* That the penalty defined in this Section shall apply also to any misbranded fertilizer; a fertilizer being deemed to be misbranded if it carries any false or misleading statement upon, or attached to, the package.

1920, XXXI, 1150.

(3299) § 17. Action by the State.—The State may maintain an action in any Court of competent jurisdiction against the vendor or owner of any fertilizer, fertilizing material or cotton seed meal sold in this State or offered or exposed for sale in this State, or shipped or transported within

or into the State in violation of law, to recover the fines and penalties due for the illegal sale, shipment or transportation thereof, regardless of the domicile or place of residence of such owner or vendor, and shall have a lien upon said fertilizer, fertilizing material and cotton seed meal, as well as upon any and all other fertilizers, fertilizing material and cotton seed meal to be found within the State belonging to the offending party or parties, to secure the payment of said fines or penalties and costs and expenses of such action, which lien shall be enforced by attachment of such fertilizers, fertilizing materials and cotton seed meal, under a writ of attachment to be issued in accordance with the practice prescribed in Chapter IV, Title VII, Part II, Code of Civil Procedure, Volume I, Code of Laws of South Carolina, 1922, except that no security, as required of other plaintiffs by said Chapter, Code of Civil Procedure, need be given by the State in such action. That any seller of commercial fertilizers manufactured beyond this State shall be taken and deemed to be an agent of the manufacturer of said fertilizer for the purpose of the service of process, and of such papers as may be necessary in the commencement of any action or suit in any Court of competent jurisdiction authorized under this Article: *And provided, further*, That if there be judgment in favor of this State as plaintiff in such action, and the fertilizers, fertilizing material and cotton seed meal may be ordered sold under execution to satisfy such judgment, an inspector shall, under direction of the Board of Trustees of Clemson Agricultural College, or a committee thereof, prior to said sale, draw proper samples from such fertilizer, fertilizing material and cotton seed meal, and cause the same to be analyzed by the chemist of said college, or under his direction, and shall affix to the package thereof the inspection tags and brand, a statement of the result of such analysis on each package, as required by this Article, so that the purchaser at the Sheriff's or Constable's sale may purchase said fertilizer, fertilizing material and cotton seed meal under a full guaranteed analysis, as provided by law: *Provided, however*, That the Board of Trustees of Clemson College, or a committee thereof, may remit, in whole or in part, upon payment of the expenses incident to an investigation, any penalty herein provided for except the penalties provided for deficiency in analysis, where the offending person or corporation is able to show that its violation of this Article was beyond its reasonable ability to prevent; such remission of penalty by the Board of Trustees of Clemson College, or a committee thereof, to be on such condition as to it may seem equitable and fair.

Civ. '12, § 2326; 1904, XXIV, 476; 1909, XXVI, 197; 1920, XXXI, 1150.

(3300) § 18. **Sales of Fertilizer Material in Bulk** — Manufacturers, jobbers, dealers or manipulators of commercial fertilizers may sell acid phosphate or other fertilizing material in bulk to persons, individuals or firms, who desire to purchase the same for their own use on their own lands in this State, but not for sale, under such rules and regulations prescribed by the Board of Trustees of the Clemson Agricultural College, or a committee thereof, as are not inconsistent with the provisions of this Article: *Provided*, That inspection tax shall be paid on such fertilizer as provided in Section 7. But if such bulk fertilizer is offered for sale it

must be tagged and branded and otherwise accord with provisions of this Article.

1912, XXVII, 711; 1920, XXXI, 1150.

(3301) § 19. Sale of Fertilizer Not Meeting Requirements as to Nitrogen Unlawful.—It shall be unlawful for any person, firm or corporation to sell, or offer for sale, in this State any fertilizer or fertilizing material furnishing nitrogen, in which the availability of the nitrogen does not meet the requirements of the Board of Trustees of the Clemson Agricultural College.

1920, XXXI, 1150.

(3302) § 20. Samples for Analysis.—Any citizen of this State who shall purchase, for his own use and not for sale, any fertilizers or manures or cotton seed meal, shall have the right to have the same analyzed by the Clemson Agricultural College, by taking a sample of same for analysis from not less than five bags and from at least ten per cent. of said fertilizers within fifteen days from the date of delivery, by giving the manufacturer thereof whose name and address appears on the bag or bags, or tags, at least six days' notice in writing or by registered letter of his intention to draw such sample, and in case of neglect of said manufacturer to have a representative present within the time required, then in the presence of at least two disinterested witnesses, one to be chosen by such purchaser and one by the seller, who shall certify that said sample or samples were taken from such fertilizers or manures or cotton seed meal, which certificate, with the sample or samples, shall be sealed by a third disinterested party in the presence of said witnesses and directed to the Clemson Agricultural College. If any seller or vendor or manufacturer of fertilizers or commercial manures or cotton seed meal shall refuse, decline or neglect to choose a witness, as provided in this Section, after having been notified or requested six days before such purchaser to do so, then he, or they, shall have forfeited their right so to do, and such purchaser shall select two disinterested witnesses, who shall select a third witness, who shall proceed to take samples as hereinbefore provided. All samples of fertilizers or cotton seed meal drawn under the provisions of this Section shall be subject to such other rules as may be prescribed by the Board of Trustees of Clemson College, or a committee thereof, not inconsistent with the provisions of this Article.

Civ. '12, § 2327; Civ. '02, § 1540; 1900, XXII, 459; 1904, XXIV, 476; 1909, XXVI, 197; 1920, XXXI, 1150.

(3303) § 21. Time in Which Samples to Be Analyzed.—Said college shall have the said sample or samples analyzed free of cost and within forty (40) days, or as soon thereafter as practicable after receiving the sample or samples, supply the purchasers and sellers of such fertilizers or manures or cotton seed meal with a sworn certificate, giving the per cent. of the different fertilizer ingredients, signed by the Chemist of said college.

Civ. '12, § 2328; Civ. '02, § 1541; 1900, XXII, 459; 1904, XXIV, 476; 1909, XXVI, 197.

(3304) § 22. Regulations.—The Board of Trustees of the Clemson Agricultural College of South Carolina shall have authority to establish such rules and regulations in regard to the inspection, analysis and sale of fer-

tilizers and fertilizing materials as shall not be inconsistent with the provisions of this Article, and as in their judgment will best carry out the requirements thereof.

Civ. '12, § 2330; 1904, XXIV, 476; 1909, XXVI, 197; 1920, XXXI, 1150.

Germofert Mfg. Co. v. Cathcart, 104 S. C. 125, 88 S. E. 535; *Richmond Guano Co. v. Kirkpatrick*, 111 S. C. 469, 98 S. E. 327.

ARTICLE II.

Cotton and Farm Products.

(3305) § 1. Tare on Cotton Prohibited, Except for Bagging and Ties—Weight for Tare Prescribed.—The custom of making a deduction from the actual weight of bales unmanufactured cotton as an allowance for breakage or draft thereon is abolished; and all contracts made in relation to such cotton shall be deemed and taken as referring to the true and actual weight thereof without deduction; and no tare shall be deducted from the weight of such bales of cotton except the actual weight of the bagging and ties used in baling said cotton; and whenever it shall be agreed between the buyer and seller to deduct tare on cotton bales it shall be as follows: For bales of cotton covered with seven yards of standard cotton bagging and six iron ties the actual tare shall be, and is hereby, fixed at sixteen pounds, and for bales of cotton covered with seven yards of standard jute bagging and six iron ties the actual tare shall be, and is hereby, fixed at twenty-four pounds; and when buyer and seller agree to sell at net weight, and when bales of cotton are covered with seven yards of standard cotton bagging and six iron ties, the actual tare shall be, and is hereby, fixed at sixteen pounds, and when bales of cotton are covered with seven yards of standard jute bagging and six iron ties, the actual tare shall be, and is hereby, fixed at twenty-four pounds.

Civ. '12, § 2331; Civ. '02, § 1543; G. S. 1195; R. S. 1303; 1846, XI, 368; 1878, XVI, 713; 1889, XX, 375.

(3306) § 2. Rates of Storage.—The rates of storage of cotton shall not exceed twelve and one-half cents per week for each bale of cotton; the charges for weighing cotton shall not exceed ten cents for each bale; and any person violating the provisions of this Section, or either of them, shall forfeit to the owner of the cotton ten dollars for each offense, which may be recovered by him in any Court of competent jurisdiction in this State.

Civ. '12, § 2332; Civ. '02, § 1544; G. S. 1196; R. S. 1304; 1876, XVI, 175.

Prohibits the making, not the paying, of a greater charge. *Holman v. Frost*, 26 S. C. 290, 2 S. E. 16.

(3307) § 3. Traffic in Cotton Seed Regulated—License—Hours of Sale.—The traffic in seed cotton or unpacked lint cotton by purchase, barter or exchange, within the period beginning August 15th, and ending December 20th, in each year, except in the counties of Chesterfield and Marlboro, where they shall be licensed only from January 1 to August 1; and except in the County of Laurens, where they shall be licensed from February 1 to April 30; and except in the Counties of Lancaster, Lee, Greenwood and Kershaw, where they shall be licensed from April 1 to July 31; and except

in the County of York, where they shall be licensed from May 1 to August 1; and except in the Counties of Williamsburg and Georgetown, where they shall be licensed from December 15 to August 1; and except in the County of Sumter, where they shall be licensed only from January 20 to August 1, of each year, without license or between the hours of sunset and sunrise, is declared against the public welfare and is prohibited.

Civ. '12, § 2333; Civ. '02, § 1545; G. S. 1197; R. S. 280, 281; 1881, XVII, 625; 1894, XXI, 793; 1905, XXIV, 912; 1908, XXV, 1125; 1910, XXVI, 635; 1911, XXVII, 25; 1912, XXVII, 545; 1921, XXXII, 63.

(3308) § 4. Licenses to Traffic in Seed Cotton.—The Clerks of the Courts of Common Pleas are authorized and empowered to issue licenses to traffic in seed cotton or unpacked lint cotton by purchase, barter or exchange within the period beginning August the 15th and ending December the 20th, except in the County of Sumter, where they shall be licensed only from January the 20th to August the 1st of each year, and in the County of Williamsburg and Georgetown, where they shall be licensed only from December 15th to August the 1st, and within their respective counties, to such person or persons as shall file with said Clerks, respectively, a written application therefor, the granting of which shall be recommended in writing by at least ten landowners within the township wherein said applicant intends to carry on such traffic. Such license shall specify the exact place whereat said traffic shall be carried on and the period within which such traffic is permitted, and shall continue in force for the period of one year from the date of issue; and for such license, if granted, a fee of not more than five hundred dollars and not less than one dollar, the amount of said license to be fixed by the County Board of Commissioners thereof, shall be paid by the applicant to the County Treasurer for the use of the county.

Civ. '12, § 2334; Civ. '02, § 1545; G. S. 1197; R. S. 280, 281; 1881, XVII, 625; 1894, XXI, 793; 1905, XXIV, 912; 1908, XXV, 1125; 1910, XXVI, 635; 1911, XXVII, 25; 1912, XXVII, 545; 1921, XXXII, 63.

(3309) § 5. Record to Be Kept.—All persons in the traffic in seed cotton and unpacked lint cotton are required to keep legibly written in a book, which shall be open to public inspection, the name of the person or persons from whom they purchase or receive by way of barter, exchange, or traffic of any sort, any seed cotton or unpacked lint cotton, with the number of pounds and date of purchase.

Civ. '12, § 2335; Civ. '02, § 1545; G. S. 1197; R. S. 280, 281; 1881, XVII, 625; 1894, XXI, 793; 1905, XXIV, 912; 1908, XXV, 1125; 1910, XXVI, 635; 1911, XXVII, 25.

(3310) § 6. Misdemeanor to Violate Provisions Herein.—Any person who shall engage in the traffic of seed cotton within the period beginning August 15, and ending December 20, except in the Counties of Chesterfield and Marlboro, where they shall be licensed from January 1 to August 1, and except in the County of Laurens, where they shall be licensed from February 1 to April 30, and except in the Counties of Lancaster, Lee, Greenwood and Kershaw, where they shall be licensed from April 1 to July 31, and except in the County of York, where they shall

be licensed from May 1 to August 1, and except in the Counties of Williamsburg and Georgetown, where they shall be licensed from December 15 to August 1, and except in the County of Sumter, where they shall be licensed from January 20 to August 1, in each year, of any year without license, as herein provided, or between the hours of sunset and sunrise, or who shall fail to keep the book of record, as herein provided, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding One Hundred Dollars or imprisonment at the discretion of the Court.

Civ. '12, § 2336; Civ. '02, § 1545; G. S. 1197; R. S. 280, 281; 1881, XVII, 625; 1894, XXI, 793; 1905, XXIV, 912; 1908, XXV, 1125; 1910, XXVI, 635; 1911, XXVII, 25; 1912, XXVII, 545; 1914, XXVIII, 459; 1915, XXIX, 68; 1920, XXXI, 800.

(3311) § 7. Exceptions.—The provisions of Sections 3 to 6 shall not apply to the purchase of "linters," nor to the purchase of seed cotton or unpacked lint cotton sold under process of law in the collection of rents or of liens or mortgages previously given on the cotton sold.

Civ. '12, § 2337; Civ. '02, § 1545; G. S. 1197; R. S. 280, 281; 1881, XVII, 625; 1894, XXI, 793; 1905, XXIV, 912; 1908, XXV, 1125; 1910, XXVI, 635; 1911, XXVII, 25.

(3312) § 8. Cotton Buyers Required to Keep a Book—Entries—Open to Inspection.—Each and every cotton buyer in this State buying from the initial seller shall be required to keep a book in which shall be inserted the number of bales of cotton bought by him. He shall number the bales of cotton bought by him, the name of those from whom he purchases, and shall give to the seller a cotton bill, on which he shall put the number of the bale or bales of cotton bought from him. The number on the bale of cotton on his books and on the cotton bill shall be the same number.*

Such books of all cotton buyers shall be open to public inspection.†

Civ. '12, § 2338; Civ. '02, § 1546; 1894, XXI, 793; 1899, XXIII, 90.

*This section is not subject to constitutional objection that it permits unreasonable searches or requires person to give evidence against himself. *Parks v. Laurens Cotton Mills*, 75 S. C. 560, 566, 56 S. E. 234.

21 Stat. 793 is germane to title. *Ib.*

Refusal of cotton buyer, under advice of counsel, to permit sheriff or his deputy to inspect his cotton buying books, under warrant to seize cotton after notice of claim under lien and demand for possession, are acts from which jury may infer actual and punitive damages. *Ib.*

†See also, Criminal Code.

(3313) § 9. Public Ginners Required to Keep Books for Public Inspection.—Every person who runs a public gin, shall keep a book in which shall be entered a full account of all the cotton brought thereto, with the date and the name of the person bringing it, which book shall be open to inspection by the public.

Civ. '12, § 2309; 1902, XXIII, 1021.

(3314) § 10. Refusal to Accept Bales Over Three Hundred Pounds Bought by Sample.—It shall be unlawful for any cotton buyer to refuse to accept any bale of cotton, after he has bought the same by sample thereof, weighing over three hundred pounds, provided same corresponds in quality with sample bought by.

Civ. '12, § 2340; Civ. '02, § 1547; 1899, XXIII, 90.

(3315) § 11. Traffic in Long Cotton Without a License a Misdemeanor.—The County Treasurer of any county is authorized and directed to

annually issue a license to traffic in long cotton, known as sea island cotton, in the seed, by purchase, barter or exchange, within the limits of one particular township only in said county, and within the period beginning the first day of August and ending the thirty-first day of December of each year, to any and every person who shall file with said County Treasurer a written application therefor, stating the township of said county wherein and the particular place in such township whereat such person desires to traffic and do business (the granting of which license must be recommended by the Board of Township Commissioners of such township). Such license shall specify the township wherein and the particular place in such township whereat, as well as the period aforesaid in which such person is permitted so to traffic and do business; and for every such license, if granted, and before the issuing of the same, a fee of fifty dollars shall be paid by every such person to the County Treasurer; and all of such license fees shall be held by him, the said Treasurer, subject to the orders of the Chairmen of the Boards of Township Commissioners in said county, respectively, and the County Supervisor, who shall apply and use the same to and for the enforcement of the provisions hereof, and to and for the repairing of the roads and bridges in the several townships, respectively, and for no other purpose. And traffic in long cotton, known as sea island cotton, in the seed, by purchase, barter or exchange, without such license, is absolutely prohibited; and any person who shall so traffic or attempt to traffic without such a license shall be guilty of a misdemeanor, and, on conviction, shall be punished for each offense by a fine of not more than one hundred dollars or by imprisonment not exceeding thirty days: *Provided*, That one-half of any such fine when collected shall go to the informer: *Provided*, The provisions of this Section do not apply to the Counties of Colleton, Beaufort and Charleston, except within the Township of James Island.

Civ. '12, § 2341; Civ. '02, § 1548; 1899, XXIII, 90; 1900, XXIII, 732.

(3316) § 12. Special Regulations of Traffic in Seed Cotton in Portion of Marion County.—All persons residing in that portion of Marion County south of a line parallel to and exactly one mile north of the Wilmington, Columbia and Augusta Railroad engaged in purchase, barter or exchange in seed cotton shall on every Saturday night post up in front of the place of business, where seed cotton is purchased, bartered or exchanged, the amount of cotton purchased, bartered or exchanged during the week and the name or names of parties from whom the purchase or purchases were made, and the amount purchased and to keep said record posted for three months: *Provided*, That no person shall purchase any seed cotton within the limits above described after the hour of five o'clock in the afternoon and before eight o'clock in the forenoon.

Civ. '12, § 2342; Civ. '02, § 1551; 1894, XXI, 944; 1901, XXIII, 728.

Public Cotton Weighers.

(3317) § 13. When Public Cotton Weighers May Be Elected—Provisos.—Upon the petition of fifty or more qualified electors, who are freeholders and growers of cotton in any township or parish in which there may be a cotton market, the County Board of Commissioners of that county shall

annually elect one or more Public Cotton Weighers for said cotton markets, whose term of office shall be for one year and until the election and qualification of his or their successors: *Provided, however*, That there shall be two Public Cotton Weighers at Bishopville, Lee County, who shall receive ten cents per bale for weighing cotton, five cents to be paid by the buyer and five cents by the seller, and who shall give bond, with good and sufficient surety, to be approved by Supervisor, in the sum of one thousand (\$1,000.00) dollars each, conditioned for the faithful performance of his duty: *Provided*, That Cotton Weighers in the County of Greenwood shall be elected to hold office for two years, and the Cotton Weighers already elected in Greenwood County shall hold office for two years from their election, and until their successors are elected and qualify: *Provided*, That in the County of Sumter no person shall be voted for or elected a Cotton Weigher who is related within the sixth degree by blood or marriage to one or any one of the County Board of Commissioners of said county: *Provided, further*, That if more than one Weigher be elected for the City of Sumter, then in such event one of said Weighers shall be elected upon the nomination and recommendation thereto by the City Council of said city.

Civ. '12, § 2343; Civ. '02, § 1552; 1896, XXII, 57; 1897, XXII, 433; 1906, XXV, 140; 1911, XXVII, 37.

Barfield v. Stevens Mercantile Co., 85 S. C. 188, 67 S. E. 158.

(3318) § 14. Cotton Weighers to Take Oath and Give Bond—Compensation.—Before entering upon the duties of his office, each Cotton Weigher shall be legally sworn to discharge the duties of the position, by some officer authorized to administer oaths, and shall enter into bond in the sum of three hundred dollars for the faithful performance of his duty, which bond shall be approved by the County Board of Commissioners, and filed with the Clerk of the Court of Common Pleas and General Sessions for the county in which said cotton market or markets may be situated. Each Weigher shall receive as compensation for his services not more than ten cents for each bale weighed by him, to be fixed by the Commissioners, the same to be paid in equal proportion by the seller and buyer, except in those markets where the Weigher may be paid by individuals or corporations, at which markets the seller shall pay nothing.

Civ. '12, § 2344; Civ. '02, § 1553; 1896, XXII, 57; 1900, XXIII, 434; 1906, XXV, 141; 1919, XXXI, 232; 1920, XXXI, 860.

Barfield v. Stevens Mercantile Co., 85 S. C. 188, 67 S. E. 158.

(3319) § 15. Duties of Weigher—Removal from Office.—It shall be the duty of each Weigher to provide a platform and scales with ample facilities for handling cotton with speed and at minimum cost, at which platform or platforms all cotton sold in said market or markets shall be weighed. It shall be the duty of each Weigher to weigh fairly and promptly all cotton sold in said market or markets, issuing his own ticket, showing the weight of each bale or package of cotton weighed. It shall be his further duty to adjust any difference between sellers and buyers as to moisture and mixed or false packing. In case of inability from sickness or other cause, and from the first day of March to the first day of September of each year, a Weigher may appoint a Deputy, who shall take, before entering upon his duties, the usual oath of the office in the manner required of

the Weigher. The elected Weigher shall be responsible on his bond for the official acts of his Deputy. Each Weigher or his Deputy shall devote his exclusive attention to the duties of his office during the cotton marketing season. Each Weigher shall test his scales once a month by the standards in the office of the Clerk of the Court, as provided by law: *Provided*, That the County Board of Commissioners may, for good and sufficient cause shown, remove any such Public Cotton Weigher from his office, after giving such Weigher at least ten days' notice to show cause why he should not be removed; and shall have power to fill any vacancy occurring in the office of Public Cotton Weigher, at the first regular meeting of the said Board after such vacancy occurs: *Provided*, That nothing herein contained shall apply to sales made on plantations or at cotton mills.

Civ. '12, § 2345; Civ. '02, § 1554; 1896, XXII, 58; 1901, XXIII, 729; 1906, XXV, 141.
Barfield v. Stevens Mercantile Co., 85 S. C. 188, 67 S. E. 158.

(3320) § 16. **Further Duties of Weigher—Platform of Weigher.**—The Cotton Weighers shall be required to mark and number each bale of cotton as indicated by tags of buyer, and keep the cotton of each buyer together in order to facilitate prompt shipment. No cotton shall be allowed to remain on the platform more than five days, except upon being subject to a charge of one cent per bale per day; and cotton left on platform for any time to be at the owner's risk. The platform for Cotton Weighers shall be furnished by the county, and shall have a capacity of 5,000 bales; and the scales on said platform shall be approachable from at least two sides. The Weighers, as aforesaid, shall render to the County Commissioners a monthly statement of the cotton weighed, and shall pay to the County Treasurer one cent per bale for all cotton weighed by them, for the use of the platform.

Civ. '12, § 2346; 1904, XXIV, 411; 1907, XXV, 610.

(3321) § 17. **Counties May Make Contracts for Platform.**—The County Board of Commissioners of any county may enter into a binding and valid contract for a time not exceeding ten years with one or more persons or corporations which shall agree to furnish a platform of such size and capacity as the said Board of County Commissioners may deem sufficient for the expeditious weighing of the cotton coming into said market, for the use of which platform the said person or persons, or corporation, shall receive as compensation one cent per bale for all cotton weighed thereon, which shall be paid by the Weigher or Weighers elected for such cotton market (weighing such cotton): *Provided*, That no cotton shall be allowed to remain on the platform longer than twenty-four hours, except upon being subject to a charge of one-half cent per bale for each day or fractional part thereof up to five days, and of one cent per bale for each succeeding day or fractional part thereof: *Provided, further*, That the Cotton Weigher or Weighers for such cotton market shall be required to number and mark at time of weighing, with not more than three letters, as indicated by tags or other instructions of buyer of each bale of cotton, and to keep the cotton of each buyer together to facilitate prompt shipment: *Provided, further*, That regular buyers and exporters of cotton shall be required to furnish stencils and marking material for properly numbering and marketing the cotton by them bought.

Civ. '12, § 2347; 1906, XXV, 142.

(3322) § 18. **Exceptions to Sections 14 and 15.**—The provisions of Sections 14 and 15 shall not apply to sales made on plantations or at cotton mills, nor to the Counties of Charleston, Laurens, Berkeley, Spartanburg, Aiken, Horry, Georgetown, Richland, Beaufort, Abbeville, Newberry, Oconee, nor to the Town of Liberty, in Pickens County, or to Anderson Township, in Anderson County: *Provided*, That in the County of Edgefield for each Cotton Weigher, his term of office shall be for two years from the date of his election, and until his successor shall have qualified: *Provided, further*, That in the County of Edgefield the provisions of this Chapter shall apply to all cotton sold or stored in warehouses.

Civ. '12, § 2348; Civ. '02, § 1555; 1896, XXII, 58; 1898, XXII, 802; 1901, XXIII, 730; 1902, XXIII, 1175; 1904, XXIV, 431, 410; 1906, XXV, 142; 1907, XXV, 609; 1908, XXV, 1043; 1909, XXVI, 183; 1910, XXVI, 715; 1911, XXVII, 36; 1915, XXIX, 67; 1917, XXX, 219.

Barfield v. Stevens Mercantile Co., 85 S. C. 188, 67 S. E. 158.

SPECIAL PROVISIONS IN CERTAIN COUNTIES.

ANDERSON COUNTY.

(3323) § 1. **Special Provisions for the Town of Honea Path.**—Upon the petition of twenty-five or more qualified electors, who are growers and buyers of cotton, or cotton growers or cotton buyers, resident within five miles of Honea Path, the Town Council of said town shall, within thirty days after the receipt of said petition, provide for and annually conduct an election, and in the usual manner of elections in said town, for a Public Cotton Weigher for said town, whose term of office shall be for one year, and until the election and qualification of his successor. At such election all and only cotton growers and cotton buyers who are qualified electors and reside within a radius of five miles of the depot in said town, shall be entitled to vote; the said Town Council shall declare the result of said election, and the person receiving the highest number of votes shall be the Public Cotton Weigher for said town, and he shall receive as compensation for his services not exceeding five cents per bale for every bale of cotton weighed, one-half to be paid by the buyer and one-half by the seller; such Weigher shall finally adjust and settle all differences or disputes between buyers and sellers as to proper deductions to be allowed from water, dampness, damaged cotton, or any false packing; and the said Weigher shall test the scales every morning before weighing cotton, so as to insure accuracy. In case of inability from sickness or other cause, the said Weigher may appoint a Deputy, who shall take, before entering upon his duties, the usual oath of office in the manner required of the Weigher. Before entering upon the duties of his office, said Cotton Weigher shall be legally sworn to discharge the duties of his position by the Intendant of the Town of Honea Path, and shall enter into bond in the sum of three hundred dollars for the faithful performance of his duty, which bond shall be approved by the Town Council of Honea Path, and filed with the Clerk of the Court of Common Pleas for Anderson County. The elected Weigher shall be responsible on his bond for the official acts of his Deputy.

Civ. '12, § 2349; Civ. '02, § 1556; 1889, XXIII, 87.

BAMBERG COUNTY.

(3324) § 1. **Cotton Weighers Elected in Bamberg County.**—There shall be nominated at the regular primary election for Bamberg County, a Cotton Weigher for each of the following towns, to wit: Bamberg, Denmark, Ehrhardt and Olar, whose terms of office shall be two years, beginning on Tuesday after the first Monday in October following their nomination: *Provided*, That the Board of County Commissioners for said county shall appoint such persons as are nominated for said positions: *Provided, further*, The following voting precincts are hereby designated for the voters for said Weighers: Bamberg territory—Bamberg, Midway, Edisto, Hunter's, Chapel and Clear Pond; Denmark territory—Denmark, Millhouse's Mill and Lee's; Ehrhardt territory—Ehrhardt and Kearsse; Olar territory—Olar, Govan and Colston.

Civ. '12, § 2365; 1911, XXVII, 38; 1913, XXVIII, 22.

(3325) § 2. **Cotton Weighers Elected in Bamberg County.**—Hereafter all Public Cotton Weighers in Bamberg County shall be elected in the Democratic primaries for their respective districts, as Magistrates are now nominated.

Civ. '12, § 2370; 1911, XXVII, 38.

CHEROKEE COUNTY.

(3326) § 1. **Cotton Weigher in Cherokee County—Term of Office—Compensation.**—Hereafter the County Commissioners of Cherokee County be, and they are hereby, empowered to elect a cotton weigher for Gaffney, in said county, instead of the City Council for Gaffney, as now provided for by law, fix his compensation and provide suitable platforms for holding cotton weighed.

1915, XXIX, 383; 1921, XXXII, 172.

(3327) § 2. **May Appoint Substitute—Employ Help—Compensation.**—Said Weigher is empowered to appoint a substitute in case of his disability from any cause, and employ such help as may be necessary to handle such cotton expeditiously, such help to receive not more than the rate each of \$1.25 per day, to be also paid out of the ordinary funds of said county.

1915, XXIX, 383.

(3328) § 3. **Bond—Oath—Scales—Platform—County Commissioners.**—The Weigher, before entering upon the discharge of his duties, shall enter into bond in the sum of five hundred (\$500) dollars, with sureties to be approved by the Board of County Commissioners, and subscribe to an oath for the faithful performance of his duties personally or by substitute (said oath shall also be subscribed by his substitute). Said Weigher, or his substitute, shall provide scales and platform for the handling of such cotton, to be paid for by the Board of County Commissioners out of the ordinary fund of said county: *Provided*, Before any such contract is made for the

use of scales and platform the said Board of County Commissioners must approve of the same.

1915, XXIX, 383.

(3329) § 4. Fee for Weighing.—The seller and buyer of any cotton on the market at Gaffney shall each pay to such Weigher five cents per bale for each bale weighed, to be by him turned over to the County Treasurer monthly, and on the 15th day of June in every year, after deducting the expenses for salaries, labor and charges for scales and platform, any balance shall be converted into the ordinary funds of the county.

1915, XXIX, 383.

(3330) § 5. Duties of Weigher.—The Weigher, or his substitute, shall weigh correctly all cotton bought and sold on said market, and settle all questions of tare loss or damage between the buyer and seller which may be referred to him by either, and furnish both a certificate of the number of each bale, its weight and amount of tare loss or damage, retaining a stub, showing the same facts with corresponding numbers on each.

1915, XXIX, 383.

CHESTER COUNTY.

(3331) § 1. Cotton Weighers for Chester County—Bond and Duties.—That Public Cotton Weigher or Weighers shall be annually elected for each of the incorporated cities or towns in the County of Chester upon the petition of twenty-five or more growers of cotton in the territory surrounding such city or town. Said petition for the election of such Public Cotton Weigher shall be filed annually with the Board of County Commissioners, respectively, of said counties on or before the first Monday in July of each year, and the said County Commissioners, with the Mayor or Intendant of the respective city or town to and for which the said petition applies and relates, shall elect such Weigher or Weighers during the month of July, whose term of office shall be one year and until the election and qualification of his or their successor or successors in office. When elected, the said Cotton Weighers shall give the bond and discharge all the duties and be subject to all the requirements provided for Public Cotton Weighers in the General Statutes; and the said Board of County Commissioners shall fix the compensation, but which shall not exceed twenty cents per bale, one-half thereof to be paid by the seller and one-half by the buyer, and remove the said Weighers from office under the provisions of the General Statutes: *Provided*, That in Chester County the Board of County Commissioners shall furnish the Cotton Weighers at Chester with standard, visible scales, and, upon the application of the Weigher, keep the same in good repair.

Civ. '12, § 2357; 1908, XXV, 1198; 1917, XXX, 218; 1918, XXX, 775; 1920, XXXI, 105, 844.

CHESTERFIELD COUNTY.

(3332) § 1. **Cotton Weighers for Chesterfield County.**—There shall be elected every two years in each town in the County of Chesterfield, where cotton is marketed, a Public Cotton Weigher, who shall be sworn to discharge the duties of his position by some officer authorized to administer oaths, and whose term of office shall be two years and until his successor is elected and qualified. The election of such Weigher shall be held on the fourth Tuesday in August, at the time for holding the general primary election, and shall be held under the rules governing the Democratic party of this State, and the candidate receiving the majority of votes cast shall be declared elected. The Managers of Election in the general primary election shall act as Managers of Election for such Cotton Weighers and shall certify the result of such election to the Mayor or Intendant of the town where such Weigher is to weigh cotton, and such Mayor or Intendant of such town shall name the candidate elected as such Cotton Weigher for said town. Said Weigher shall enter into bond to the Town Council of such town in the sum of three hundred dollars, conditioned for the faithful performance of his duties, which bond shall be approved by and filed with the said Town Council. The Mayor or Intendant of each of said towns shall give at least three weeks' notice of such election, and may give said notice by posting same in three public places. The qualifications for voting for such Cotton Weighers shall be: First, the voter must be qualified to vote in the Democratic primary; second, the voter must be a resident of said county; and, third, such voter shall vote for Cotton Weigher for the town where such voter markets the most of his cotton. Any voter qualified to vote in the primary and residing within the limits of the town where such Cotton Weigher is to weigh cotton, shall also be entitled to vote for such Cotton Weigher. Boxes shall be placed at the precincts most convenient for the voters for such Cotton Weighers, and shall also be placed at precincts outside the limits of such towns. The candidates for Cotton Weighers shall have the right to have boxes placed at the said voting precincts. Each candidate shall prepare his own ballots. Each voter shall take an oath that he has not before voted for Cotton Weigher in said election. Each said Weigher shall receive as compensation for his services eight cents per bale, four cents to be paid by the purchaser and four cents to be paid by the seller. It shall be the duty of such Weigher to provide scales for the weighing of such cotton as may be brought to such market, which scales shall be subject to inspection at all times. It shall be the duty of such Weigher to adjust all differences between buyer and seller as to moisture and dampness of said cotton, etc. In the event that no candidate offers in such election for such office, the Town Council shall appoint some suitable person to weigh cotton for such town, or to make such arrangements for weighing cotton in such town as the Town Council may deem best. In the event of vacancy by resignation or death of any of said Cotton Weighers, the Town Council shall appoint some suitable person for Cotton Weigher for the unexpired term.

Civ. '12, § 2353; 1909, XXVI, 122; 1910, XXVI, 632; 1912, XXVII, 641; 1914, XXVIII, 464; 1918, XXX, 871.

COLLETON COUNTY.

(3333) § 1. **Cotton Weighers at Lodge, Smoaks and Walterboro, Colleton County.**—At the primary elections in Colleton County, the managers for the precincts at Lodge, Smoaks and Walterboro, in said county, shall provide a box for the election of a Public Cotton Weigher for each of said towns, whose term of office shall be for two years, or until the election of his successor. At such election, all cotton growers and cotton buyers who are qualified electors and who are entitled to vote at the above precincts at said primary election, shall be entitled to vote. The Managers of said primary shall declare the result of said election and the person receiving the highest number of votes shall be the Public Cotton Weigher for said town, and he shall receive as compensation for his services not exceeding twenty cents per bale for every bale of cotton weighed, one-half to be paid by the buyer and one-half by the seller; such Weigher shall finally adjust and settle all differences or disputes between buyers and sellers as to proper deductions to be allowed from water, dampness, damaged cotton or any false packing, and said Weigher shall test the scales every morning before weighing any cotton, so as to insure accuracy. In case of inability from sickness, or other cause, the said Weigher may appoint a Deputy, who shall take, before entering upon his duties, the oath of office required of the Weigher. Before entering upon the duties of his office, the said Cotton Weigher shall be sworn to discharge the duties of his position by the Clerk of Court for Colleton County, and shall enter into a bond in the sum of five hundred dollars for the faithful performance of his duty, which bond shall be approved by the Clerk of Court for said county and filed in his office, and the said Weigher shall be responsible on his bond for the official acts of his Deputy: *Provided*, The compensation for all Cotton Weighers in Colleton County shall be as herein fixed, and such Weighers shall place such marks and numbers on bales weighed by them as shall be desired by the buyer.

Civ. '12, § 2360; 1910, XXVI, 637; 1920, XXXI, 843.

DARLINGTON COUNTY.

(3334) § 1. **Cotton Weighers for Lamar, Darlington County.**—Upon the petition of twenty-five or more qualified electors, who are growers and buyers of cotton, or cotton growers, or cotton buyers, resident within five miles of Lamar, in Darlington County, the Town Council of said town shall, within thirty days after receipt of said petition, provide for and annually conduct an election, and in the usual manner of elections in said towns, for a Public Cotton Weigher for said town, whose term of office shall be for one year, and until the election and qualification of his successor. At such election all and only cotton growers and cotton buyers who are qualified electors and reside within a radius of five miles of the depot, in said town, shall be entitled to vote; the said Town Council shall declare the result of said election, and the person receiving the highest number of votes shall be the Public Cotton Weigher for said town, and he shall receive as compensation

for his services not exceeding six cents per bale for every bale of cotton weighed, one-half to be paid by the buyer and one-half by the seller; such Weigher shall finally adjust and settle all differences or disputes between buyers and sellers as to proper deductions to be allowed from water, dampness, damaged cotton, or any false packing; and the said Weigher shall test the scales every morning before weighing cotton, so as to insure accuracy. In case of inability from sickness or other cause, the said Weigher may appoint a Deputy, who shall take, before entering upon his duties, the usual oath of office in the manner required of the Weigher. Before entering upon the duties of his office, said Cotton Weigher shall be legally sworn to discharge the duties of his position by the Intendant of the Town of Lamar, and shall enter into bond in the sum of three hundred dollars for the faithful performance of his duty, which bond shall be approved by the Town Council of Lamar, and filed with the Clerk of the Court of Common Pleas for Darlington County. The elected Weigher shall be responsible on his bond for the official acts of his Deputy.

Civ. '12, § 2361; 1909, XXVI, 58.

DILLON COUNTY.

(3335) § 1. Fees of Cotton Weighers in Dillon County.—It shall be unlawful for any Cotton Weigher in the County of Dillon, to charge in excess of ten cents per bale for weighing and marking cotton, when used for weighing such cotton, any scale other than automatic scales, and not more than twenty cents per bale when using automatic scales.

1920, XXXI, 1562.

DORCHESTER COUNTY.

(3336) § 1. Cotton Weighers in Dorchester County.—The County Commissioners of Dorchester County are authorized and directed to order elections to be held, at time of general elections, for the purpose of electing a Public Cotton Weigher for each of the following districts: The Cotton Weigher who does business at St. George's shall be voted for by the qualified electors of St. George's, Indianfield, Badham and Grover precincts. The Cotton Weigher who does business at Harleyville shall be elected by the qualified voters of Harleyville, Dorchester and Pregnall precincts. The Cotton Weigher who does business at Ridgeville shall be elected by the qualified voters of Ridgeville precinct. The Cotton Weigher who does business at Givhans shall be elected by the qualified electors of Givhans and Beach Hill precincts; and the Cotton Weigher who does business at Summerville shall be elected by the qualified voters of all the precincts in Summerville, Knightsville and Delemars, who shall hold their offices for the term of two years and until their successors are elected and qualified: *Provided*, That no such election need be held for any of these places unless Cotton Weighers have been therein lawfully installed; and said Commissioners shall make such rules and regulations for the government of such elections as to them shall seem proper; they shall also fix the compensation to be received by

each of the said Cotton Weighers; said compensation not to exceed fifteen cents per bale for each bale of cotton weighed by any one of them, seven cents to be paid by the seller and eight cents by the buyer, and said Cotton Weigher shall furnish his own platform and scales. Said Commissioners shall canvass the votes polled at said elections, declare said elections and issue a commission to the person declared elected: *Provided*, That no person elected Public Cotton Weigher under the provisions of this Section shall receive a commission to enter upon the discharge of his duties as such Public Cotton Weigher until he has entered into a good and sufficient bond, with two or more sureties, in the sum of three hundred dollars, payable to said Commissioners, and conditioned for the faithful performance of his duties as such Cotton Weigher; said bond to be approved by said Commissioners. Any other person than a duly elected and commissioned Cotton Weigher, charging or receiving any sum or sums of money or other valuable consideration for weighing cotton in said County of Dorchester, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined a sum not exceeding one hundred dollars, or imprisonment for a term not exceeding thirty days. The said Commissioners are authorized to fill any vacancy caused by the death or resignation of any Cotton Weigher elected under the provisions of this Section, by appointment. That all scales shall be tested by the Clerk of Court.

Civ. '12, § 2362; 1908, XXV, 1209; 1919, XXXI, 70.

EDGEFIELD AND LEE COUNTIES.

(3337) § 1. **Compensation for Cotton Weighers in Edgefield and Lee Counties.**—That the Cotton Weighers of Edgefield and Lee Counties shall receive as compensation for their services twenty (20c) cents for each bale of cotton weighed by them, ten (10c) cents of which shall be paid by the seller and ten (10c) cents by the buyer thereof, and the Weighers shall mark each bale weighed in plain letters and numbers as required by the buyer.

1920, XXXI, 974.

FLORENCE AND YORK COUNTIES.

(3338) § 1. **Compensation of Cotton Weighers in York and Florence Counties.**—That the Public Cotton Weighers of York and Florence Counties shall receive as compensation for their services twenty (20) cents for each bale of cotton weighed by them, ten (10) cents of which shall be paid by the seller and ten (10) cents by the buyer thereof.

1920, XXXI, 843.

GREENWOOD COUNTY.

(3339) § 1. **Compensation of Cotton Weighers in Greenwood County.**—That all Cotton Weighers in Greenwood County who have heretofore been

appointed or elected to that position, or who hereafter may be appointed or elected to that position, shall be paid for weighing cotton sixteen cents per bale, one-half of said amount shall be paid by the buyer and one-half by the seller.

1920, XXXI, 860.

KERSHAW COUNTY.

(3340) § 1. **Cotton Weigher for Town of Kershaw—Kershaw.**—There shall be elected by the qualified electors, resident within the County of Kershaw, a Public Cotton Weigher, who shall have an office in the Town of Kershaw, in said county. Such Weigher shall be sworn to discharge the duties of the position by some officer authorized to administer an oath. The election of such Weigher shall be on the first Tuesday in August each year, the polls to open at 8 a. m. and close at 4 p. m. The County Supervisor shall appoint three men as Managers of said election, and shall give notice of the time and place of holding the same at least ten days before the day of said election. The said Weigher shall enter into bond to the said County Supervisor in the sum of three hundred dollars for the faithful performance of his duties, which bond shall be approved by and filed with the said County Supervisor, and said Weigher shall receive as compensation for his services ten cents per bale for each bale weighed by him, the same to be paid in equal proportions by the buyer and seller. It shall be the duty of said Cotton Weigher to provide scales and ample facilities for handling cotton sold and weighed. It shall be the duty of the said Weigher to weigh all cotton brought to him to be weighed fairly and promptly, issuing a ticket therefor, which shall show the weight of each bale. It shall be his further duty to adjust any differences between buyers and sellers as to moisture, mixture or false packing. In case of disability, by sickness or other cause, the said Weigher may appoint temporarily a Deputy, who shall take the usual oath of office before a Magistrate previous to entering upon his duty. When any false weighing or omission of duty on part of said Weigher occurs, whereby either buyer or seller suffers loss or injury, such Weigher and his bondsmen shall be held liable to the extent of such loss or injury. For the purposes of this Section, qualified electors shall include all male citizens who are patrons of the Kershaw cotton market, resident within the County of Kershaw. The said County Supervisor shall advertise by posting notices in three conspicuous places in the county or otherwise and for at least ten days before such election the time and place at six o'clock on the third day next preceeding such election and delivered to the Manager of such election forthwith, a certified list of the names of all persons to whom he shall have issued such certificates, and such certified list shall be used by the said Managers as the poll list in such election. The person receiving the highest number of votes cast in such election shall be the Cotton Weigher for the said town, and his term of office shall be for one year, and until the election and qualification of his successor.

Civ. '12, § 2358; 1909, XXVI, 194; 1912, XXVII, 65; 1915, XXIX, 192.

(3341) § 2. **Cotton Weigher for Kershaw County—Bethune.**—There shall be elected by the qualified electors, resident within the County of Kershaw, a Public Cotton Weigher, who shall have his office in the Town of Bethune, in said county. All the provisions of Section 2 of the Article, as to the Cotton Weigher at Pickens, regulating the time of elections, the appointment of Managers and the conduct of electors, the bond of the Cotton Weigher, and his powers, duties, term of office and compensation, shall apply to the Cotton Weigher to be elected at Bethune, except that said Cotton Weigher shall be elected for a term of two years and until his successor is elected and qualified. For the purposes of this Section, “qualified electors” shall include all male citizens who are patrons of the Bethune cotton market, resident within the County of Kershaw, who shall, on or before the third day before the day fixed for such election, upon the production of his registration certificate, procure from the Clerk of the Town Council of the Town of Bethune an additional certificate that he is a duly qualified elector under the law governing general elections in the State of South Carolina, and entitled to vote in the annual election for Cotton Weigher.

Civ. '12, § 2359; 1906, XXV, 139; 1907, XXV, 626; 1908, XXV, 1202; 1912, XXVII, 65.

Act. 25 Stat. 137, is special legislation and is in conflict with Const., Art. III, § 34, subsec. 11. *Barfield v. Stevens Mercantile Co.*, 85 S. C. 186, 188, 67 S. E. 158.
Cotton Weigher of Bethune elected under this Act, cannot rest his election on general statutes relating to Cotton Weighers. *Ib.*

LANCASTER COUNTY.

(3342) § 1. **Election for Cotton Weigher in Lancaster, Heath Springs and Kershaw, Lancaster County.**—The County Commissioners of Lancaster County are authorized and directed to order elections to be held in the Towns of Lancaster, Heath Springs, and Kershaw, in Lancaster County, on the second Tuesday in August, 1899, and every two years thereafter, for the purpose of electing a Public Cotton Weigher for each of said towns, respectively; and said Commissioners shall make such rules and regulations for the government of such elections as to them shall seem proper; they shall also fix the compensation to be received by each of said Cotton Weighers, said compensation not to exceed twenty cents for each bale weighed by them, ten cents of which shall be paid by the seller and ten cents by the buyer, and the Weighers shall mark each bale weighed in plain letters and figures as required by the buyer. Said Commissioners shall canvass the votes polled at said elections, declare said elections, and issue a commission to the person declared elected: *Provided*, That no person elected Public Cotton Weigher under the provisions of this Section shall receive a commission to enter upon the discharge of his duties as such Public Cotton Weigher until he has entered into a good and sufficient bond, with two or more sureties, in the sum of one thousand dollars, payable to said Commissioners, and conditioned for the faithful performance of his duties as such Cotton Weigher, said bond to be approved by said Commissioners. Any other person than a duly elected and commissioned Cotton Weigher, charging or receiving any sum or sums of money or other valuable consideration for weighing cotton in said County of Lancaster, shall be guilty of a mis-

demeanor, and, upon conviction thereof, shall be fined a sum not exceeding one hundred dollars, or imprisonment for a term not exceeding thirty days. The said Commissioners are authorized to fill any vacancy caused by the death or resignation of any Cotton Weigher elected under the provisions of this Section by appointment.

Civ. '12, § 2352; Civ. '02, § 1558; 1899, XXII, 194; 1920, XXXI, 974.

LEXINGTON COUNTY.

(3343) § 1. **Public Cotton Weigher at Batesburg.**—Upon the petition of twenty-five or more qualified electors, who are growers and buyers of cotton or cotton growers, or cotton buyers, resident within five miles of Batesburg, the Town Council of said town shall, within thirty days after the receipt of said petition, provide for an annual election, and in the usual manner of election in said town, for a Public Cotton Weigher for said town, whose term of office shall be for one year, or until the election and qualification of his successor. At such election, all and only cotton growers and cotton buyers who are qualified electors, and reside within a radius of five miles of the depot in said town, and who has sold or bought cotton in said town within the last two years shall be entitled to vote: *Provided*, That any elector before voting shall satisfy the Managers of Election by exhibiting a certificate from some cotton buyer or merchant that he has sold cotton within the time prescribed; the said Town Council shall declare the results of said election, and the person receiving the highest number of votes shall be the Public Cotton Weigher for said town, and he shall receive as compensation for his services not exceeding ten cents per bale for every bale of cotton weighed, one-half to be paid by the buyer and one-half by the seller. Such Weigher shall finally adjust and settle all differences and disputes between buyers and sellers as to proper deductions to be allowed from water, dampness, damaged cotton, or any false packing; and the said Weigher shall test the scales every morning before weighing any cotton, so as to insure accuracy. In case of inability from sickness or other cause, the said Weigher may appoint a Deputy, who shall take, before entering upon his duties, the usual oath of office in the manner required of the Weigher. Before entering upon the duties of his office, said Cotton Weigher shall be legally sworn to discharge the duties of his position by the Intendant of the Town of Batesburg, and shall enter into bond in the sum of three hundred dollars for the faithful performance of his duty, which bond shall be approved by the Town Council of Batesburg, and filed with the Clerk of the Court of Common Pleas for Lexington County. The elected Weigher shall be responsible, on his bond, for the official acts of his Deputy: *Provided*, That the Weigher herein designated shall furnish at his own expense all necessary help for the expeditious handling of cotton to be weighed under the terms of this Article.

Civ. '12, § 2363; 1910, XXVI, 700; 1918, XXX, 706.

(3344) § 2. **Cotton Weighers at Lexington, in Lexington County.**—That on the second Tuesday of August, 1918, and every two years thereafter, the qualified electors, entitled to vote at Lexington, Cromers, Irene, St. Mat-

thews and Boylston precincts, in Lexington County, shall hold an election for a Cotton Weigher for the Town of Lexington, in said county, whose term of office shall be for two years, or until his successor has been elected and qualified. That a majority of votes cast in said election shall be necessary to a choice. That the compensation and duties of said Cotton Weigher, when so elected and qualified, shall be as prescribed by Volume III, Code of Laws of South Carolina.

1918, XXX, 761.

(3345) § 3. Cotton Weigher at Pelion, Lexington County—Election—Term—Compensation.—That on the first Tuesday of August, 1920, and every two years thereafter, the qualified electors entitled to vote at Pelion, Rishton and Sharp Hill precincts, in Lexington County, shall hold an election for a Cotton Weigher for the Town of Pelion, in said county, whose term of office shall be for two years, or until his successor has been elected and qualified. That a majority of votes cast in said election shall be necessary to a choice. That the compensation and duties of said Cotton Weigher, when so elected and qualified, shall be as prescribed by Volume III, Code of Laws of South Carolina.

1920, XXXI, 841.

(3346) § 4. Election for Cotton Weigher at Swansea—Term—Provisos.—That on the second Tuesday of August, every two years, the qualified electors entitled to vote at the polling precincts of Swansea, Gaston, Poole's Mill and Sandy Run, in Lexington County, shall hold an election for a Cotton Weigher for Swansea, in said county, whose term of office shall be for two years, and until his successor has been elected and qualified: *Provided*, That the term of office of the present Cotton Weigher shall not be interfered with by this Article: *Further provided*, That a majority of the votes cast at such elections shall be necessary to elect.

Civ. '12, § 2354; 1908, XXV, 1210; 1910, XXVI, 640; 1917, XXX, 220.

(3347) § 5. Compensation, Duties and Compensation as Now Provided.—That the duties and location of such Cotton Weigher shall remain as now provided by law. He shall receive as compensation for his services not exceeding ten cents per bale for every bale of cotton weighed, one-half to be paid by the buyer and one-half by the seller. Such Weigher shall finally adjust and settle all differences or disputes between buyers and sellers as to proper deduction to be allowed from water, dampness, damaged cotton, or any false packing; and the said Weigher shall test the scales every morning before weighing any cotton, so as to insure accuracy. In case of inability from sickness or other cause, the said Weigher may appoint a Deputy, who shall take, before entering upon his duties, the usual oath of office in the manner required of the Weigher. Before entering upon the duties of his office said Cotton Weigher shall be legally sworn to discharge the duties of his position by the Intendant of the Town of Swansea, and shall enter into bond in the sum of three hundred dollars for the faithful performance of his duty, which bond shall be approved by the Town Council of Swansea, and filed with the Clerk of the Court of Common Pleas for Lexington

County. The elected Weigher shall be responsible on his bond for the official acts of his Deputy.

Civ. '12, § 2354; 1908; XXV, 1210; 1910, XXVI, 640; 1917, XXX, 220.

MARLBORO COUNTY.

(3348) § 1. **Compensation of Cotton Weighers in Marlboro County.**—That hereafter all Cotton Weighers in Marlboro County shall receive as compensation for their services the sum of twenty cents for each bale of cotton weighed by them, one-half of which sum shall be paid by the buyer and one-half by the seller; such Weighers shall place such marks and numbers on bales weighed by them as shall be desired by the buyer.

1920, XXXI, 843.

NEWBERRY COUNTY.

(3349) § 1. **Election for Cotton Weigher for Town of Prosperity, Newberry County.**—That upon a petition signed by twenty-five or more qualified electors, who are growers and buyers of cotton, or growers or buyers of cotton resident in the County of Newberry, and patrons of the Prosperity cotton market, filed with the Town Council of the Town of Prosperity on or before July the first of each year, hereafter, it shall be the duty of the said Town Council to order an election for a Cotton Weigher for the said Town of Prosperity to be held during the month of July of each year. The said Town Council shall appoint the Managers, two of whom shall reside without the Town of Prosperity for such election, receive the returns and declare the result, and the person receiving the highest number of votes shall be declared elected Public Cotton Weigher for said cotton market, whose term of office shall be for one year and until the election and qualification of his successor. At such election only qualified electors resident in the County of Newberry, and who are patrons of the Prosperity cotton market, shall be entitled to vote. The said election to be conducted in all respects as now provided by law for general and special elections. The Cotton Weigher so elected shall receive as compensation for his services ten (10) cents per bale for every bale of cotton weighed by him, one-half thereof to be paid by the buyer and one-half by the seller. Such Weigher shall officially adjust and settle all differences and disputes between buyers and sellers as to proper deductions to be allowed on account of water, dampness, damaged cotton or false packing of same; and the said Weigher shall provide himself at his own expense with suitable scales for weighing cotton, which scales shall be tested every morning before weighing any cotton so as to insure accuracy. In case of inability from sickness or other cause, the said Cotton Weigher may appoint a Deputy, who shall take, before entering upon his duties, the oath of office, hereinafter required of the regular Cotton Weigher.

1912, XXVII, 639.

(3350) § 2. **Oath.**—Before entering upon the duties of his office, the said Cotton Weigher shall be legally sworn to discharge the duties of his position fairly and impartially by the Intendant of the Town of Prosperity or some other person authorized to administer oaths, and shall enter into bond in the sum of five hundred (\$500.00) dollars, conditioned for the faithful performance of his duties, said bond and oath to be filed with the Clerk of Court of Common Pleas for Newberry County. The elected Weigher shall be responsible on his bond for the official acts of his Deputy.

1912, XXVII, 639.

(3351) § 3. **Oath of Elector.**—Each elector offering to vote in the election herein provided for shall, before being permitted to vote, take the following oath, to be administered by the Managers: "I solemnly swear that I am a qualified elector under the laws of this State, residing in Newberry County, and am a patron of the Prosperity cotton market.

1912, XXVII, 639.

(3352) § 4. **Cotton Weigher at Chappells.**—That upon a petition signed by twenty or more qualified electors who are growers and buyers of cotton, or who are growers or buyers of cotton resident in No. 7 Township, County of Newberry, and patrons of the Chappells cotton market filed with the Town Council of the Town of Chappells on or before the first day of July of each year hereafter, it shall be the duty of the said Town Council to order an election for a Cotton Weigher for the said Town of Chappells to be held during the month of July of each year. The said Town Council shall appoint the Managers, who shall be residents of different sections of said No. 7 Township, to conduct said election, receive the returns and declare the result, and the person receiving the highest number of votes shall be declared Public Cotton Weigher for said market, whose term of office shall be for one year, and until the election and qualification of his successor. At said election only qualified electors resident of No. 7 Township, in the County of Newberry, and who are patrons of the Chappells cotton market, shall be entitled to vote, the said election to be conducted in all respects as now provided by law for general and special elections. The Cotton Weigher shall receive as compensation for his services ten cents per bale for each bale of cotton weighed by him, one-half thereof to be paid by the buyer and one-half by the seller. Said Weighers shall officially adjust and settle all differences between buyers and sellers as to the proper deductions to be allowed on account of water, dampness, damaged cotton or false packing of same, and the said Weigher shall provide himself, at his own expense, with suitable scales for weighing cotton, which scales shall be tested every morning before weighing any cotton, so as to insure accuracy. In case of inability from sickness or any other cause, the said Cotton Weigher may appoint a Deputy, who shall take, before entering upon his duties, the oath of office hereinafter required of the regular Cotton Weigher.

1914, XXVIII, 610.

(3353) § 5. **Oath.**—Before entering upon the duties of his office the said Cotton Weigher shall be legally sworn to discharge the duties of his office fairly and impartially by the Intendant of the Town of Chappells, or by

some other person authorized to administer oaths, and enter in a bond in the sum of five hundred (\$500.00) dollars, conditioned for the faithful performance of his duties, said bond and oath to be filed with the Clerk of Court of Common Pleas for Newberry County. The elected Cotton Weigher shall be responsible on his bond for the official acts of his Deputy.

1914, XXVIII, 610.

(3354) § 6. Oath of Elector.—Each elector offering to vote in the election herein provided for shall, before being permitted to vote, take the following oath to be administered by the Managers: “I solemnly swear that I am a qualified elector under the laws of this State, residing in No. 7 Township, Newberry County, and am a patron of the Chappells cotton market.”

1914, XXVIII, 610.

(3355) § 7. Exception.—Nothing in this Article contained shall be construed to prevent any person other than the regular Cotton Weigher from weighing cotton at the said Town of Chappells.

1914, XXVIII, 610.

ORANGEBURG COUNTY.

(3356) § 1. Compensation of Cotton Weighers in Orangeburg County.—All Public Cotton Weighers of the County of Orangeburg, including the City of Orangeburg, shall receive as compensation for their services twenty (20c) cents per bale for each bale of cotton weighed by them, one-half to be paid by the seller and one-half by the buyer. That in consideration of the said compensation the said Cotton Weighers shall weigh, tag, mark and inspect for water the said cotton, except in the City of Orangeburg.

1918, XXX, 842; 1919, XXXI, 234.

OCONEE AND PICKENS COUNTIES.

(3357) § 1. Special Provision as to Election of Cotton Weighers in Pickens and Oconee Counties.—There shall be annually elected by the qualified voters of Easley Township, and Liberty Township, respectively, in Pickens County, and Seneca Township, in Oconee County, a Cotton Weigher for Easley, and one for Liberty, and one for Seneca in Oconee County. Such Weigher shall be duly sworn to discharge the duties of the position by some officer authorized to administer an oath. The election of such Weigher shall be on the third Saturday in August, 1899, the polls to open at 10 a. m. and close at 5 p. m., at each of the said towns, and on the third Saturday in August each year thereafter. The Town Council of each of said towns, respectively, shall appoint three men as Managers of said election and shall give notice of the time and place of holding the same at least ten days before the day of said election.

Civ. '12, § 2350; Civ. '02, § 1557; 1899, XXII, 196.

WEIGHERS TO GIVE BOND—COMPENSATION.—The said Weighers shall respectively enter into bond to the Town Council of his town in the sum of three hundred dollars for the faithful performance of his duties, which bond shall be approved by and filed with the said Town Council of the said towns in said counties; and said Weighers shall receive as compensation for his services ten cents per bale for each bale weighed by him, the same to be paid in equal proportions by the buyer and seller.

Civ. '12, § 2350; Civ. '02, § 1557; 1899, XXII, 196.

DUTIES OF WEIGHERS.—It shall be the duty of the said Cotton Weigher to provide scales and ample facilities for handling cotton sold and weighed. It shall be the duty of the said Weigher to weigh all cotton brought to his town for sale fairly and promptly, issuing a ticket therefor, which shall show the weight of each bale. It shall be his further duty to adjust any differences between buyers and sellers as to moisture, mixture or false packing. In case of disability, by sickness or other cause, the said Weigher may appoint temporarily a Deputy, who shall take the usual oath of office before a Magistrate previous to entering upon his duty.

Civ. '12, § 2350; Civ. '02, § 1557; 1899, XXII, 196.

LIABILITY OF WEIGHERS.—When any false weighing or omission of duty on the part of any one of said Weighers occurs, whereby either buyer or seller suffer loss or is injured, such Weigher and his bondsmen shall be held liable to the extent of such loss or injury.

Civ. '12, § 2350; Civ. '02, § 1557; 1899, XXII, 196.

EXCEPTIONS.—This Section shall not apply to purchasers or weighers of cotton for the Easley Cotton Mills, in the Town of Easley, nor to purchasers or weighers of cotton for the Pickens Mills, in the Town of Pickens, nor to the purchasers or weighers of cotton for the Glenwood Mills in Easley, and the Liberty Mills in Liberty.

Civ. '12, § 2350; 1900, XXIII, 551; 1903, XXIII, 177.

(3358) § 2. Special Provision as to the Election of Cotton Weighers in Pickens County.—There shall be annually elected by the qualified electors, resident within the County of Pickens, a Public Cotton Weigher, who shall have an office in the Town of Pickens, in said county. Such Weigher shall be sworn to discharge the duties of the position by some officer authorized to administer an oath. The election of such Weigher shall be on the third Saturday in August, 1905, the polls to open at 10 a. m. and close at 5 p. m., and on the third Saturday in August each year thereafter. The Town Council of the Town of Pickens shall appoint three men as Managers of said election, and shall give notice of the time and place of holding the same, at least ten days before the day of said election.

BOND OF WEAHER.—The said Weigher shall enter into bond to the said Town Council in the sum of three hundred dollars for the faithful performance of his duties, which bond shall be approved by and filed with the said Town Council; and said Weigher shall receive as compensation for his services twenty cents per bale for each bale weighed by him, the same to be paid by the buyer.

Civ. '12, § 2351; 1906, XXV, 138; 1907, XXV, 626; 1908, XXV, 1202; 1919, XXXI, 232

DUTY OF WEAIGHER—QUALIFIED VOTERS—NOTICE OF ELECTION.—It shall be the duty of the said Cotton Weigher to provide scales and ample facilities for handling cotton sold and weighed. It shall be the duty of the said Weigher to weigh all cotton brought to the said town for sale fairly and promptly, issuing a ticket therefor, which shall show the weight of each bale. It shall be his further duty to adjust any differences between buyers and sellers as to moisture, mixture or false packing. In case of disability, by sickness or other cause, the said Weigher may appoint temporarily a Deputy, who shall take the usual oath of office before a Magistrate previous to entering upon his duty. When any false weighing or omission of duty on the part of said Weigher occurs, whereby either buyer or seller suffers loss or is injured, such Weigher and his bondsmen shall be held liable to the extent of such loss or injury. For the purposes of this Section, "qualified electors" shall include all male citizens who are patrons of the Pickens cotton market, resident within the County of Pickens, who shall, on or before the third day next preceding such election, upon the production of his registration certificate, procure from the Clerk of the Town Council of the Town of Pickens an additional certificate that he is a duly qualified elector, under the laws governing general elections in the State of South Carolina, and entitled to vote in the annual election of Cotton Weigher. The said Clerk shall advertise, by posting notices in three conspicuous places in the county, or otherwise, and for at least ten days before such election the time and place such additional certificates may be procured, and shall open books and issue such certificates to such persons as may be entitled thereto under the provisions of this Section, the said Clerk to be the judge of all necessary compliance with these qualifications: *Provided*, The said Clerk shall close his registration books for such election at six o'clock on the third day next preceding such election, and deliver to the managers of such election, forthwith, a certified list of names of all persons to whom he shall have issued such certificates, and such certified list shall be used by the said managers as the poll list in such election. The person receiving the highest number of votes cast in such election shall be the Cotton Weigher for the said town, and his term of office shall be for one year, and until the election and qualification of his successor: *Provided*, That this Section shall not apply to purchasers or weighers of cotton for the Pickens Cotton Mill.

1906, XXV, 138; 1907, XXV, 626; 1908, XXV, 1202.

COTTON WEAIGHER FOR CENTRAL, PICKENS COUNTY.—The provisions of this Section shall be applied and be of force in and to Central, South Carolina, as to the election, its manner, the powers, duties, term of office and compensation of Cotton Weigher at and for Central: *Provided*, The provisions hereof shall not apply to cotton weighers for, or purchasers of cotton for cotton mills located in the Town of Central.

Civ. '12, § 2351; 1906, XXV, 138; 1907, XXV, 626; 1908, XXV, 1202.

Act 25 Stat. 137 is in conflict with Const., Art. III, § 34, subsec. 11. *Barfield v. Stevens Mercantile Co.*, 85 S. C. 186, 188, 67 S. E. 158.

RICHLAND COUNTY.

(3359) § 1. **Cotton Platforms to Be Erected in Richland County.**—The County Board of Commissioners of Richland County shall cause to be maintained a public cotton platform adequate to hold not less than three thousand (3,000) bales of cotton, said platform to have a substantial roof, sufficient number of suitable scales and sprinkler attachment for fire protection, and to be located in the City of Columbia as accessible as possible to the cotton compress of the Columbia Compress Company, and also to the neighboring warehouses of the Standard Warehouse Company and to the railroads, for the convenient handling of cotton from said platform to either of said buildings and to freight trains; said platform to be open and accessible to wagons, the cost of such maintenance to be paid by the County Board of Commissioners out of funds in their hands.

1910, XXVI, 710.

TWO COTTON WEAIGHERS TO BE APPOINTED — DUTIES — DEPUTIES.—Said County Board of Commissioners of Richland County shall, on or before the first day of July, A. D. 1910, and every four years thereafter, elect and commission for the term of four years one Cotton Weigher for Columbia Township, of said Richland County, to be approved by the Farmers' Union of Richland County and by a majority of the recognized cotton buyers of said Columbia Township, if such organization and persons agree upon a recommendation: *Provided*, That said Cotton Weigher shall not be related within the sixth (6th) degree to any member of the said Board of County Commissioners.

1910, XXVI, 710.

BOND—DUTIES.—Such Cotton Weigher, before receiving his commission, shall take and subscribe the oath of office and enter into a bond with an approved surety company as surety in the sum of one thousand dollars for the faithful performance of his duties, payable to the County Board of Commissioners for the use of any party who may be aggrieved, said bond to be approved by said Board and filed with the Clerk of Court, the premiums on said bond to be paid by said Board. Said Cotton Weigher shall have a night watchman on duty at said platform from sunset to sunrise of every day, and must employ one assistant for every day from September 1st to December 31st, and may have other assistants during the year. He shall frequently test the scale or scales at said platform and keep them accurate and weigh promptly and fairly all cotton offered to him and mark each bale of cotton as indicated by tag of buyer and number of each bale of cotton and keep together all the cotton of the several buyers separate and apart from each other, so as to facilitate prompt shipment, and issue ticket showing number, mark and weight of every bale weighed by him, and adjust any differences between sellers and buyers as to moisture and mixed or false packing. That said Cotton Weigher shall represent neither buyer nor seller of the cotton weighed nor be interested in any purchase or sale, except in cotton from his own farm, and shall receive and charge for his services and the use of the platform, thirty cents for each bale weighed by him, fifteen cents to be paid by the seller and fifteen cents to be paid by the buyer, and

for such cotton as may remain on the platform for more than three days the said Weigher shall collect an additional charge of one cent per bale for every additional day, to be paid by the owner, all cotton to be at the risk of the Weigher, loss by fire excepted, for the first three days, and thereafter at the risk of the owner. The Public Cotton Weigher, herein provided for, in case of necessary absence by reason of sickness or other cause, may appoint a Deputy to serve in his place during such absence, such appointment to be approved by the Board of County Commissioners, which Deputy shall take the usual oath of office, the bond of the Cotton Weigher being liable for the official acts of such Deputy. The Public Cotton Weigher shall weigh, inspect and sample before sale every bale of cotton brought to said platform for sale, and no cotton shall be sold until after it has been so weighed and inspected. All wagons or street cotton sold in the City of Columbia or Columbia Township shall be brought to said platform for sale, and no cotton in bales shall be sold in Columbia Township by any seller except upon certificate that it has been so weighed and inspected: *Provided*, That the provisions of this Section shall not apply to cotton sold by regular cotton dealers out of recognized cotton warehouses or cotton compresses in Columbia Township. The said Cotton Weigher shall render to the County Board of Commissioners a monthly statement of the cotton weighed by him, and shall pay to said Board as compensation for the use of the platform one cent per bale for all cotton weighed and one-half the amount collected for cotton remaining on the platform more than three days. All other receipts to be retained by the Cotton Weigher for his compensation and expenses. The County Board of Commissioners shall have power to remove from his office the said Cotton Weigher after at least three days' notice why he should not be removed, and on sufficient cause in the judgment of said Board being shown, and said Board may fill any vacancy in the manner hereinabove required for the election of a Cotton Weigher.

Civ. '12, § 2355; 1910, XXVI, 710; 1920, XXXI, 925.

(3360) § 2. Penalty for Sale or Purchase of Cotton Contrary to Provisions.—Any and every person who shall sell or buy in said Columbia Township any cotton bale or bales contrary to the provisions of the foregoing Section shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not exceeding fifty dollars or imprisonment for not exceeding ten days for each offense.

Civ. '12, § 2356; 1910, XXVI, 710.

See, also, Criminal Code.

SALUDA COUNTY.

(3361) § 1. Cotton Weigher at Ridge Spring May Be Elected—Election—Duties—Deputy—Bond.—Upon the petition of twenty-five or more qualified electors who are growers and buyers of cotton or cotton growers or cotton buyers, resident within five miles of Ridge Spring, the Town Council of said town shall, during the month of July, 1917, and, at the same time every two years thereafter, provide for an election in the usual manner of elections in the said town, for a Public Cotton Weigher for said town, whose

term of office shall be for two years, or until the election and qualification of his successor. At such election all and only cotton growers and cotton buyers, who are qualified electors, and reside within a radius of five miles of the depot in said town, shall be entitled to vote; the said Town Council shall declare the result of said election, and the person receiving the highest number of votes shall be the Public Cotton Weigher for said town, and he shall receive as compensation for his services not exceeding ten cents per bale for every bale of cotton weighed, one-half to be paid by the buyer and one-half by the seller. Such Weigher shall finally adjust and settle all differences and disputes between buyers and sellers as to proper deduction to be allowed from water, dampness, damaged cotton, or any false packing: and the said Weigher shall test the scales every morning before weighing any cotton, so as to insure accuracy. In case of inability, from sickness or other cause, the said Weigher may appoint a Deputy, who shall take, before entering upon his duties, the usual oath of office in the manner required of the Weigher. Before entering upon the duties of his office, said Cotton Weigher shall be legally sworn to discharge the duties of his position by the Intendant of the Town of Ridge Spring, and shall enter into bond in the sum of three hundred dollars for the faithful performance of his duty, which bond shall be approved by the Town Council of Ridge Spring, and filed with the Clerk of the Court of Common Pleas for Saluda County. The elected Weigher shall be responsible, on his bond, for the official acts of his Deputy.

1917, XXX, 96; 1920, XXXI, 974; 1921, XXXII, 260.

(3362) § 2. Overcharge a Misdemeanor—Penalty.—Any Cotton Weigher in Saluda County charging as compensation for his services in weighing cotton in excess of the amount fixed in Section 1 shall be, for each offense, deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum of not less than five (\$5.00) dollars nor more than twenty-five (\$25.00) dollars, or imprisoned for not more than thirty (30) days.

1921, XXXII, 260.

SUMTER COUNTY.

(3363) § 1. Cotton Weighers for Sumter County.—Upon the petition of twenty-five or more qualified electors who are growers of cotton and reside in Sumter County within five miles of any place in which there may be a cotton market, the County Board of Commissioners of Sumter County may elect a Cotton Weigher, whose term of office shall be for two years and until the election and qualification of his successor. No one shall be elected Weigher under this Section who is related by blood or marriage to any member of the County Board of Commissioners of said county: *Provided*, That for the City of Sumter the County Board of Commissioners of Sumter County shall, on July 1, 1909, elect two Cotton Weighers for said city, whose duties shall be as herein prescribed, one of which Weighers shall be elected upon the recommendation of the City Council of the City of Sumter: that the term of office of the Weighers of the City of Sumter shall be for a

term of two and three years, and until his or their successor or successors be elected and qualified; that the choice of said terms shall be determined by lot by the two Weighers so elected.

1909, XXVI, 128.

OATH, BOND AND COMPENSATION.—Before entering upon the duties of his office, each Cotton Weigher shall be legally sworn to discharge the duties of the position by some officer authorized to administer oaths, and shall enter into bond in the sum of three hundred dollars for the faithful performance of his duties, which bond shall be approved by the County Board of Commissioners in which it is given, and filed with the Clerk of Court of such county in which such market may be located. Each Weigher or Weighers, jointly, including the Weigher at Mayesville, shall receive as compensation for his or their services twenty cents for each bale weighed, the same to be paid in equal proportion by the seller and buyer: *Provided*, Nothing herein contained shall apply to sales made on plantations or at cotton mills: *And provided, further*, That the County Board of Commissioners may appoint Deputy Cotton Weighers to weigh cotton at any cotton warehouse in the city of Sumter, where, in the judgment of the County Board of Commissioners, the amount of cotton to be weighed makes it necessary in order to provide for the weighing of cotton without undue delay, and the said Deputy Weigher, when so appointed, shall give the same bond, and collect the same fees, as herein provided for regular Weighers, and shall, at the end of each month, pay over to the regular Weigher in the City of Sumter three-fourths of the amount received for weighing, and shall retain the remaining one-fourth as his compensation. Except that during the term of the present Weighers, and until the expiration of the term for which they have been elected, the said Deputy Weighers shall receive only 5 cents per bale weighed, as compensation, and shall pay over the remainder of the weighing fees to the regular Cotton Weighers of the City of Sumter, as above provided.

1909, XXVI, 128; 1919, XXXI, 261; 1920, XXXI, 1119.

DUTIES.—It shall be the duty of the Weigher or Weighers at each market having a Weigher or Weighers to furnish a platform or platforms with sufficient facilities, including a set of scales for each Weigher, so that said cotton shall be expeditiously handled at a minimum cost, at which platform or platforms all cotton sold in said market shall be weighed, which platform or platforms shall be approachable from both sides. It shall be the duty of each Weigher to weigh fairly and promptly all cotton sold in said market or markets, issuing his own ticket therefor, showing the weight of each bale or package of cotton weighed. It shall be the duty of such Weighers to adjust any difference between sellers and buyers as to moisture, mixed and false packing or damage. In case of inability from sickness or other cause, and from the first day of March to the first day of September of each year, a Weigher may appoint a Deputy, who shall take, before entering upon his duties, the usual oath of office in the manner required of the Weigher. The elected Weigher shall be responsible on his bond for the official acts of his Deputy. Each Weigher, or his Deputy, shall devote his exclusive

attention to the duties of his office during the cotton marketing season. Each Weigher shall test his scales once a month by the standards in the office of the Clerk of the Court as provided by law: *Provided*, That the County Board of Commissioners may for good and sufficient cause shown remove any Public Cotton Weigher from his office after first giving such Weigher at least ten days' notice to show cause why he should not be removed, and shall have power to fill any vacancy occurring in the office of Public Cotton Weigher as soon thereafter as practicable.

1909, XXVI, 128.

PLATFORM.—The County Board of Commissioners of said county may enter into a binding and valid contract for a term of years not exceeding ten, with one or more persons or corporations to furnish a platform of such size and capacity as said Board of County Commissioners may deem sufficient for the expeditious handling of the cotton coming into said market, and for services in handling the cotton on said platform, for the use of which platform and services the said persons or corporations shall receive as compensation a sum not exceeding one-half of the charge made in such county for the weighing of cotton, which shall be fixed by the County Board of Commissioners and be paid by the Weigher or Weighers weighing such cotton: *Provided*, That no cotton shall be allowed to remain on the platform longer than twenty-four (24) hours except upon being subject to a charge of one-half of one per cent. per bale for each day or fractional part thereof in excess of twenty-four (24) hours up to five days, and of one cent per bale for each succeeding day or fractional part thereof: *Provided, further*, That such Cotton Weigher or Weighers for such cotton market shall be required to number and mark at time of weighing, with not more than three letters, as indicated by tags or other instructions of buyer of each bale of cotton, and to keep the cotton of each buyer together, to facilitate prompt shipment: *Provided, further*, That regular buyers and exporters of cotton shall be required to furnish stencils and marking materials for properly marking and numbering the cotton bought by them.

Civ. '12, § 2364; 1909, XXVI, 128.

WILLIAMSBURG COUNTY.

(3364) § 1. **Cotton Weigher at Kingstree, in Williamsburg County.**—That in Williamsburg County an election shall be held on the second Tuesday in August of 1918, and on the same day every two years thereafter, by the qualified electors entitled to vote in primary elections in this State, for the purpose of electing a Cotton Weigher at Kingstree, and at such other points in the county as may be designated by the County Democratic Committee of said county, said Cotton Weigher to be voted for only at certain precincts as shall be prescribed by the County Democratic Committee. The terms of said Cotton Weighers shall be for two years, or until their successors shall have been elected and qualified. That the compensation of said Weighers shall be fifteen cents, seven cents to be paid by the seller and eight cents by the buyer; and the duties of said Cotton Weighers, when

so elected and qualified, shall be as prescribed by this Chapter. That in case a vacancy should occur by death or otherwise, then the successor to such Cotton Weigher in such case shall be appointed as provided for before the approval of this Article.

1918, XXX, 761; 1919, XXXI, 70.

In Counties Having Cities of Certain Populations.

(3365) § 1. **Public Cotton Platform to Be Maintained in Certain Cities—Cotton Weigher—Duties—Compensation—Statements.**—In every city of more than twenty thousand and less than fifty thousand inhabitants, as shown by the last preceding United States Census, and within the township in which such city is situated, the purchase and sale of cotton in bales shall be regulated by the provisions of this Section. The County Board of Commissioners shall cause to be maintained a public cotton platform adequate to hold not less than three thousand (3,000) bales of cotton, said platform to have a substantial roof, sufficient number of suitable scales, and to be located as accessibly as possible to the railroad, or railroads, and to the neighboring cotton warehouse, or warehouses, and compresses, if any, for the convenient handling of cotton from said platform to freight trains and to such cotton warehouses or compresses, said platform to be open and accessible to wagons, the cost of maintenance of the same to be paid by the County Board of Commissioners out of funds in their hands. The said County Board of Commissioners shall, on or before the first day of July, 1911, and every four years thereafter, elect and commission for the term of four years one Cotton Weigher for such city and township: *Provided*, That said Cotton Weigher shall not be related within the sixth degree to any member of said Board of County Commissioners. Such Cotton Weigher, before receiving his commission, shall take and subscribe to the oath of office and enter into a bond with an approved surety company as surety, in the sum of one thousand dollars for the faithful performance of his duties, payable to the County Board of Commissioners for the use of any party who may be aggrieved, said bond to be approved by said Board and filed with the Clerk of Court, the premiums on said bond to be paid by said Board. Said Cotton Weigher shall have a night watchman on duty at said platform from sunset to sunrise of every day, and shall employ one assistant for every day from September 1st to December 31st, and may have other assistants during the year. He shall frequently test the scales at said platform and keep them accurate, and shall weigh promptly and fairly all cotton offered to him and mark each bale of cotton as indicated by tag of buyer and number of each bale of cotton, and keep together all the cotton of the several buyers separate and apart from each other, so as to facilitate prompt shipment, and issue ticket showing number, mark and weight of every bale weighed by him, and adjust any differences between sellers and buyers as to moisture and mixed or false packing. Said Cotton Weigher shall represent neither buyer nor seller of the cotton weighed nor be interested in any purchase or sale, except in cotton from his own farm, and shall receive and charge for his services and the use of the platform, fifteen cents for each bale weighed by him, seven cents

to be paid by the seller and eight cents to be paid by the buyer, and for such cotton as may remain on the platform for more than three days the said Weigher shall collect an additional charge of one cent per bale for every additional day, to be paid by the owner, all cotton to be at the risk of the Weigher, loss by fire excepted, for the first three days, and thereafter at the risk of the owner. The said Cotton Weigher shall, during the cotton season, maintain a blanket insurance to cover at least fifty bales of cotton left upon the platform for sale, and shall compensate himself for the cost of such insurance by deducting the amount thereof from the charge hereinafter provided to be collected for the use of the platform by cotton remaining thereon more than three days. The Public Cotton Weigher, herein provided for, shall appoint a Deputy to serve in his place during necessary absence by sickness or otherwise, such appointment to be approved by the Board of County Commissioners, which Deputy shall take the usual oath of office, the bond of the Cotton Weigher being liable for the official acts of such Deputy. The Public Cotton Weigher shall weigh, inspect and sample before sale every bale of cotton brought to said platform for sale, and no cotton shall be sold until after it has been so weighed and inspected. All cotton in bales weighed in such city or township for sale therein and purchased in such city or township at weights ascertained by weighing in such city or township (it being intended hereby not to include under the terms herein cotton bought upon weights stated in bills of lading of shipments to said city or town) shall be brought to said platform for sale, and no cotton in bales shall be sold or purchased in such city, town or township, by any seller or purchaser or agent, except upon certificate that it has been weighed and inspected at such platform by the Public Cotton Weigher or Deputy: *Provided*, That the provisions of this Section shall not apply to cotton sold by regular cotton dealers out of recognized cotton warehouses or cotton compresses in such city, town or township, or to cotton weighed upon plantations or at ginhouses or bought upon the faith of weights guaranteed by the sellers. The said Cotton Weigher shall render to the County Board of Commissioners a monthly statement of the cotton weighed by him, and shall pay to said Board as compensation for the use of the platform and equipment, after deducting the cost of maintaining the blanket insurance to cover, during the cotton season, at least fifty bales of cotton left upon the platform for sale, as hereinabove provided for, one cent per bale for all cotton weighed on said platform and one-half the amount collected for cotton remaining on the platform more than three days. All other moneys received by virtue of the charges herein provided for shall be retained by the Cotton Weigher for his compensation and expenses. The County Board of Commissioners shall have power to remove from his office the said Cotton Weigher after at least three days' notice why he should not be removed, and on sufficient cause being shown, and said Board shall fill any vacancy in the manner hereinabove provided for the election of a Cotton Weigher.

Civ. '12, § 2367; 1911, XXVII, 32.

(3366) § 2. Misdemeanor to Violate Provisions.—Any and every person, for himself or as agent, and any corporation, who shall sell or buy in such

city or township any cotton bale or bales contrary to the provisions of Section 1, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not exceeding fifty dollars, or imprisonment for not exceeding ten days for each offense.

Civ. '12, § 2368; 1911, XXVII, 34.

(3367) § 3. Duty of Sheriff and Rural Policemen to Enforce Law.—It shall be the special duty of the Sheriff, the Rural Policemen, if any, and the Magistrates' Constables in the county in which such city may be situate, and of the City Policemen, to be on the lookout for violations of the provisions of this Article, and upon information or belief to swear out warrants and cause prosecutions for the same; and it shall likewise be the duty of the Solicitor and of the City Attorney to prosecute in such cases.

Civ. '12, § 2369; 1911, XXVII, 34.

Weighers of Farm Products.

(3368) § 1. Public Weighers for Farm Products Permitted in Certain Cities—How Appointed.—That upon the petition of at least fifty freeholders of any township within the State in which is located a town or city of five thousand (5,000) inhabitants or more, shall be appointed a Public Weigher for live stock of all descriptions and all other farm products offered for sale on the market of such town or city: *Provided*, That the said Weighers shall be appointed by the Governor, upon the recommendation of the Town Council of said town or city.

1916, XXIX, 670.

(3369) § 2. Bond and Oath Required of Weigher.—That such Weighers shall each enter into bond in the sum of three hundred dollars with sureties to be approved by the Clerk of the Court of the county and shall file an oath with the Clerk of the Court of the county to truly and faithfully perform the duties as such Weigher before entering upon the duties of his said office.

1916, XXIX, 670.

(3370) § 3. Fees for Services—By Whom Paid—Not to Weigh Lint Cotton in Bales—Other Weighers Allowed.—That said Weighers shall be entitled to charge and receive the following fees for his services: For each hog weighed by him, five cents; for each cow weighed by him, ten cents; for each sheep, goat or other like animal weighed by him, five cents; for each load of hay, ten cents, and other farm products at the same rate. One-half of all such fees to be paid by the purchaser, the other half to be paid by the seller. The provisions of the two foregoing Sections are not intended to apply to lint cotton in bales: *Provided*, That nothing herein shall not prevent any person or persons from accepting the weights of other weighers.

1916, XXIX, 670.

(3371) § 4. Certificates to Be Issued.—That such Weigher shall issue to the persons for whom he makes weights a certificate of the true weight of

each article so weighed by him, affixing thereto the date when made and his official signature.

1916, XXIX, 670.

ARTICLE III.

Cotton Warehouse System.

(3372) § 1. **Cotton Warehouse System—Commissioner.**—That within the police powers of the State and for the general welfare there is established, as hereinafter provided, a cotton warehouse system for the State of South Carolina. There shall be elected by the General Assembly forthwith a suitable person, to be known as the State Warehouse Commissioner, whose salary shall be \$3,000 per annum and who shall hold office for the term of two years or until his successor is elected by the General Assembly. And in case a vacancy shall occur while the General Assembly is not in session, the Governor shall appoint a suitable person to fill such vacancy until the next meeting of the General Assembly.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3373) § 2. **Standard Grades.**—That the Warehouse Commissioner shall accept as authoritative the standards and classifications of cotton established by the Federal Government.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3374) § 3. **Powers and Duties of Commissioner.**—The Commissioner shall have the power to acquire property for the warehousing of cotton by lease: *Provided*, No rent shall be paid until the operating expenses of such warehouse so leased have been paid from the income of the warehouse so leased, and in no case shall the State be responsible for any rent except from the income of such warehouse so leased in excess of operation expenses and may settle the terms upon which private or corporate warehouses may obtain the benefit of State operation. And it shall be his especial duty to foster and encourage the erection of warehouses in the various towns in the several counties for operation under the terms of this Article, so as to localize the storage of cotton so far as possible.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3375) § 4. **Suits by or Against Commissioner—Venire—Liability of State—Receiving of Cotton for Storage—To Be Delivered Only on Presentation of Receipt—Receipt to Convey Good Title—Duty of Person Accepting Cotton to Ascertain That No Liens Exist—Clerk of Court to Assist—Receipts Already Issued Validated—Inspection of Warehouses.**—The said Commissioner shall also have the power to sue or be sued in the Courts under the Civil Code of South Carolina upon the same terms as an individual or corporation, the action to be against or by him as representative of the State, and not as an individual, except in case of tort or neglect of duty, when the action shall be upon his bond. Suits

may be brought in the County of Richland or in the county in which the cause of action accrued: *Provided, however*, That the weights, classes and grades of cotton, or other non-perishable farm products on storage, are under this Act only guaranteed by the State in favor of those who loan money or buy cotton stored in warehouses: *Provided*, That cotton designated as "linters" shall not be received for storage under the provisions of this Act: *Provided, further*, That the State shall not be responsible for such fluctuations in weight as representing ordinary climatic conditions. The Commissioner, where fully satisfied as to the title to same, shall receive for storage lint cotton properly baled, with an inspection tag showing that it has been legally weighed and that a Federal or State Inspector, as may hereafter be provided, has graded said cotton. There shall be a receipt issued for such cotton under the seal and signature of the State Warehouse Commissioner or by his Deputy thereunto duly authorized, and in the name of the State of South Carolina, stating location of warehouse, name of manager, the mark on said bale, weight, grade and whether long or short staple, so as to be able to deliver on surrender of receipt the identical cotton for which it was given. The receipt for the cotton so stored to be transferable by written assignment and actual delivery, and the cotton which it represents to be deliverable only on a physical representation of the receipt, which is to be marked "cancelled" when the cotton is taken from the warehouse. The said receipt carries absolute title of the cotton, it being the duty of the officer accepting same for storage by inspection of the Clerk's office to ascertain whether there are no file crop mortgages or liens or rent on laborers' liens, verbal or in writing, covering said cotton before he accepts same and issue a receipt: *Provided, however*, That in case of all cotton deposited hereunder any lien thereon shall be and take effect only as of the dates of the execution thereof, the registry laws of the State to the contrary notwithstanding. It shall be the duty of the Clerk of the Court or Register of Conveyances of the respective counties to furnish without charge from his records a certificate as to any liens and mortgages, upon request of the Warehouse Commissioner or officer under him charged with responsibility under this Act: *Provided*, That all receipts heretofore issued in accordance herewith are hereby ratified and made of full legal effect: *And provided, further*, Each warehouse shall be inspected and checked up at least once in every three (3) months.

1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3376) § 5. Export License.—Any person, firm, individual or corporation who desires to engage in the export cotton trade, may, upon application, receive a license from the State Warehouse Board, who is authorized and directed to use the name and powers of the State in establishing channels for the sale of cotton to foreign and domestic manufacturers; to negotiate for and arrange the sale, transportation and delivery of cotton handled under the provisions herein, and to finance such negotiations and sales: *Provided*, That a fee shall be charged which shall be commensurate with the services so rendered and which shall not exceed one-eighth of one per cent. of the amount involved in the transaction. The funds accumulating

from such fees to be carried in the name of the State Warehouse Board, and to be paid out upon the warrant of the Chairman and Secretary thereof.
1920, XXXI, 1145.

—(3377) § 6. **Cotton to Be Tagged.**—The grades, weights and identification marks provided for in Section 4 shall be evidenced by tags affixed to the bale of cotton, and shall also be branded on the bagging with a stencil and ink, which tags shall be so designed that the brand "South Carolina" will be unmistakable, the palmetto tree, with a bale of cotton lying at the roots and the shield of the State on either side.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3378) § 7. **Must Pay Expenses.**—The Commissioner, in settling the terms upon which cotton stored in local warehouses may be taken over, shall not operate any warehouse which does not pay expenses, it being the declared purpose of this Article to be self-sustaining and to operate at cost without profit to the State.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3379) § 8. **State Warehouse Commissioner to Make Reports.**—The State Warehouse Commissioner shall make an annual report to the General Assembly setting forth, viz.: "A"—Number and location of each warehouse where cotton has been received for storage by the State. "B"—Cotton on storage and that delivery on presentation of receipts. "C"—Moneys received and disbursed.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3380) § 9. **Commissioner to Appoint Clerks, Etc.**—The Commissioner shall have the power to appoint Clerks, officers and all necessary employees to carry out the provisions of this Article and fix the salaries of the same. He shall, to safeguard the interests of the State, require bonds from such officers, Clerks or employees for the faithful performance of their duties. He shall prescribe rules and regulations, not inconsistent with the intent and spirit of this Act, to carry same into effect: *Provided*, No person who has cotton stored in warehouse shall act as manager of said warehouse.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3381) § 10. **Bond of Commissioner.**—The person elected under the first Section of this Article shall give a bond to the State of South Carolina in the sum of \$200,000.00 or more to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State, to be approved as other bonds for State officers.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3382) § 11. **Warehouse Receipts.**—The warehouse receipt books shall be designed by the Commissioner and furnished the managers of each warehouse. Receipts must be numbered and the warehouse receiving such books must account for each receipt. The receipts in such books may have the lithographed or engraved signature of the State Warehouse Commissioner, but the same shall be signed with pen and ink by the manager of the local warehouse.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3383) § 12. **Penalty for Fraudulent Receipt.**—The manager of any warehouse or any agent, employee or servant, who issues or aids in issuing a receipt for cotton, knowing that such cotton has not been actually placed in the warehouse under the control of the manager thereof, shall be punished for each offense by imprisonment in the State Penitentiary for a period of not less than one nor more than five years, or by a fine of not exceeding \$5,000.

1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3384) § 13. **Penalty for Issuing Duplicate Receipt.**—Any manager employee or servant who shall issue or aid in issuing a duplicate or additional receipt for cotton, knowing that the former receipt or any part thereof is outstanding, shall be punished as in the laws of this State provided for forgery: *Provided*, The party applying for a duplicate upon the representation that the original has been lost or destroyed give to the State Warehouse Commissioner an indemnifying bond in an amount to fully cover any amount or loss or litigation that might result from the issuance of the same.

1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3385) § 14. **Penalty Not to Produce Receipt.**—Any manager, employee, agent or servant who shall deliver cotton from a warehouse under this Article without the production of the receipt therefor or who fails to mark such receipt "Cancelled" on the delivery of the cotton shall be punished by a fine of not more than \$5,000 or imprisonment not more than five years, or by both fine and imprisonment in the discretion of the Court.

1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3386) § 15. **Penalty for Deposit of Cotton Under Lien Without Notification—Lien of Warehouse for Storage.**—Any person who shall deposit or attempt to deposit cotton upon which a lien or mortgage exists, without notifying the manager of the warehouse, shall be punished by fine and imprisonment for a period of not more than one year and a fine of not more than one thousand (\$1,000.00) dollars: *Provided*, That the warehouse shall have a lien for insurance and storage charges, and other expenses incident to the storage of said cotton prior to all other liens except for State and county taxes. And any person disposing of such cotton over which this prior lien exists shall be punished as now provided for by law for selling property over which lien exists.

1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3387) § 16. **Constitutionality.**—If any particular Section of this Article shall be held unconstitutional, such holding shall not invalidate any other portion thereof.

1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3388) § 17. **Liabilities.**—It is hereby declared that no debt or other liability shall be created against the State by reason of the lease or operation of the warehouse system, created by this Article, except as by this Article: *Provided*, The Warehouse Commissioner being specifically forbid-

den to lease or take over any warehouse where the revenue derived from same is not sufficient to pay the expense of operation.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXI, 303.

(3389) § 18. Insurance.—The Commissioner shall insure and shall keep insured for its full value, upon the best terms obtained by individual or blanket policy, all cotton on storage. In case of loss he shall collect the insurance due and pay the same ratably to those lawfully entitled. The insurance policies to be in the name of the State and the premium collected from the owner of the cotton, the State to have a lien on the cotton for insurance and storage charges, the same as other public warehouses in the State.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1919, XXXI, 290; 1920, XXXI, 902; 1921, XXXII, 303.

(3390) § 19. Appropriation.—To put this Article into immediate effect the sum of \$15,000 be, and the same is hereby, appropriated, to be subject to the order of the State Warehouse Commissioner. To be paid out on a warrant drawn by the Comptroller General, accompanied by an itemized statement from the Commissioner, showing for what and to whom the said money is to be paid.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3391) § 20. Expenses.—The Warehouse Commissioner, when away from office in the discharge of his duties, shall be paid his actual expenses, for which there shall be filed an itemized account, to accompany the warrant from the Comptroller General on the State Treasurer.

1912, XXVII, 707; 1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3392) § 21. Fund.—The money appropriated by this Article, and all sums collected under it, shall be held in the State Treasury as a separate fund for the purposes of this Article.

1914, Sp. XXIX, 18; 1921, XXXII, 303.

(3393) § 22. Additional Powers Conferred Upon Commissioner—Negotiation of Loans—Sell Cotton—Commissions.—That the Commissioner, in addition to the duties hereinbefore vested in him, is also permitted and empowered upon the request of the owner or owners of the warehouse receipts and cotton stored in such warehouses, to aid, assist and co-operate, or as the duly authorized agent of such owner or owners, to secure and negotiate loans upon the pledge of his or their warehouse receipts, and for his or their benefit; and upon like request of said owner or owners, and his or their duly authorized agent, to sell and dispose of his or their warehouse cotton for such owner or owners, either in the home or foreign markets, as may be agreed upon between such owner or owners and the said Commissioner. And for said loan or sales said Commissioner shall charge reasonable and just commission, without discrimination, all of which shall be accounted for and held as part of the fund for the maintenance of the State warehouse system: *Provided, however,* That the State incurs no liability whatever for any act or representation of the Commissioner in exer-

cising any of the permissions or powers vested in him in this section: *Provided, further*, That the bond of the Commissioner will be liable for any unfaithful or negligent act of his by reason of which the owner or owners of such warehoused cotton suffer damage or loss.

1915, XXIX, 144; 1921, XXXII, 303.

(3394) § 23. Warehouse Not Paying Insurance to Be Closed.—The State Warehouse Commissioner shall close all State warehouses and cease to sign all receipts where the warehouseman fails to pay insurance due, after thirty days' notice.

1921, XXXII, 303.

(3395) § 24. References to Cotton Herein Include Other Non-Perishable Farm Products.—All the provisions of this Bill wherein it refers to cotton shall be understood to refer likewise to all non-perishable farm products in storage.

1921, XXXII, 303.

(3396) § 25. Insurance of Cotton and Warehouses — Duties of State Warehouse Commissioner.—That in the event the State Warehouse Commissioner cannot procure the necessary insurance protection on satisfactory terms, rates and conditions for the warehouses of the State Cotton Warehouse System and the cotton stored therein, then the said State Warehouse Commissioner, as the head of the State Cotton Warehouse System, is hereby authorized and empowered to carry all of the insurance on said warehouses and the cotton stored therein under the provisions of the ensuing sections of this Article.

1919, XXXI, 290; 1920, XXXI, 902.

(3397) § 26. Schedule of Rates—Submission to Governor, Insurance Commissioner and Comptroller General.—The State Warehouse Commissioner shall prepare a schedule of rates of insurance on the warehouses of the State Cotton Warehouse System and the cotton stored therein, taking as a basis the rate applying on insurance in effect at the time of the approval of this Article. Upon completion of this schedule of rates shall be submitted to the Governor, Insurance Commissioner and Comptroller General, and no rate is to be promulgated without their written approval.

Said schedule of rates shall be filed in duplicate in the office of the Insurance Commissioner and the State Warehouse Commissioner. The said schedule shall give the number and location of each warehouse, the rate of insurance and the storage capacity of said warehouse, together with a diagram showing all exposures. The premiums are to be assessed upon the same system now practiced in the State Warehouse and payment be made upon the daily average number of bales on storage, so that the assessment shall be only for the time each bale of cotton is actually upon storage and protected against loss by fire.

1919, XXXI, 290; 1920, XXXI, 902.

(3398) § 27. Form of Policy.—The State Warehouse Commissioner shall prepare a form of insurance policy to be issued to the manager of each

warehouse, which is to be kept on file in said warehouse subject to the inspection of any person with cotton on storage. The said policy to be set forth as follows: "A," rate on warehouse. "B," rate on cotton stored therein. "C," the portion of the risk carried by the State under the provisions of this Act. "D," the names of any company or companies insuring any portion of the risk and the amount carried by each.

1919, XXXI, 290.

(3399) § 28. Reinsurance.—The Warehouse Commissioner shall reinsure in reliable insurance company or companies such portion of the insurance liability of the State Cotton Warehouse System as is commensurate with the principles of safe underwriting.

1919, XXXI, 290; 1920, XXXI, 902.

(3400) § 29. Limit on Individual Risks.—If satisfactory reinsurance contracts or treaties cannot be effected the Warehouse Commissioner is authorized and empowered to insure each individual risk in the State Cotton Warehouse System in a sum not to exceed ten thousand (\$10,000.00) dollars, subdivisions of individual warehouses being considered individual risks where such subdivisions are separated by standard fire wall. Where the insurance on any individual risk exceeds the amount carried in the State Cotton Warehouse System such excess shall be placed as concurrent insurance in one or more reliable insurance companies.

1919, XXXI, 290; 1920, XXXI, 902.

(3401) § 30. Handling of Premiums—Payment of Losses—Loan from Sinking Fund Commission.—The premiums collected on insurance written under the provisions of this Article shall be remitted by the Warehouse Commissioner monthly to the State Treasurer, and the State Treasurer shall place such amounts remitted to the credit of the State Cotton Warehouse System and placed in a fund to be known as the State Cotton Warehouse Insurance Fund, to be used by the Warehouse Commissioner in the payment of all losses that may occur to the warehouses and the cotton stored therein insured under the provisions of this Article and in payment of premiums on reinsuring or concurrent policies of insurance: *Provided*, That in the event that the losses sustained exceed at any time the funds on hand in the said State Cotton Warehouse Insurance Fund, that the State Sinking Fund Commission is hereby authorized to loan to the State Cotton Warehouse System sufficient funds to make up the deficit, and the General Assembly at its next session shall provide for the payment of said loan with interest.

1919, XXXI, 290; 1920, XXXI, 902.

(3402) § 31. Duties of State Warehouse Commissioner in Collection of Premiums.—The Warehouse Commissioner is required to collect the premiums on insurance policies issued by the State Cotton Warehouse System within thirty days after the issuance of such policies and shall close all warehouses where the premiums remain unpaid for a period of time longer than that specified in this Section.

1919, XXXI, 290; 1920, XXXI, 902.

ARTICLE IV.**Co-operative Marketing Act.**

(3403) § 1. **Purpose of Article.**—In order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through co-operating and to eliminate speculation and waste, and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer, and to stabilize the marketing problems of agricultural products, this Article is passed.

1921, XXXII, 339.

(3404) § 2. **Terms Defined.**—As used in this Article:

(a) The term "Agricultural products" shall include horticultural, viticultural, forestry, dairy, live stock, poultry, bee and any farm products.

(b) The term "member" shall include actual members of association without capital stock and holders of common stock in associations organized with capital stock.

(c) The term "association" means any corporation organized under this Article; and,

(d) The term "person" shall include individuals, firms, partnerships, corporations and associations.

Associations organized hereunder shall be deemed non-profit, inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.

This Article shall be referred to as the "Co-operative Marketing Act."

1921, XXXII, 339.

(3405) § 3. **Formation of Co-operative Associations.**—Five (5) or more persons engaged in the production of agricultural products may form a non-profit, co-operative association with or without capital stock, under the provisions of this Article.

1921, XXXII, 339.

(3406) § 4. **Objects for Which Associations May Be Formed.**—An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping or utilization thereof, or the manufacturing or marketing of the by-products thereof, or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies, or in the financing of the above enumerated activities, or in any one or more of the activities specified herein.

1921, XXXII, 339.

(3407) § 5. **Where Information Can Be Secured.**—Every group of persons contemplating the organization of an association under this Article, is urged to communicate with the Director of Extension Service of Clemson College (and the Cotton Market Bureau of this State), who will inform it whatever a survey of the marketing conditions affecting the com-

modities to be handled by the proposed association indicates regarding probable success.

1921, XXXII, 339.

(3408) § 6. Powers of Incorporated Associations.—Each association incorporated under this Article shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling or utilization of any agricultural products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities, or in any one or more of the activities specified in this Section. No association, however, shall handle the agricultural products of any non-member, except by special rules and regulations.

(b) To borrow money and to make advances to members.

(c) To act as agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights of ownership in, and to sell, transfer or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f) To buy, hold and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto.

(g) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this Article; and to do any such thing anywhere.

1921, XXXII, 339.

(3409) § 7. Membership—Representation.—(a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a non-stock association be other than a natural person, such member may be represented by an individual, associate, officer or member thereof, duly authorized in writing.

(c) One association organized thereunder may become a member or stockholder of any other association or associations organized hereunder.

1921, XXXII, 339.

(3410) § 8. Articles of Incorporation.—Each association formed under this Article must prepare and file articles of incorporation, setting forth:

(a) Name of the association.

(b) The purpose for which it is formed.

(c) The place where its principal business will be transacted.

(d) The term for which it is to exist, not exceeding fifty (50) years.

(e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended or repealed except by the written consent or the vote of three-fourths of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this State; and when so filed, the said articles of incorporation, or certified copies thereof, shall be received in all the Courts of this State, and other places as *prima facie* evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the articles of incorporation shall also be filed with the Director of the State Extension Service of Clemson College (and the Director of the Cotton Market Bureau of this State).

1921, XXXII, 339.

(3411) § 9. Amendment of Articles of Incorporation.—The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first

be approved by two-thirds of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation, when so adopted, shall be filed in accordance with the provisions of the general corporation law of this State.

1921, XXXII, 339.

(3412) § 10. By-Laws.—Each association incorporated under this Article must, within thirty (30) days after its incorporation, adopt for its government and management, a code of by-laws, not inconsistent with the powers granted by this Article. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such by-laws. Each association under its by-laws may also provide for any or all of the following matters:

- (a) The time, place and manner of calling and conducting its meetings.
- (b) The number of stockholders or members constituting a quorum.
- (c) The rights of members or stockholders to vote by proxy or by mail or by both, and the conditions, manner, form and effects of such votes.
- (d) The number of directors constituting a quorum.
- (e) The qualifications, compensation and duties and term of office of directors and officers, time of their election and the mode and manner of giving notice thereof.
- (f) Penalties for violation of the by-laws.
- (g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.
- (h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.
- (i) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock, the conditions upon which, and time when, membership of any member shall cease. The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or, at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interest in the association and shall fix the amount thereof

in money, which shall be paid to him within one year after such expulsion or withdrawal.

1921, XXXII, 339.

(3413) § 11. Meetings of Association.—In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent. of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting: *Provided, however,* That the by-laws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

1921, XXXII, 339.

(3414) § 12. Directors.—The affairs of the association shall be managed by a board of not less than five directors, elected by the members or stockholders from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such district. In such a case the by-laws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The by-laws may provide that primary elections should be held in each district to elect the directors apportioned to such districts and the result of all such primary elections must be ratified by the next meeting of the association. The by-laws may provide that one or more directors may be appointed by the Director of the Extension Service and the Cotton Market Bureau of this State. The director or directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors.

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association, or to any other kind of contract differing from terms generally current in that district.

When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provide for an election of directors by districts. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

1921, XXXII, 339.

(3415) § 13. Officers.—The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the

two latter offices and designate the combined office as secretary-treasurer. The treasurer, who shall be a bonded official, may be a bank or any depository, and as such shall not be considered as an officer, but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer; excepting that the funds shall be deposited only as authorized by the board of directors.

1921, XXXII, 339.

(3416) § 14. Certificates of Membership—Capital Stock—Liability of Members—Voting—Retirement of Stock.—When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof. No stockholder of a co-operative association shall own more than one-half of the issued common stock of the association; and an association, in its by-laws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock.

No member or stockholder shall be entitled to more than one vote. Any association organized with stock under this Act may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate. The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

The association may, at any time, except when the debts of the association exceed fifty (50%) per cent. of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one (1) year thereafter.

1921, XXXII, 339.

(3417) § 15. Charges Against Officers—Filing—Hearing—Vote Upon Removal.—Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten (10%) per cent. of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against

whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

In case the by-laws provide for the election of directors by districts with primary elections in each district, then the petition for removal of director must be signed by twenty (20%) per cent. of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

1921, XXXII, 339.

(3418) § 16. Upon Demand of One-Third of Directors, Matter May Be Referred to Members.—Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership of the stockholders for decision at the next special or regular meeting: *Provided, however*, That a special meeting may be called for this purpose.

1921, XXXII, 339.

(3419) § 17. Contracts for Marketing Products—Remedies for Breach.—The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding eight (8%) per cent. per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight (8%) per cent. per annum upon common stock.

The by-laws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the Courts of this State.

In the event of any such breach or threatened breach of such marketing contracts by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a

temporary restraining order and preliminary injunction against the member.

1921, XXXII, 339.

(3420) § 18. Issue of Preferred Stock for Property Purchased.—Whenever an association organized hereunder with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest, shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

1921, XXXII, 339.

(3421) § 19. Annual Reports.—Each association formed under this Article shall prepare and make out an annual report on forms furnished by (The Cotton Market Bureau) or the Director of the State Extension Service of Clemson College containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received, if a non-stock association; the total expenses of operations; the amount of its indebtedness or liability and its balance sheets.

1921, XXXII, 339.

(3422) § 20. Inconsistent Laws Not to Be Construed as Applying.—Any provisions of law which are in conflict with this Article shall not be construed as applying to the association herein provided for.

1921, XXXII, 339.

(3423) § 21. Participation of Associations in Other Associations.—An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engage in preserving, drying, processing, canning, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed, or licensed or bonded under the laws of this State or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

1921, XXXII, 339.

(3424) § 22. Contracts to Promote Purposes of Association.—Any association may, upon resolution adopted by its board of directors, enter into

all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other co-operative corporation, association or associations, formed in this or in any other State, for the co-operative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses.

1921, XXXII, 339.

(3425) § 23. Adoption of Article by Corporations or Associations Already Formed.—Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this Article by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the corporation commissioners, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this Article. Articles of incorporation shall be filed as required in Section 8, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

1921, XXXII, 339.

(3426) § 24. Inducing Members to Violate Contract or Malicious Spreading of False Reports Concerning Association, a Misdemeanor—Penalties. Any person or persons or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be guilty of a misdemeanor and subject to a fine of not less than one hundred (\$100.00) dollars and not more than one thousand (\$1,000.00) dollars for such offense, and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred (\$500.00) dollars for each such offense.

1921, XXXII, 339.

(3427) § 25. Not Illegal Combinations.—No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and its members or any agreement authorized in this Article be considered illegal or in restraint of trade.

1921, XXXII, 339.

(3428) § 26. Invalidity of One Section Not to Affect Remainder of Article.—If any section of this Article shall be declared unconstitutional for any reason, the remainder of the Article shall not be affected thereby.

1921, XXXII, 339.

(3429) § 27. General Corporation Law to Apply, Unless Inconsistent Herewith.—The provisions of the general corporation laws of this State, and all powers and right thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with, or inconsistent with, the express provisions of this Article.

1921, XXXII, 339.

(3430) § 28. Annual License Fee—Exempt from Franchise Tax.—Each association organized hereunder shall pay an annual license fee of ten (\$10.00) dollars, but shall be exempt from all franchise or license taxes.

1921, XXXII, 339.

(3431) § 29. Fees for Articles of Incorporation—For Amendments.—For filing articles of incorporation, an association organized hereunder shall pay ten (\$10.00) dollars and for filing an amendment to articles, two and 50-100 (\$2.50) dollars.

1921, XXXII, 339.

ARTICLE V.

Inspection of Flour—Grain.

(3432) § 1. Inspector of Flour for City of Charleston—Appointment, Bond and Terms.—The City Council of Charleston shall appoint a competent person as Inspector of Flour for the City of Charleston, who shall hold his office for two years and who shall give bond to the State of South Carolina, with good security, to be approved by the City Council of Charleston, in the penal sum of two thousand dollars, conditioned for the faithful discharge of the duties of the said office.

Civ. '12, § 2371; Civ. '02, § 1559; G. S. 1199; R. S. 1306; 1850, XII, 9; 1854, XII, 317.

Construed. *Caulfield v. State*, 1 S. C. 46.

(3433) § 2. Inspection of Flour Before Sale—Exception.—It shall not be lawful, if inspection be demanded by the seller or purchaser, to sell in the City of Charleston any barrel, half barrel or bag of flour or meal of wheat, rye or corn unless the same shall have been first submitted to the view and examination of the Inspector of the aforesaid city, and by him examined in some lot, street or warehouse, open and accessible to all persons; but flour of wheat, rye or corn manufactured in the City of Charleston for export to any other port or ports beyond the limits of the State shall not be liable to inspection in the said city.

Civ. '12, § 2372; Civ. '02, § 1560; G. S. 1200; R. S. 1307; 1860, XII, 8; 1868, XIV, 107; 1878, XVI, 751.

(3434) § 3. Regulations as to Barrels, Etc.—Every cask or barrel containing flour or meal of wheat, rye or corn brought into or manufactured in the City of Charleston for sale shall be well made, of good seasoned materials, and sufficiently hooped and nailed; and the said Inspector shall cause all casks or barrels not made as aforesaid, and not in merchantable condi-

tion, but capable of being made so at a reasonable expense, to be repaired and put in merchantable condition at the expense of the owner thereof.

Civ. '12, § 2373; Civ. '02, § 1561; G. S. 1201; R. S. 1308; 1859, XII, 8.

(3435) § 4. Barrel to Contain What Quantity, Etc.—Every barrel submitted for inspection as aforesaid shall contain such quantity of flour or meal as upon inspection shall be found to be of the net weight of one hundred and ninety-six pounds; and each and every half barrel shall contain such quantity as shall be of the net weight of ninety eight pounds; and the said Inspector shall cause all barrels or half barrels containing a less quantity to be made of full weight at the expense of the owners thereof.

Civ. '12, § 2374; Civ. '02, § 1562; G. S. 1202; R. S. 1309; 1859, XII, 8.

(3436) § 5. Manner of Inspecting—Branding—Designation of Brands.—Every cask or bag of flour or meal submitted to the view and examination of the Inspector as aforesaid shall by him be searched and tried, by boring on the head and piercing it through with an instrument by him to be provided; and he shall afterwards plug the same with soft seasoned wood, to prevent the entrance of water therein. If the Inspector shall judge the same to be merchantable, he shall brand every such cask or bag with the word "Charleston," and shall brand the degrees of fineness of which he shall, on inspection, determine the said flour or meal to be, in letters of half an inch in length, which degrees shall be distinguished as follows, to wit: "Family," "Extra," "Super," "Fine," "First Middlings," or "Second Middlings," "Ship Stuff," "First Rye," "Second Rye," "First Corn," or "Second Corn," as the case may be; but if, on examination, it proves unsound, then he shall mark the cask or bag with the broad arrow.

Civ. '12, § 2375; Civ. '02, § 1563; G. S. 1203; R. S. 1310; 1856, XII, 547; 1859, XII, 8; 1866, XIII, 432.

(3437) § 6. Inspector's Fees.—The Inspector shall be allowed not more than two and a half cents per package for inspecting, which shall be paid by the owner thereof, or his agent.

Civ. '12, § 2376; Civ. '02, § 1564; G. S. 1204; R. S. 1311; 1854, XII, 316; 1859, XII, 8; 1866, XIII, 432.

(3438) § 7. When Inspector May Appoint Deputy.—In case of sickness or temporary absence of the Inspector, or if necessary for the convenient dispatch of the duties of his office, he is hereby empowered to appoint a deputy to act for him during such sickness, absence, or such time as he may think proper, who shall also be made liable to the same penalties, and shall take the oath hereinafter prescribed.

Civ. '12, § 2377; Civ. '02, § 1565; G. S. 1209; R. S. 1312; 1859, XII, 8.

(3439) § 8. Inspector's Oath.—The Inspector of Flour and Meal under this Chapter shall, before he proceeds to perform the duties, make oath or affirmation, as the case may be, before the Clerk of the Court of Common Pleas, that, without fear, favor or affection, malice, partiality or respect of persons, he will diligently and carefully examine and inspect, to the best of his skill and ability, all flour or meal offered to him for inspection, and that he will brand, or cause to be branded, as merchantable, all barrels, half

barrels or bags of flour or meal that appear sufficiently sweet and sound, and no other, according to the best of his knowledge and judgment; and also the oath provided for public officers.

Civ. '12, § 2378; Civ. '02, § 1566; G. S. 1210; R. S. 1313; 1859, XII, 8.

(3440) § 9. Flour, Etc., in Transit Not Subject to Inspection.—No flour merely passing through the City of Charleston from any place in this or any other State to another port or place out of this State shall be required to be inspected in the said City of Charleston: *Provided*, Such flour be distinctly marked before it comes into the said city, upon the barrels or bags, with the name of the place from whence it comes, and the name of the port or place of its destination, with the words "in transit" between the names of the said two places.

Civ. '12, § 2379; Civ. '02, § 1567; G. S. 1212; R. S. 1314; 1856, XII, 548.

(3441) § 10. Charleston Chamber of Commerce May Appoint Flour Committee.—The Charleston Chamber of Commerce shall appoint a Flour Committee consisting of five members, who shall arrange and adopt suitable standards for the different grades of flour; the standards so selected to conform as nearly as possible to similar standards adopted by the Boards of Inspection in the principal Atlantic cities.

Civ. '12, § 2380; Civ. '02, § 1568; G. S. 1213; R. S. 1315; 1880, XVII, 343.

(3442) § 11. Flour Committee to Arrange Standards.—The said Committee shall, as often as once in every three months, provide and adopt suitable standards for the different grades of flour, viz.: "Fine," "Superfine," "Extra," "Family," and "Extra Family." The standards thus approved shall be kept in the possession of the Committee for reference in all cases of dispute which may arise. They shall also furnish the Inspector or Inspectors herein provided for with similar standards for their guidance; and all flour inspected by the said Inspectors shall be legibly branded or marked "Charleston Chamber of Commerce Standard," with grade, day, month, year, and name of Inspector.

Civ. '12, § 2381; Civ. '02, § 1569; G. S. 1214; R. S. 1316; 1880, XVII, 343.

(3443) § 12. Settlement of Disputes Between Inspectors and Parties by Flour Committee—Mode, Appeal, Etc.—The said Flour Committee shall also be umpire to settle and decide all cases of dispute that may arise in reference to the inspection of flour between the Inspectors and the parties for whom the inspection may have been performed; and when an Inspector is charged with passing flour which proves to be below the standard, unsound or damaged when inspected, or deficient in any way, it shall be the duty of said Committee, when called upon, to investigate the case, and, if the Inspector is in fault, to assess such damages to be paid by him as in their judgment is fair and just. In all cases calling for their action a majority of said Committee shall constitute a quorum, and their decision in such cases shall be made in writing; the decision so made, however, to be subject to the right of appeal by either party to the Arbitration Court of the said Chamber of Commerce—the decision of said Court to be final; and suit may be brought on the bond herein provided for the Inspector, if he

shall be in default, in the name of the Charleston Chamber of Commerce, by the party in whose favor a decision may be so made, to recover the amount of damages so assessed.

Civ. '12, § 2382; Civ. '02, § 1570; G. S. 1215; R. S. 1317; 1880, XVII, 343.

(3444) § 13. Flour Committee May Appoint Inspectors.—The said Committee shall appoint one or more Inspectors of Flour; and the Inspectors so appointed shall each make and execute a good and satisfactory bond to the Charleston Chamber of Commerce in the penal sum of two thousand dollars (\$2,000), (the said bond to be approved by the President of said Charleston Chamber of Commerce), conditioned for the faithful performance of the duties of the Inspector, and for the payment of all claims and demands which may be decided against him as aforesaid: *Provided, always*, That the said Committee shall have power to suspend or dismiss an Inspector at any time for any cause satisfactory to them; and no Inspector so to be appointed shall be directly or indirectly engaged in the flour trade during such time as he may hold the office, on penalty of forfeiture of his commission as Inspector.

Civ. '12, § 2383; Civ. '02, § 1571; G. S. 1216; R. S. 1318; 1880, XVII, 344.

(3445) § 14. Duty of Inspectors.—It shall be the duty of the Inspectors so appointed carefully to inspect all flour submitted to them, and to decide on the grade and soundness of the same; all flour thus inspected must be equal in quality to the standard furnished by the Committee; and any Inspector passing flour which is not equal in quality to the standard for the grade which he makes it, shall be liable for any damage accruing from such action.

Civ. '12, § 2384; Civ. '02, § 1572; G. S. 1217; R. S. 1319; 1880, XVII, 344.

(3446) § 15. Standard Weight.—It shall be the duty of the Inspector to weigh a suitable number of barrels of each lot of flour inspected, to be assured that they contain the full weight of one hundred and ninety-six (196) pounds, and no Inspector shall use the brand of the Charleston Chamber of Commerce on any flour in barrels that is of less weight than one hundred and ninety-six (196) pounds to the barrel. For such inspection, weighing, and branding, the Inspector shall receive two (2) cents per barrel or bag for each and every barrel or bag so inspected, weighed and branded, to be paid by the party requesting the same to be done, and the same fee on reinspection.

Civ. '12, § 2385; Civ. '02, § 1573; G. S. 1218; R. S. 1320; 1880, XVII, 344.

(3447) § 16. Pay of Committee.—In all cases calling for the action of the Committee to decide disputes as regards grade, soundness, or any other defect, between the Inspector and parties for whom such inspection has been made, the members of the Committee serving in said cases shall be paid one dollar for each meeting, the amount to be paid by the party against whom the case is decided by the Committee, or, in case of appeal, by the party against whom the appeal Court, herein provided for, shall decide.

Civ. '12, § 2386; Civ. '02, § 1574; G. S. 1219; R. S. 1321; 1880, XVII, 344.

(3448) § 17. Tolls Allowed for Grinding.—No person shall take more toll for grinding corn, wheat, rye or any other grain into good meal or flour than one-eighth part of any quantity under ten bushels, and for ten bushels, or any quantity above, at one time brought, one-tenth part only, and for all grain, as aforesaid, chopped for hominy, feeding stock or for distilling, one-sixteenth part.

Civ. '12, § 2387; Civ. '02, § 1575; G. S. 1220; R. S. 1322; 1785, IX, 652.

(3449) § 18. Penalty for Taking More Toll Than Allowed.—Any person or persons taking more toll than hereinbefore directed shall be subject to pay a fine to the amount of ten times the value of the toll so taken, to be recovered in the most summary way before the nearest Magistrate; one-half to the prosecutor and the other half to the person aggrieved.

Civ. '12, § 2388; Civ. '02, § 1576; G. S. 1221; R. S. 1323; 1785, IX, 652.

(3450) § 19. City Council of Charleston to Regulate Sale of Grain.—The City Council of Charleston shall have full power and authority to regulate and control the sale of grain by measurement or weight, or both, sold within the corporate limits of the city, in such manner as will insure a fair, equal and uniform sale and measurement of the same.

Civ. '12, § 2389; Civ. '02, § 1577; G. S. 1222; R. S. 1324; 1823, VII, 143.

(3451) § 20. General Duties of Board of Health as to Inspection of Food, Drugs, Etc.—The State Board of Health shall take cognizance of the interests of the public health as it relates to the sale of food, drugs, spirituous, fermented and malt liquors, and the adulteration thereof, and make all necessary inquiries and investigations relating thereto, and for such purpose may appoint inspectors, analysts and chemists, who shall be subject to its supervision and removal. Within sixty days after February 19, 1898, the said State Board of Health shall adopt such measures as it may deem necessary to facilitate the enforcement thereof. It shall prepare rules and regulations with regard to the proper method of collecting and examining drugs, articles of food, and spirituous, fermented and malt liquors.

Civ. '12, § 2390; Civ. '02, § 1578; 1898, XXII, 804.

(3452) § 21. Duty of Board of Health to Publish Exempted Articles.—It shall be the duty of the State Board of Health to prepare and publish from time to time lists of the articles, mixtures or compounds declared to be exempt from the provisions of this Article in accordance with the preceding Section. The State Board of Health shall from time to time fix the limits of variability permissible in any article of food or drug, or compound, the standard of which is not established by any national Pharmacopœia.

Civ. '12, § 2391; Civ. '02, § 1579; 1898, XXII, 804.

(3453) § 22. Persons Offering Certain Articles for Sale to Furnish Samples for Analysis When Demanded.—Every person offering or exposing for sale, or delivering to a purchaser, any drug or article of food, or spirituous, fermented or malt liquors included under the provisions of Section 20, shall furnish to any analyst, or other officer or agent appointed here-

under, who shall apply to him for the purpose and shall tender to him the value of the same, a sample sufficient for the purpose of analysis of any such drug or article of food or drink which is in his possession.

Civ. '12, § 2392; Civ. '02, § 1580; 1898, XXII, 804.

(3454) § 23. Meaning of Word "Food" and Word "Drug."—The term "food" as used in Section 20 shall include every article used for food or drink by man, including all candies, teas, coffees, and spirituous, fermented and malt liquors. The term "drug" as used in Section 20 shall include all medicines for internal or external use.

Civ. '12, § 2393; Civ. '02, § 1581; 1898, XXII, 804.

(3455) § 24. Adulterated Articles—State Board of Health May Declare Certain Articles Exempt.—An article shall be deemed to be adulterated:

(a) **WHAT DRUGS DEEMED ADULTERATED.**—In the case of drugs:

1. If, when sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality or purity laid down therein.

2. If, when sold under or by a name not recognized in the United States Pharmacopœia, but which is found in some other Pharmacopœia or other standard work on Pharmacopœia Materia Medica, it differs materially from the standard of strength, quality or purity laid down in such work.

3. If its strength or purity falls below the professed standard under which it is sold.

(b) **ADULTERATED FOOD OR DRINK.**—In case of food or drink:

1. If any substance or substances has or have been mixed with it so as to reduce or lower or injuriously affect its quality or strength.

2. If any inferior or cheaper substance or substances has or have been substituted wholly or in part for the article.

3. If any valuable constituent of the article has been wholly or in part abstracted.

4. If it be an imitation of, or be sold under, the name of another article.

5. If it consists wholly or in part of a deceased, or decomposed, or putrid, or rotten animal or vegetable substance, whether manufactured or not, or in the case of milk, if it is the produce of a diseased animal.

6. If it be colored or coated, or polished, or powdered, whereby damage is concealed, or it is made to appear better than it really is, or of greater value.

7. If it contains any added poisonous ingredient, or any ingredient which may render such article injurious to the health of the person consuming: *Provided*, That the State Board of Health may declare from time to time certain articles or preparations to be exempt from the provisions of Sections 20 to 24: *And provided, further*, That the provisions of Sections 20 to 24 shall not apply to mixtures or compounds recognized as ordinary articles of food, provided that the same are not injurious to health, and that the articles are distinctly labeled as a mixture, stating the components of the mixture.*

* See § (3684).

(c) **WHAT DEEMED ADULTERATED LIQUORS.**—In the case of spirituous, fermented and malt liquors: If it contains any substance or ingredient not normal or healthful to exist in spirituous, fermented or malt liquors or which may be deleterious or detrimental to health when such liquors are used as a beverage or as a medicine, and if it does not conform in respect to strength and purity required by the laws of this State.

Civ. '12, § 2394; Civ. '02, § 1582; 1898, XXII, 804.

ARTICLE VI.

Gauging Liquors—Naval Stores.

(3456) § 1. **Certain Liquors, Etc., in Charleston to Be Gauged Before Delivery—Gauger.**—All oils, molasses, syrups, wines, vinegar and liquors (not domestic) sold in the City of Charleston, either by the hogshead, pipe, puncheon, barrel, cask, keg or tank, shall, before their delivery, be gauged by a sworn Gauger, elected by the City Council of Charleston, whose term of office shall be for four years.

Civ. '12, § 2395; Civ. '02, § 1583; G. S. 1223; R. S. 1325; 1876, XVI, 103.

(3457) § 2. **Unlawful for Others to Exercise Duties of Gauger—Penalty.**—It shall not be lawful for any person or persons, except those duly elected by the City Council of Charleston, to exercise the duties of Gauger, or gauge any of the aforesaid articles, under such penalty for each offense as may have been or may hereafter be fixed by the ordinances of said city, the said penalty to be recovered in any Court of competent jurisdiction.

Civ. '12, § 2396; Civ. '02, § 1584; G. S. 1224; R. S. 1326; 1876, XVI, 103.

(3458) § 3. **Fees of Gauger.**—The fee charged for the said gauging shall not exceed ten cents per package, to be paid by the seller to the authorized Gauger; and all fees accruing to the City Gaugers in the discharge of their duties shall be equally shared between them.

Civ. '12, § 2397; Civ. '02, § 1585; G. S. 1225; R. S. 1327; 1876, XVI, 103.

(3459) § 4. **City Council of Charleston to Appoint Inspectors of Naval Stores.**—The City Council of Charleston are authorized to appoint such number of Inspectors of Naval Stores as the wants of the trade may in their judgment from time to time require. No other person than those so appointed can perform any of the duties of Inspectors of Naval Stores in said city. In case any one not appointed by the said City Council shall assume to perform any of said duties, he shall be liable to the pains and penalties of the ordinances of the City Council of Charleston in such case made and provided.

Civ. '12, § 2398; Civ. '02, § 1586; G. S. 1226; R. S. 1328; 1858, XII, 744; XVI, 199.

(3460) § 5. **Inspectors to Give Bond, Etc.**—Each of the Inspectors so appointed shall give bond in the sum of two thousand dollars, conditioned for the faithful discharge of his duties.

Civ. '12, § 2399; Civ. '02, § 1587; G. S. 1227; R. S. 1329; 1856, XII, 584.

(3461) § 6. **Duty of Inspector to Examine Crude Turpentine, Etc.**—It shall be the duty of the Inspector of Naval Stores for the City of Charleston to examine and inspect any crude turpentine or rosin of grades other than those known as "common" or "number two," which may be offered for sale in the City of Charleston, and which may be submitted for examination by the owner or other person having charge of the same.

Civ. '12, § 2400; Civ. '02, § 1588; G. S. 1228; R. S. 1330; 1746, III, 687; 1856, XII, 583.

(3462) § 7. **Inspector to Weigh, Search, Try, and Brand Turpentine or Rosin.**—Every barrel of crude turpentine or rosin submitted to an Inspector as aforesaid shall be by him weighed and searched and tried, and the Inspector shall brand every such barrel or cask with the word "Charleston," and shall brand thereon, in characters known to the trade, the quality of said turpentine or rosin, together with the weight of the same expressed in figures, and every barrel of rosin and turpentine shall be cleaned, strained and merchantable, without chips, leaves, filth, or dirt.

Civ. '12, § 2401; Civ. '02, § 1589; G. S. 1229; R. S. 1331; 1746, III, 687; 1856, XII, 583.

(3463) § 8. **Fees Allowed Inspector—Lien for Fees.**—For every barrel of turpentine or rosin weighed by the Inspector, he shall be entitled to three cents, and for every barrel inspected and branded as herein directed, three and one-quarter cents, to be paid by the owner of said turpentine or his agent, and the Inspector shall have a lien on said barrels for the amount due.

Civ. '12, § 2402; Civ. '02, § 1590; G. S. 1230; R. S. 1332; 1856, XII, 583.

(3464) § 9. **Weight of Barrel of Crude Turpentine—Quantity of Tar to Barrel.**—In the absence of satisfactory proof of a special stipulation to the contrary, it shall be presumed and held that the quantity and weight of crude turpentine to make a barrel thereof is two hundred and eighty pounds, and that the quantity of tar to make a barrel thereof is thirty-two gallons.

Civ. '12, § 2403; Civ. '02, § 1591; G. S. 1232; R. S. 1333; 1746, III, 687; 1870, XIV, 350.

(3465) § 10. **Casks and Barrels to Be Branded, Etc. — Penalty for Failure.**—Every person who shall sell or expose for sale in any part of this State any pitch, tar, rosin, turpentine, beef, or pork, in any casks or barrels, shall first set on every such cask or barrel a burnt mark, with the first letter of the Christian name, and the surname at length, of the maker of such commodity, with an iron brand; and if any person shall, in any port or place of exportation within this State, sell or expose to sale any of the said commodities hereinbefore enumerated, in any cask or barrel, before the same be marked and branded as aforesaid, every such person shall, for every such cask or barrel, forfeit the sum of two dollars to the person or persons who will inform and sue for the same, to be recovered before any Magistrate.

Civ. '12, § 2404; Civ. '02, § 1592; G. S. 1233; R. S. 1334; 1746, III, 686.

(3466) § 11. **Penalty for Exporting Without Brands, Etc.**—If any merchant, factor, trader, or other person, shall ship or put on board any ship or vessel any of the said commodities hereinbefore enumerated, in

any casks or barrels, with the intent to export the same, before such casks or barrels be marked and branded as aforesaid, every such merchant, factor, trader, or other person, shall forfeit the sum of two dollars for every such cask or barrel, to be sued for, recovered, and disposed of in manner aforesaid.

Civ. '12, § 2405; Civ. '02, § 1593; G. S. 1234; R. S. 1335; 1746, III, 686.

(3467) § 12. Barrels May Be Opened by Purchasers Where Fraud is Suspected, Etc.—If any fraud or abuse shall be suspected in any barrel or barrels of pitch or rosin which shall be brought to market or exposed for sale, the person who shall treat for the purchase of such pitch or rosin shall be at liberty to cut open as many barrels of the same as he shall think proper, which shall be liable to be viewed, judged and forfeited, as is directed in the case of rice; and where any pitch or rosin shall be condemned as fraudulent by the person or persons empowered (as is directed with respect to rice), to view and judge the same, all such condemned pitch and rosin shall be forfeited and sold by the State Treasurer, and applied to such uses as is directed in the case of rice.

Civ. '12, § 2406; Civ. '02, § 1594; G. S. 1235; R. S. 1336; 1746, III, 688.

See post, §§ (3473), (3474).

(3468) § 13. Barrels Opened at Risk of Persons Ordering Contents—Liabilities.—Where any pitch or rosin shall be ordered to be cut open as aforesaid, without the consent of the owner or person offering or exposing the same for sale, the same shall be done at the risk of the person who shall cause such pitch to be so cut open, that is to say, if such pitch or rosin shall not be condemned as fraudulent by the person or persons empowered to view and judge the same, then the person who caused the said pitch or rosin to be so cut open and examined shall take to himself every such barrel so cut open, and which shall not be condemned as aforesaid, and shall pay to the owner or person offering the same for sale the current sum or price at which good pitch or rosin shall then be, at that port or place, anything hereinbefore contained to the contrary notwithstanding.

Civ. '12, § 2407; Civ. '02, § 1595; G. S. 1236; R. S. 1337; 1746, III, 688.

ARTICLE VII.

Pork and Beef—Ice—Staves and Shingles.

(3469) § 1. Barrels to Contain and Weigh What—How to Be Packed.—Every barrel of pork or beef packed and sold in this State shall contain thirty gallons and two hundred pounds weight of wholesome, well cured meat in the same, which shall be weighed by the packers, and well packed with salt and pickle, each piece not to weigh more than eight pounds, and not to be cut or mangled further than to take out the kernels or where the bones require it, and not more than two heads in one barrel of pork. No beef's heads or shanks shall at all be packed.

Civ. '12, § 2408; Civ. '02, § 1596; G. S. 1237; R. S. 1338; 1746, III, 687.

(3470) § 2. Penalty for Killing Cattle for Packing Not Previously Penned Twelve Hours.—In case any person shall kill any cattle to put in barrels for sale, without having first penned them twelve hours before killing them, every such person shall forfeit the sum of ten dollars, current money, for every head of cattle so killed, to the person who will sue for the same, to be recovered before any Magistrate.

Civ. '12, § 2409; Civ. '02, § 1597; G. S. 1238; R. S. 1339; 1746, III, 688.

(3471) § 3. Barrels to Be Made of Seasoned White or Water Oak.—Every person in this State shall make the casks for packing beef or pork of sound, dry and well seasoned white or water oak timber, without sap, the heads as well as bodies of which casks shall be made tight, so as to hold pickle, and shall fill the said casks with water before the same are packed with any beef or pork.

Civ. '12, § 2410; Civ. '02, § 1598; G. S. 1239; R. S. 1340; 1746, III, 687.

(3472) § 4. Fraudulent Mixtures to Be Forfeited to the State — How Examined.—If any planter or other person shall sell or expose for sale to any merchant, factor, or any other person, at any port or place of exportation within this State, any casks or barrels of rice which, upon opening or uncasking the same, shall be found to contain any unfair and fraudulent mixture of small or damaged rice, then, and in every such case, the seller of the said rice, or person offering the same for sale, shall immediately, on request of the buyer, or person offering to buy the same, name one indifferent person, being a freeholder, and the said buyer another, to view the said rice, and if such two persons shall agree in opinion, and certify the same in writing under their hands, that such rice was deceitfully and fraudulently packed and exposed for sale, every such cask or barrel so fraudulently packed and exposed for sale, shall be forfeited to the State, and the same shall be sold or caused to be sold by the State Treasurer, or by the person or persons who shall condemn the same for the use aforesaid, who shall be allowed thereout five per cent. for their trouble.

Civ. '12, § 2411; Civ. '02, § 1599; G. S. 1240; R. S. 1341; 1746, III, 687; 1783, IV, 540.

(3473) § 5. Proceedings in Case Sellers Do Not Nominate Arbitrators.—If the seller shall refuse to nominate a person to view the said rice, then the buyer shall nominate both the persons to view such rice, who shall have the same power as if one had been named by the seller and one by the buyer: *Provided*, That in case the said persons nominated as aforesaid shall not agree in opinion, they shall have power to nominate a third person, being a freeholder as aforesaid, who shall have the same power as the first two by this Chapter have; and in case either of the said two persons shall refuse or neglect to join or cannot agree in nominating such third person, then in such case any Magistrate, on notice given by both or either of the said persons, shall, and he is hereby, required to nominate such third person, which third person shall have the same power in the premises as if he had been nominated by both. And such adjudication and certificate shall be made within twenty-four hours from the first application, and the said certificate shall be deemed a sufficient condemnation of the said rice to warrant the

sale thereof as aforesaid; any law, statute, usage, or custom to the contrary notwithstanding.

Civ. '12, § 2412; Civ. '02, § 1600; G. S. 1241; R. S. 1342; 1746, III, 687.

(3474) § 6. **Size of Pipe Staves, Etc.**—All staves to be made for exportation, and all shingles which shall be offered for sale in this State, shall be made of good and sound timber, and shall be of the following dimensions, to wit: Each pipe stave to be made of white oak, fifty-eight inches long, and not less than three-quarters of an inch thick at the thin edge, and three inches broad, clear of sap; each hogshead stave to be made of red or white oak, forty-two inches long, not to be less than three-quarters of an inch thick at the thin edge, and four inches broad, clear of sap; and each barrel stave, of red or white oak, to be thirty inches long, not to be less than half an inch thick at the thin edge, and four inches broad, clear of sap; and each shingle to be twenty-two inches in length, and not less than half an inch thick at the thick end, and well shaved, so as not to be winding, and not less than three inches and a half broad, clear of sap.

Civ. '12, § 2413; Civ. '02, § 1601; G. S. 1242; R. S. 1343; 1746, III, 690.

ARTICLE VIII.

Inspection and Taxation of Timber and Lumber.

(3475) § 1. **Rules for Measuring Ranging Timber—Penalty for Violation.**—All ranging timber bought or sold in the markets of this State shall be by board or superficial measurement; and any person or persons who shall buy or sell ranging timber in or for the markets of Charleston or Georgetown, or any other public market in this State, by the rule known as "side and edge measurement," that is to say, by adding the side to the edge, multiplying by the length, and dividing by twelve [(side — edge) X length ÷ twelve], shall be fined for every such act of buying or selling not less than one hundred dollars and not more than three hundred dollars.

Civ. '12, § 2414; Civ. '02, § 1602; G. S. 1243; R. S. 1344; 1855, XII, 434.

(3476) § 2. **Timber Not to Be Sold in Charleston Except by Board Measurement.**—No timber shall be sold or purchased in the City of Charleston by any mode of measurement except that denominated board or superficial measurement (unless by special contract between the parties), which shall alone be done by the Inspectors or Surveyors of timber in the City of Charleston.

Civ. '12, § 2415; Civ. '02, § 1603; G. S. 1244; R. S. 1345; 1853, XII, 294.

(3477) § 3. **Annual Election of Inspectors in Beaufort, Port Royal and Georgetown—Bond and Oath**—The City Council of Charleston and the Town Councils of Beaufort, Port Royal, and Georgetown, shall each elect annually, for their respective municipalities, one or more Inspectors and Surveyors of Timber, who, before entering upon the duties of his or their office, shall severally execute a bond to the said Council, in the penalty of two thousand dollars, with good sureties, for the faithful performance of the duties of his or their office; and shall also take and subscribe the fol-

lowing oath, to wit: "I, A B, do solemnly swear (or affirm, as the case may be) that I will faithfully perform all the duties of Inspector and Surveyor of Timber in the City of Charleston (or town of, as the case may be), as prescribed by the Act of General Assembly providing for the same. So help me, God." And said bond shall be recorded in the office of the Secretary of State, and shall be liable to suit at the instance of the State of South Carolina, or of individuals suffering loss by the violation of the provisions of this Chapter.

Civ. '12, § 2416; Civ. '02, § 1604; G. S. 1245; R. S. 1346; 1853, XII, 294.

(3478) § 4. Surveyors and Inspectors to Measure Timber on Request—Sale of Timber in Bulk.—It shall be the duty of the said Surveyors and Inspectors to measure all timber in the manner aforesaid brought for sale to the City of Charleston, at the request of any person owning or buying the same, and shall give a certificate to such person, specifying the quality, and kind, and quantity of such timber, and the number of pieces in each lot; which certificate shall be evidence of the matters stated therein, as between the owner and purchasers thereof. But nothing herein contained shall prevent any person or persons from buying or selling timber in bulk without measurement.

Civ. '12, § 2417; Civ. '02, § 1605; G. S. 1246; R. S. 1347; 1853, XII, 294; 1856, XII, 580.

(3479) § 5. Measured Lumber to Be Inspected by Licensed Measurers.—All timber and lumber brought to market for sale at the ports of Charleston, Port Royal, Beaufort, and Georgetown, shall be measured and inspected by one of the licensed measurers, selected by the seller and buyer jointly; and the measurer so selected shall be entitled individually to the fee earned by him; and the manner of inspection and classification of both timber and lumber shall be such as may be agreed upon between the buyer and seller.

Should the buyer fail to agree to the selection of a measurer, then the measurement and inspection and classification may be made by any official measurer.

Civ. '12, § 2418; Civ. '02, § 1606; G. S. 1247; R. S. 1348; 1877, XVI, 271.

(3480) § 6. Fees of Measures.—The fees to be received by the measurers shall not exceed the following rates, viz.: Ten (10) cents per thousand feet for all square, hewn, or round timber; ten (10) cents per thousand feet for all lumber measured by bulk measurement in rafts; and twenty-five (25) cents per thousand feet for all lumber measured and inspected by the piece; the expense of measuring fees to be equally divided between the buyer and seller.

Civ. '12, § 2419; Civ. '02, § 1607; G. S. 1248; R. S. 1349; 1877, XVI, 271.

(3481) § 7. Taxation of Timber.—That every person, firm or corporation, who now is or may hereafter be engaged in the business of cutting and severing from the soil standing timber in this State, for sale or for manufacturing the same into timber or lumber, whether such sale or manufacture be conducted in the State or elsewhere, shall, at the time fixed by law for making annual returns of personal property in this State for the purpose of taxation, file a return, under oath, with the County Auditor in each of the counties in which such standing timber may be cut, stating in said

return the number of feet of timber, based on Doyle's rule, so cut and severed from the soil in such county, for sale or manufacturing purposes, during the year preceding the first day of January in each year in which such return is made, with the value thereof at the place of removal.

1913, XXVIII, 197.

(3482) § 8. Entered on Tax Books.—That the value of said timber so cut and severed from the soil in each county for a period of twelve months prior to the date of making the return hereinafter provided, shall be entered on the tax books of such county as personal property returned by such person, firm or corporation so making said returns, and shall be subject to all statutory and other provisions relating to the returns, assessments, equalization, levy and taxation of personal property and the collection of taxes thereon in this State.

1913, XXVIII, 197.

(3483) § 9. Required to Keep Record.—Every such person, firm or corporation so carrying on the business aforesaid, shall keep proper books, in which shall be entered from month to month the number of feet of timber to be ascertained as above so cut and severed from the soil in each county, which books shall be always open to the inspection of the County Auditor or other proper county officials, and such person, firm or corporation shall be subject to all the provisions, limitations and penalties prescribed by law in reference to the making of returns for taxation of personal property in this State; and the said county officials shall have the same rights and shall perform the same duties in reference to the listing and entering of such property on the tax books, and the assessment, levy and collection of taxes thereon as they now have and perform in regard to the entering of new property, the assessment, levy and collection of taxes on personal property within their respective counties.

1913, XXVIII, 197.

(3484) § 10. Distribution of Tax Fund.—That all taxes collected under the provisions of this Article shall be so apportioned that one-half thereof shall go to the public road fund; one-fourth to the public school fund, and the remainder to the ordinary county fund of the respective counties within which such taxes are collected: *Provided*, That the terms and provisions of this Article shall not apply to the Counties of Abbeville, Greenville, Marion, Marlboro, Sumter, York, Jasper, Spartanburg, Greenwood, Oconee, Calhoun, Florence, Edgefield, Laurens, Bamberg, Anderson, Newberry, Saluda, Darlington, Dillon, Dorchester, Richland, Chesterfield, Chester, Lee, Fairfield, Lexington, Orangeburg, Aiken, Hampton, Union, Lancaster, Kershaw, Barnwell, Pickens and Georgetown: *Provided*, That the provisions of this Article shall not apply to persons, firms or corporations cutting and severing from the soil standing timber, or manufacturing lumber for local purposes or to supply local demand.

1913, XXVIII, 197; 1917, XXX, 334.

ARTICLE IX.**Inspection of Certain Oils.**

(3485) § 1. That all gasoline, benzine, naphtha, kerosene or other like products of petroleum under whatever name called, used for illuminating, heating or power purposes, sold or offered for sale in this State and to be used in this State for power, illuminating or heating purposes, shall be subjected to inspection and test to determine their safety and value for power, illuminating or heating purposes. All manufacturers, wholesalers and jobbers, before selling or offering for sale in this State, any gasoline, kerosene, or other mineral oil for power, illuminating or heating purposes, shall file with the Commissioner of Agriculture, Commerce and Industries a statement that they desire to do business in the State, and furnish the name or brand of the oil or oils which it is desired to sell, with the name and address of the manufacturer, and that the oil or oils will comply with the requirements of this Article. The Department of Agriculture, Commerce and Industries shall have power at all times and at all places to have collected samples of any gasoline, illuminating or heating oils offered for sale, and have the same tested or analyzed. The inspection of oils as authorized in this Article shall be under the direction of the Commissioner of Agriculture, Commerce and Industries, who is authorized to make all necessary rules and regulations for the inspection of such oils, to employ all necessary chemist or chemists, and to enforce standards as to safety, purity, value for power and heating purposes, or absence from objectionable substances and luminosity, when not in conflict with the provisions of this Article, and which he may deem necessary to provide the people of the State with satisfactory gasoline and illuminating oil.

1913, XXVIII, 204.

(3486) § 2. **Standards to Be Enforced.**—The following standards shall be enforced under the provisions of the Article: (a) The flash test of illuminating oils shall be not less than 100 degrees Fahrenheit, as tested by the Elliott method closed cup—according to directions prepared by the Commissioner of Agriculture, Commerce and Industries. (b) All illuminating oils shall show not more than six per cent. by weight of residue remaining undistilled at 570 degrees Fahrenheit. (c) Photometric tests of illuminating oils must show a steady flame of good quality and good illuminating power. (d) All gasoline, naphtha, benzine and oils used for power and heating purposes shall bear label, stamp or lettering as directed by the rules of the Commissioner of Agriculture, Commerce and Industries showing their flash test (Elliott closed cup method), their specific gravity and their quality upon distillation.

1913, XXVIII, 204.

(3487) § 3. **Commissioner of Agriculture to Appoint Analysts, Chemists and Inspectors—Oil Inspection—Oath—Powers of Inspectors—Duties.**—The Commissioner of Agriculture, Commerce and Industries shall appoint such analysts, chemists and inspectors as may be required to carry out the provisions of this Article. If advisable, the feed inspectors and chemists of the Department of Agriculture, Commerce and Industries shall

also assist in the enforcement of the oil inspection law of the State. Each inspector, before entering upon his duties, shall take an oath of office before some person authorized to administer oaths. The inspector shall have power to examine all barrels, tanks or other vessels containing gasoline, kerosene, illuminating or heating oils, to see that they are properly tagged as required in this Article, and they shall, as directed, collect and test samples of oil offered for sale in different sections of the State, and, when instructed, collect and send samples to the Department of Agriculture, Commerce and Industries for examination.

1913, XXVIII, 204; 1915, XXIX, 145.

(3488) § 4. Fee for Inspection.—For the purpose of defraying expenses connected with the inspection, testing and analyzing oils in this State, there shall be paid to the Commissioner of Agriculture, Commerce and Industries a charge of one-eighth cent per gallon, which payment shall be made before delivery to agents, dealers or consumers in the State. Each barrel, tank, tank car or other container of oil shall have attached thereto a tag or stamp stating that all charges specified in this Section have been paid; and the Commissioner of Agriculture, Commerce and Industries is hereby empowered to prescribe a form for such tags: *Provided*, That they shall be such as to meet the requirements of the trade in oils and to adopt such rules and regulations as will insure the enforcement of this law. Where oil is shipped in tank cars or other large containers the manufacturer or jobber shall give notice to the Commissioner of Agriculture, Commerce and Industries of every shipment, with the name and address of the person, company or corporation to whom it is sent, and the number of gallons on the day the shipment is made.

1913, XXVIII, 204.

(3489) § 5. Disposition of Checks or Orders in Payment for Tags, Moneys Received and Receipts—Payment of Expenses.—That all checks or orders in payment for tags and stamps shall be made payable to the Commissioner of Agriculture, and all moneys received under the provisions of this Article shall be paid into the State Treasury. Such receipts shall be turned over monthly by the Commissioner to the State Treasurer, as are other funds. The Commissioner of Agriculture, Commerce and Industries is authorized to draw out of said funds, upon his requisition, such sums as may be necessary to pay all expenses incurred in connection with this Article, including salaries of oil chemist, or chemists, the cost of inspection, tags, blank.

1913, XXVIII, 204; 1915, XXIX, 145.

(3490) § 6. Reports.—The Commissioner of Agriculture, Commerce and Industries shall include in his report to the General Assembly an account of the operations and expense under this Article.

1913, XXVIII, 204.

(3491) § 7. Complaints.—Whenever a complaint is made to the Department of Agriculture, Commerce and Industries in regard to the power, illuminating or heating qualities of any oil sold in this State the Commissioner shall cause a sample of said oil or oils complained of to be procured

and have the same thoroughly analyzed and tested as to safety or value for power or heating purposes or illuminating qualities. If such analysis or other tests shall show that the oil is either unsafe or of inferior quality for power, heating or illuminating purposes, its sale shall be forbidden and reports of the result or results be sent to the party making the complaint and to the manufacturer of said oil.

1913, XXVIII, 204.

(3492) § 8. Fraudulent Branding — Misdemeanor — Penalty. — Every person who shall fraudulently brand or stamp any package or barrel or other vessel, or use a stamp a second time, or keep any gasoline, kerosene or other like products of petroleum, under whatever name called, used for illuminating, heating or power purposes, not marked and branded in accordance with the regulations of the Commissioner of Agriculture, Commerce and Industries, or violate any other provision of this Article or any regulation adopted by the Commissioner of Agriculture, Commerce and Industries for its enforcement, shall be guilty of a misdemeanor, and fined not less than ten (\$10) dollars for each offense nor more than three hundred (\$300) dollars.

1913, XXVIII, 204.

(3493) § 9. Selling Without Label Misdemeanor.—If any person, manufacturer or dealer shall sell or offer for sale in this State any of said gasoline, kerosene or other like products of petroleum, under whatever name called, used for illuminating, heating or power purposes, before first having the same labeled and tagged as required by the regulations adopted by the Commissioner of Agriculture, Commerce and Industries, he shall be guilty of a misdemeanor, and, on conviction, be fined not exceeding three hundred (\$300) dollars, and the said oils and fluids be forfeited and sold, and the proceeds thereof go to the common school fund of the State. If any manufacturer or dealer of said gasoline, illuminating or heating fluids shall, with intent to deceive or defraud, alter or erase the label or tag to indicate a different flash test, gravity or quantity, than is indicated by the label or stamp attached to the vessel, he shall, on conviction, be fined not exceeding fifty (\$50) dollars for every such offense.

1913, XXVIII, 204.

(3494) § 10. Inspectors Not to Be Interested in Products Sold.—Any inspector who, while in office, shall be interested, directly or indirectly, in the manufacture or vending of any of the gasoline, illuminating or heating oils, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than three hundred (\$300) dollars.

1913, XXVIII, 204.

(3495) § 11. Fines—How Recovered.—All prosecutions for fines and penalties under the provisions of this Article shall be by indictment in a Court of competent jurisdiction.

1913, XXVIII, 204.

(3496) § 12. Exceptions.—The provisions of this Article shall not apply to the retail dealer in oils, unless such retail dealer shall sell or offer

to sell oils of a manufacturer, wholesaler or jobber who refuses to comply with the provisions of this Article.

1913, XXVIII, 204.

ARTICLE X.

Concentrated Commercial Feeding Stuffs.

(3497) § 1. **Concentrated Animal Food to Contain Statement of Contents.**—Every lot or parcel of concentrated commercial feeding stuff, sold, offered or exposed for sale within this State shall have affixed thereto, or printed thereon in a conspicuous place on the outside thereof, a legible and plainly printed statement, in the English language, clearly and truly certifying the weight of the package (provided that all concentrated commercial feeding stuffs shall be in standard weight bags or packages of 25, 50, 75, 100, 125, 150, 175 or 200 pounds); the name, brand or trade-mark under which the article is sold; the name and address of the manufacturer, jobber or importer; the names of each and all ingredients of which the article is composed; a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein, and the percentage of carbohydrates, allowing one per cent. of nitrogen to equal six and one-fourth per cent. of protein; all four constituents to be determined by the methods in use at the time by the association of official agricultural chemists of the United States.

Civ. '12, § 2420; 1910, XXVI, 613.

(3498) § 2. **What Included in "Concentrated Commercial Feeding Stuffs."**—The term "concentrated commercial feeding stuffs" shall be held to include all feeds used for live stock and poultry, except whole hays, straw, cotton seed hulls and corn stover, when the same are not mixed with other materials; nor shall it apply to the unmixed whole seeds or grains of cereals when not mixed with other materials, and when not in damaged condition as determined by inspection to be unfit for feed purposes, mixed or unmixed.

Civ. '12, § 2421; 1910, XXVI, 613.

(3499) § 3. **Statement to Be Filed With Commissioner of Agriculture, Commerce and Industries.**—Each and every manufacturer, importer, jobber, agent or seller, before selling, offering or exposing for sale in this State any concentrated commercial feeding stuff, shall, for each and every feeding stuff bearing a distinguished name or trade-mark, file for registration with the Commissioner of Agriculture, Commerce and Industries a copy of the statement required in Section 1, and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentage of crude protein, crude fat, crude fiber and carbohydrates which it contains.

Civ. '12, § 2422; 1910, XXVI, 613.

(3500) § 4. If Manufacturer Files Statement the Seller Need Not.—

Whenever a manufacturer, importer or jobber of any concentrated commercial feeding stuff shall have filed a statement, as required by Section 3, no agent or seller of such manufacturer, importer or jobber shall be required to file such statement.

Civ. '12, § 2423; 1910, XXVI, 613.

(3501) § 5. Commissioner May Refuse Registration.—The Commissioner of Agriculture, Commerce and Industries shall have power to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is composed or when the names of each and all ingredients of which it is composed are not stated. Should any concentrated commercial feeding stuffs be registered and it is afterwards discovered that they are in violation of any of the provisions of this Article, the Commissioner of Agriculture, Commerce and Industries shall have the power to cancel such registration.

Civ. '12, § 2424; 1910, XXVI, 613.

(3502) § 6. Concentrated Commercial Feedstuff—Inspection Tax Stamp Sales in Bulk Regulated—Stamp—Exception as to Tax Stamps Redeemed—No Restriction of Sales Between Importers and Manipulators Except Tag, Etc.—Commissioner of Agriculture to Prescribe Form of Stamps.—

Each and every manufacturer, importer, jobber, agent or seller of any concentrated commercial feeding stuff, as defined in Section 2, shall pay to the Commissioner of Agriculture, Commerce and Industries, who shall deposit same in the State Treasury on or before the tenth day of each month, as other funds, an inspection tax of 25 cents per ton for each ton of such commercial feeding stuff sold, offered or exposed for sale or distributed in this State, and shall affix to, or accompany each car shipped in bulk and to each bag, barrel or other package of such concentrated commercial feeding stuff, a stamp to be furnished by the Commissioner of Agriculture, Commerce and Industries, stating that all charges specified in this Section have been paid: *Provided*, Whenever any concentrated commercial feeding stuff, as defined in Section 2, is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement or statements in Section 1 is, or are, plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber or importer shall furnish the purchaser with one of said cards, upon which is, or are, printed the statement, or statements, described in this Section, together with sufficient tax stamps to cover same: *Provided*, That the inspection tax of 25 cents per ton shall not apply to whole seeds and grains when not mixed with other seeds or materials: *Provided, further*, That upon demand, said inspection stamps shall be redeemed by the department issuing said stamps upon surrender of same, accompanied by an affidavit that the same have not been used: *Provided*, That nothing in this Article shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers or manipulators who mix concentrated commercial feeding stuff for sale; but importers, manufacturers and manipulators

shall attach to such feeding stuff a tax stating that it is to be used for mixing purposes only, and this tag shall give the number of pounds in bulk or package, the name of the manufacturer, the name of the stuff and its analysis, showing crude protein, crude fat, crude fiber and carbohydrates; and a duplicate of said tax shall be sent to the Commissioner of Agriculture, Commerce and Industries, together with a request for inspection. The Commissioner of Agriculture, Commerce and Industries is hereby empowered to prescribe the form of such tax stamps.

Civ. '12, § 2425; 1910, XXVI, 613; 1915, XXIX, 142.

(3503) § 7. Penalty for Violation of Provisions. — Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale or distribution in this State any concentrated commercial feeding stuff, as defined in Section 2, without complying with the requirements of the preceding Sections of this Article, or who shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuffs which contain substantially a smaller percentage of crude protein or crude fat or carbohydrates or a larger percentage of crude fiber than certified to be contained or who shall mix or adulterate any concentrated commercial feeding stuffs with foreign, mineral or other substance or substances, such as rice chaff or hulls, peanut shells, ground or crushed corn cobs, oat hulls or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, or who shall sell, offer or expose for sale any concentrated commercial feeding stuffs so mixed or adulterated shall be guilty of a violation of this Article, and the lot of feeding stuffs in question shall be seized and condemned, sold or destroyed by the Commissioner of Agriculture, Commerce and Industries, or his duly authorized representative, and the proceeds from said sales shall be covered into the State Treasury for the use of the department executing the provisions of this Article. Such seizure and sale shall be made by the Commissioner of Agriculture, Commerce and Industries, or under the direction of an officer of his appointment. The sale shall be made at the Court House door in the county in which the seizure is made: *Provided*, That whenever for sufficient reasons appearing to the Commissioner of Agriculture, Commerce and Industries or his representative aforesaid, another place of sale is more convenient and more desirable, such place of sale may be selected. The sale shall be advertised for thirty days in a newspaper published in the county in which seizure is made, or if no newspaper be published in such county, then it shall be advertised in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the brand or name of the goods, the quantity and why seized and offered for sale, and must show the time and place of sale. The Commissioner of Agriculture, Commerce and Industries, however, may, in his discretion, release the feeding stuffs so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all the costs or expenses incurred in any proceeding connected with such seizure and withdrawal.

Civ. '12, § 2426; 1910, XXVI, 613.

(3504) § 8. Commissioner May Suspend Sales. — If at any time the Commissioner of Agriculture, Commerce and Industries, or his duly author-

ized representative, shall have reason to believe that any feeding stuff offered or exposed for sale in this State does not comply with the requirements of this Article as to the ingredients or substances of the same, it shall be his duty by written order to suspend the sale of the same until he shall have satisfied himself, or shall be satisfied by an analysis, or otherwise, that such feeding stuff is made up or compounded as required by this Article. If he shall find that the same does not comply with this Article, then he is authorized to proceed with regard to the same as provided in Section 7.

Civ. '12, § 2427; 1910, XXVI, 613.

(3505) § 9. Commissioner May Inspect and Take Samples Wherever Found.—The Commissioner of Agriculture, Commerce and Industries, together with his deputies, agents and assistants, shall have free access to all places of business, mills, buildings, vehicles, cars, vessels and packages of whatsoever kind used in the manufacture, importation or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff; and upon tender and full payment of the selling price of said samples, take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually caused to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold or offered or exposed for sale in this State under the provisions of this Article. Said samples, not less than one pound in weight, shall be taken from not less than ten bags or packages, or, if there be less than ten bags or packages, then the samples shall be taken from each bag or package, if it be in bag or package form, or, if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot. The Commissioner of Agriculture, Commerce and Industries is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise: *Provided, however*, That if such a sample or samples as analyzed by the Commissioner of Agriculture, Commerce and Industries differ from the statement prescribed in Section 1, then, at least thirty days before publishing the results of such analysis, the Commissioner of Agriculture, Commerce and Industries shall give written notice of such results to the manufacturer, importer, agent or jobber of such stock, if the name and address of such manufacturer, jobber or importer be known: *Provided, further*, That if the analysis of any such sample does not differ substantially from the statement prescribed in Section 1, appearing upon the goods, the manufacturer may be considered as having complied with the requirement of this Article.

Civ. '12, § 2428; 1910, XXVI, 613.

(3506) § 10. Commissioner to Publish Regulations.—The Commissioner of Agriculture, Commerce and Industries shall from time to time prescribe and publish rules and regulations for carrying out the provisions of this Article:

Civ. '12, § 2429; 1910, XXVI, 613.

(3507) § 11. Prescribing Rules and Regulations as to Grading.—The Commissioner of Agriculture, Commerce and Industries is authorized to prescribe rules and regulations governing the grading of any and all concentrated commercial feeding stuffs defined in Section 2.

Civ. '12, § 2430; 1910, XXVI, 613.

(3508) § 12. Commissioner to Notify Dealer and Solicitor.—Whenever the Commissioner of Agriculture, Commerce and Industries, or his duly authorized representative, becomes cognizant of any violations of the provisions of this Article, he shall immediately notify in writing the manufacturer, importer, jobber or dealer, if same be known, and after thirty days he shall notify the Circuit Solicitor, who shall cause such person or persons so violating this Article to be prosecuted in the manner required by law.

Civ. '12, § 2431; 1910, XXVI, 613.

(3509) § 13. Appropriation for Enforcing Provisions of This Article—Payment of Expenses.—There is hereby appropriated for the purpose of enforcing the provisions of this Article a sum not exceeding the amount of fees and fines collected, and moneys or proceeds derived from the seizure and sale of feeding stuffs under its provisions. Such expenses shall be paid by warrant of the Comptroller General, upon itemized bills filed by the Commissioner of Agriculture, Commerce and Industries. All fees collected under the provisions of this Article shall be paid into the State Treasury on or before the tenth day of each month.

Civ. '12, § 2432; 1910, XXVI, 613; 1915, XXIX, 142.

(3510) § 14. Analysts and Inspectors.—The Commissioner of Agriculture, Commerce and Industries shall appoint such analysts, chemists and inspectors as may be required to carry out the provisions of this Article, and any part of the labor of analysts and chemists, upon request of the Commissioner of Agriculture, Commerce and Industries, shall be performed by the South Carolina Experiment Station, with such compensation therefor as may be approved by the said Commissioner of Agriculture, Commerce and Industries. Such inspectors shall also assist in the enforcement of the Pure Food and Drug Law of the State.

Civ. '12, § 2433; 1910, XXVI, 613.

(3511) § 15. Ingredients of Mixed Feeds to Be Shown in Addition to Analysis.—That in addition to the analysis now required by law on all mixed feed sold within the State, or rules of the Commissioner of Agriculture, Commerce and Industries, there shall be included in such analysis a showing in full of each ingredient contained therein.

1920, XXXI, 1107.

(3512) § 16. Penalty for Violation.—Any violation of the provisions of the preceding Section shall subject the offender to the same penalty now provided by law in case of failure to attach the analysis hereinbefore required.

1920, XXXI, 1107.

ARTICLE XI.**Sale of Poultry Preparations Regulated.**

(3513) § 1. **Sale of Patent Poultry Preparations, Etc., Regulated.**—That before any condimental patented, proprietary or trade-marked “stock or poultry tonic,” “stock or poultry regulator,” “stock or poultry conditioner,” “stock or poultry remedy,” or any similar preparation, regardless of the specific name or title under which it is sold, which is represented as containing “tonic,” “remedial” or other “medicinal” properties, either is sold, offered or exposed for sale in the State, the manufacturer, importer, dealer, agent or person who causes it to be sold or offered for sale, by sample or otherwise, within this State, shall file with the Commissioner of Agriculture, Commerce and Industries a statement that he desires to offer such “stock or poultry tonic,” “stock or poultry regulator,” “stock or poultry conditioner,” “stock or poultry remedy,” or similar preparation for sale in this State, and also a certificate, the execution of which shall be sworn to before a Notary Public or other proper official, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, and the name, brand or trade-mark under which the said preparation or preparations will be sold, together with the guaranty that said preparation or preparations are not injurious to the health of domestic animals and that they do not conflict with the drug requirements of the South Carolina Pure Food and Drug Act, and that the name or trade-mark under which the article is sold shall not mislead or deceive the purchaser in any way; also, that any statement, design or device on the label or package regarding the substances contained therein shall be true and correct, and any claim made for the feeding, condimental, tonic or medicinal value shall not be false or misleading in any particular, and file with the Commissioner of Agriculture, Commerce and Industries, a labeled package of each brand of goods, showing claims made for same, which labeling and claims shall not be changed during the fiscal year for which registration is made without the consent of the Commissioner of Agriculture, Commerce and Industries.

1914, XXVIII, 700.

(3514) § 2. **Registration Fee.**—For the expense incurred in registering, inspecting and analyzing “stock or poultry tonics,” “stock or poultry regulators,” “stock or poultry conditioners,” “stock or poultry remedies” and similar preparations defined in Section 1, a registration fee of ten (\$10) dollars for each separate brand, or in lieu thereof a maximum fee of fifty (\$50) dollars per annum covering all brands made by a single manufacturer, shall be paid by the manufacturers or sellers of same to the Commissioner of Agriculture, Commerce and Industries during the month of July, one thousand nine hundred and thirteen, and during the month of January in each succeeding year, said fees to be used by the Commissioner of Agriculture, Commerce and Industries for executing the provisions of this Article.

1914, XXVIII, 700.

(3515) § 3. **Penalty.**—Any person, company, corporation, or agent that shall offer for sale or expose for sale any package or sample or any

quantity of condimental, patented, proprietary or trade-marked "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," "stock or poultry remedy," or any similar preparation, regardless of the title under which it is sold, which has not been registered, but subsequently found by an analysis or examination made by or under the direction of the Commissioner of Agriculture, Commerce and Industries to violate any of the provisions of this Article, or to contain harmful or injurious substances, or to be labeled with false or misleading statements regarding the contents or curative properties of said "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," "stock or poultry remedy," or any similar preparation, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in the sum of fifty (\$50) dollars for the first offense and in the sum of one hundred (\$100) dollars for each subsequent offense.

1914, XXVIII, 700.

(3516) § 4. Commissioner of Agriculture to Enforce Law.—Whenever the Commissioner of Agriculture, Commerce and Industries becomes cognizant of any violation of any of the provisions of this Article he shall immediately notify, in writing, the manufacturer, importer, jobber or dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the Commissioner of Agriculture, Commerce and Industries; and if it appears that any of the provisions of this Article have been violated the Commissioner of Agriculture, Commerce and Industries shall certify the facts to the Solicitor in the district in which said sample was obtained, and furnish that officer with a copy of the result of the analysis or other examination of the said article, duly authenticated by the analyst or other officer making such examination under the oath of such officer. In all prosecutions arising under this Article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be *prima facie* evidence of the fact or facts therein certified.

1914, XXVIII, 700.

(3517) § 5. Solicitors to Prosecute.—That it shall be the duty of every Solicitor to whom the Commissioner of Agriculture, Commerce and Industries shall report any violation of this Article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed.

1914, XXVIII, 700.

(3518) § 6. Condimental Feedstuffs Fund — Commissioner of Agriculture.—All moneys, including fines received under the provisions of this Article, shall be paid into the State Treasury on or before the tenth day of each month as other funds and kept as a distinct fund, to be styled the "Condimental Feedstuffs Fund." The Commissioner of Agriculture, Commerce and Industries is authorized to draw out of said fund, upon his warrants, such sums as may be necessary to pay all expenses incurred in connection with this Article, and he shall include in his report to the

General Assembly an account of the operations and expenses under this Article.

1914, XXVIII, 700; 1915, XXIX, 155.

(3519) § 7. Not in Conflict With Feedstuffs Law.—This Article does not repeal any part of any concentrated commercial feeding stuff law which may be in effect in this State, but it is designed to fully cover all preparations commonly known as condimental, patented, proprietary or trade-marked “stock or poultry tonic,” “stock or poultry regulators,” “stock or poultry conditioners,” “stock or poultry remedies,” and all similar preparations used for “tonic,” “regulative,” “remedial” or “condition” purposes, and to protect the public from deception and fraud in the sale of these specific products.

1914, XXVIII, 700.

ARTICLE XII.

Sale of Commercial Disinfectants Regulated.

(3520) § 1. Marking of Commercial Disinfectants.—That no commercial disinfectant, by its nature subject to the test hereinafter provided, be sold or offered for sale in South Carolina unless it have, plainly stamped upon the container, the coefficient strength as compared with pure phenol, the said coefficient to be determined by the method employed by the Hygienic Laboratory of the United States Public Health Service, or the Redial Walker Method.

1919, XXXI, 114; 1920, XXXI, 1121.

(3521) § 2. Certificate and Sample to Be Filed With Commissioner of Agriculture, Etc.—That before any commercial disinfectant either is sold, offered or exposed for sale in the State, the manufacturer, importer, dealer, agent or person who causes it to be sold or offered for sale, by sample or otherwise, within this State shall file with the Commissioner of Agriculture, Commerce and Industries a statement that he desires to offer such commercial disinfectants for sale in this State, and also a certificate, the execution of which shall be sworn to before a Notary Public or other proper official for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, and the name, brand or trade-mark under which the said preparation or preparations will be sold, together with the guaranty and that preparation or preparations meet the requirements of this Article, and that the name or trade-mark under which the article is sold shall not mislead or deceive the purchaser in any way; also, that any statement, design or device on the label or package regarding the substance therein shall be true and correct, and any claim made for the article shall not be false or misleading in any particular, and file with the Commissioner of Agriculture, Commerce and Industries a labeled package of each brand of goods, showing claims made for same, which labeling and claim shall not be changed during the fiscal year for which registration is made without the consent of the Commissioner of Agriculture, Commerce and Industries.

1919, XXXI, 114.

(3522) § 3. Fees.—For the expense incurred in registering, inspecting and analyzing commercial disinfectants, a registration fee of ten (\$10) dollars for each separate brand, or in lieu thereof a maximum fee of fifty (\$50) dollars per annum, covering all brands made by a single manufacturer, shall be paid by the manufacturer or seller of same to the Commissioner of Agriculture, Commerce and Industries during the month of July, one thousand nine hundred and nineteen, and during the month of January in each succeeding year, said fees to be used by the Commissioner of Agriculture, Commerce and Industries for executing the provisions of this Article.

1919, XXXI, 114.

(3523) § 4. Sale, Etc., of Unregistered Disinfectants a Misdemeanor—Penalty.—Any person, company, corporation or agent that shall offer for sale or expose for sale any package or sample or any quantity of any commercial disinfectant, or any similar preparation, regardless of the title under which it is sold, which has not been registered, but subsequently found by an analysis or examination made by or under the direction of the Commissioner of Agriculture, Commerce and Industries to violate any of the provisions of this Article, or to contain harmful or injurious substances, or to be labeled with false or misleading statements regarding contents thereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in the sum of fifty (\$50) dollars for the first offense and in the sum of one hundred (\$100) dollars for each subsequent offense.

1919, XXXI, 114.

(3524) § 5. Procedure Upon Violation of Article.—Whenever the Commissioner of Agriculture, Commerce and Industries becomes cognizant of any violation of any of the provisions of this Article he shall immediately by written order suspend the sale of the goods and notify, in writing, the manufacturer, importer, jobber or dealer, if the same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the Commissioner of Agriculture, Commerce and Industries; and if it appears that any of the provisions of this Article have been violated, the Commissioner of Agriculture, Commerce and Industries shall confiscate and destroy the goods, and certify the fact to the Solicitor in the district in which said sample was obtained, and furnish that officer with a copy of the results of the analysis or other examination of the said article, duly authenticated by the analyst or other officer making such examination under the oath of such officer. In all prosecutions arising under this Act the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be *prima facie* evidence of the fact or facts therein certified.

1919, XXXI, 114.

(3525) § 6. Solicitors to Prosecute.—That it shall be the duty of every Solicitor to whom the Commissioner of Agriculture, Commerce and Industries shall report any violation of this Article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed.

1919, XXXI, 114.

(3526) § 7. Disposition of Moneys Received.—All moneys, including fines received under the provisions of this Article, shall be kept as a distinct fund, to be styled the "Commercial Disinfectant Fund," to be paid into the State Treasury at the end of each month; all checks or orders in payment for registration fees under this Article shall be made payable to the Commissioner of Agriculture, Commerce and Industries, who is authorized to draw out of said funds upon his warrant such sums as may be necessary to pay all expenses incurred in connection with this Article, and he shall include in his report to the General Assembly an account of the operation and expenses under this Article.

1919, XXXI, 114.

ARTICLE XIII.

Regulation of Sale of Entire Stock in Trade.

(3527) § 1. Conditions Under Which Mercantile Business May Be Sold Out—Schedule—Notice—Fraud.—It shall be unlawful for any merchant or corporation engaged in the buying and selling of merchandise, while he or it is indebted to any person or corporation, to sell his or its entire stock of merchandise in bulk, or to sell the major portion thereof, otherwise than in the ordinary course of trade, in the regular and usual prosecution of the seller's business, and with the intention of ceasing to conduct said business, in the same manner and at the same place as he or it has heretofore conducted the same, without first making a full and complete inventory of the merchandise so proposed to be sold, in which inventory the values shall be extended at the ruling wholesale price thereof; and without further making a full, true and correct schedule of all persons or corporations to whom he or it is indebted, stating therein the postoffice address of each of said creditors, and the amount owing to each of them; to which inventory and schedule there shall be attached the oath of the seller that the same is true and correct; or if the seller shall assert that he or it is not indebted to any person or corporation, he or it shall make affidavit to that effect and deliver the same to the purchaser, with the inventory, as hereinafter provided. The seller shall deliver said inventory and schedule to the proposed purchaser, and shall retain exact copies thereof in his or its own possession; the seller and the purchaser shall each preserve such inventory, schedule and affidavit for the period of six months after such sale and purchase, and the same shall be open to the inspection of the creditors of the seller. Ten days before such sale shall be consummated, and before the purchaser take possession of the merchandise so proposed to be sold, the seller and proposed purchaser shall join in giving written or printed notice of the proposed sale and purchase of such merchandise to each of the creditors named in such schedule; such notice may be delivered in person to such creditors, or transmitted to them by registered letter through the United States mail, by being deposited in the United States postoffice at the place where the seller has heretofore conducted business or nearest thereto, properly addressed to the respective creditors at the postoffice address given in such schedule, with proper postage affixed: such notice shall state the aggre-

gate value of the merchandise proposed to be sold as shown by such inventory, the consideration to be paid therefor, and the time and manner of making such payment. If said seller shall fail to make such inventory of such merchandise, or if such inventory shall fail to state the true value of said goods as above required, or if said seller shall fail to make such true schedule of creditors as hereinafter provided, and the purchaser shall have knowledge of that fact, or in event the seller shall assert that there are no debts against him or it, if the purchaser shall fail to require the affidavit above provided, or if the seller and purchaser shall fail to give each of said creditors named in said schedule the notice above required in the manner above provided, or if such notice shall not correctly state the amount of such merchandise proposed to be sold, and the consideration to be paid therefor, and the time and manner of making the same, then and in either of such events such sale shall *prima facie* be presumed to be fraudulent and void as against the creditors of such seller, and the merchandise in the hands of the purchaser, or any part thereof, if it shall be found in his or its hands, shall be liable to such creditors, and in the event the same, or any part thereof, shall be withdrawn by said purchaser, then the purchaser himself or itself personally shall also be liable to said creditors of such seller to the extent of the value of the merchandise so received by him or it and thus withdrawn.

Civ. '12, § 2434; 1906, XXV, 1.

National City Bank v. Huey & Martin Drug Co. et al, 113 S. C. 333, 102 S. E. 516; Summerton Live Stock Co. v. Cleveland Mfg. Co. et al, 114 S. C. 186, 103 S. E. 516.

(3528) § 2. Mailing Conclusive Presumption of Notice.—Whenever a notice, as provided in Section 1, is sent by registered mail, the creditor or person to whom the notice is mailed shall be presumed conclusively to have received the notice, and the time of the notice shall be dated from the time of the mailing and registration, or actual service of said notice.

Civ. '12, § 2435; 1906, XXV, 1.

(3529) § 3. Not to Affect Rules of Evidence.—Except as expressly provided in the preceding Sections, nothing therein contained, nor any act thereunder, shall change or affect the present rules of evidence or the present presumption of law.

Civ. '12, § 2436; 1906, XXV, 1.

National City Bank v. Huey & Martin Drug Co. et al, 113 S. C. 333, 102 S. E. 516.

ARTICLE XIV.

Trusts, Pools and Monopolies.

(3530) § 1. Trusts and Combinations Declared Against Public Policy.—All arrangements, contracts, agreements, trusts or combinations between two or more persons as individuals, firms or corporations, made with a view to lessen, or which tends to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or con-

trol the price or the cost to the producer or to the consumer of any such product or article, and all arrangements, contracts, trusts, syndicates, associations or combinations between two or more persons as individuals, firms, corporations, syndicates or associations, that may lessen or affect in any manner the full and free competition in any tariff, rates, tolls, premium or prices in any branch of trade, business or commerce, are hereby declared to be against public policy, unlawful and void.

Civ. '12, § 2437; Civ. '02, § 2845; 1897, XXII, 434.

Constitutional; complaint under. *State v. Virginia-Carolina Chemical Co.*, 71 S. C. 544, 51 S. E. 455. Contracts giving sole right to sell goods in designated territory is not illegal. Statute construed. *Mowing Co. v. Hardware Co.*, 75 S. C. 378, 55 S. E. 978, 9 Am. & Eng. Ann. Cas. 902, 9 L. R. A., N. S., 501n. Contract void as against. *Packard & Fieds v. Byrd*, 73 S. C. 1, 51 S. E. 678, 6 L. R. A., N. S., 547n.

Seller may recover for goods sold under agreement, void hereunder, if it is not necessary to his case without relying upon illegal part of contract. Separable contracts defined. *Packard v. Byrd*, 73 S. C. 1, 51 S. E. 678, 6 L. R. A., N. S., 547n.

(3531) § 2. Charter of Corporation Violating This Article to Be Forfeited—How.—Whenever complaint is made upon sufficient affidavit or affidavits showing a *prima facie* case of violation of the provisions of Section 1 by any corporation, domestic or foreign, it shall be the duty of the Attorney General to begin an action against such domestic corporation to forfeit its charter; and for the purpose of such forfeiture he shall apply to any Court of competent jurisdiction for an order restraining such offending corporation, and in cases where in his discretion it is necessary, for the immediate appointment of a receiver for such offending corporation where such forfeiture affects a creditor or creditors of such offending company; and in case such violation shall be established the Court shall adjudge the charter of such corporation to be forfeited, and such corporation shall be dissolved, and its charter shall cease and determine; and in the case of such showing as to a foreign corporation an action shall be begun by the Attorney General in said Court against such corporation to determine the truth of such charge; and in case such charge shall be considered established, the effect of the judgment of the Court shall be to deny to such corporation the recognition of its corporate existence in any Court of law or equity in this State. But nothing in this Section shall be construed to affect any right of action then existing against such corporation.

Civ. '12, § 2438; Civ. '02, § 2846; 1897, XXII, 434; 1902, XXIII, 569.

(3532) § 3. Injured Party May Recover Damages.—Any person or persons or corporations that may be injured or damaged by any such arrangement, contract, agreement, trust or combination described in Section 1 may sue for and recover, in any Court of competent jurisdiction in this State, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust.

Civ. '12, § 2439; Civ. '02, § 2847; 1897, XXII, 434.

ALL PERSONS COMPELLED TO TESTIFY.—Any and all persons may be compelled to testify in any action or prosecution under Sections 1 to 3 inclusive: *Provided*, That such testimony shall not be used in any other action or prosecution against such witness or witnesses, and such witness

or witnesses shall forever be exempt from any prosecution for the act or acts concerning which he or they testify.

Civ. '12, § 2439; Civ. '02, § 2847; 1897, XXII, 434.

(3533) § 4. Rights and Remedies of Employees of Street Railways.—Every employee of any street railway doing business in this State shall have the same rights and remedies for an injury suffered by any person from the acts of omission of said corporation, or its employees, as are provided by the Constitution for employees of Railroad Corporations.

Civ. '12, § 2440; Civ. '02, § 2848; 1901, XXIII, 716.

See Constitution, Art. IX, § 15.

(3534) § 5. Conspiracies in Restraint of Trade Prohibited.—Any corporation organized under the laws of this or any other State or country, and transacting or conducting any kind of business in this State, or any partnership or individual, or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and to be subject to the penalties as provided by this Article.

Civ. '12, § 2441; 1902, XXIII, 1057.

(3535) § 6. Monopolies Defined.—A "monopoly" is any union, or combination, or consolidation, or affiliation of capital, credit, property, assets, trade, custom, skill or acts, or any other valuable thing or possession, by or between persons, firms or corporations, or associations of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this Article is accomplished, or sought to be accomplished, or whereby any one or more of said purposes are promoted, or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a "monopoly" as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom trade, or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation, or an incorporated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisi-

tion or control of shares or certificates of stocks or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies, are especially declared to constitute monopolies, within the meaning of this Article, if so created or entered into for any one or more of the purposes named in this Article; and a "monopoly," as defined in this Section, is hereby declared to be unlawful and against public policy; and any and all persons, firms, corporations or associations of persons engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this Article.

Civ. '12, § 2442; 1902, XXIII, 1057.

(3536) § 7. Unlawful to Discriminate Unfairly to Destroy Competitor's Business.—Any person, firm, company, association, or corporation, foreign or domestic, doing business in the State of South Carolina, and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities or cities of this State, by selling such commodity at a lower rate in one section, community, or city than is charged for said commodity by said party in another section, community, or city, after making due allowance for the difference, if any, in the grade or quality or quantity, and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

Civ. '12, § 2443; 1909, XXVI, 19.

(3537) § 8. Penalty for Violation of Preceding Section.—Any person, firm, company, association, or corporation violating any of the provisions of this Article, and any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same, or any individual guilty of a violation thereof, shall be liable for a penalty of not less than five hundred dollars (\$500), nor more than five thousand dollars (\$5,000), to be recovered at the suit of the State in the Court of Common Pleas of any county in the State; the Attorney General may allow one-half of the penalties herein provided to anyone who may conduct the suit.

Civ. '12, § 2444; 1909, XXVI, 19.

(3538) § 9. Validity of Trust Agreements.—All contracts or agreements made in violation of any of the provisions of this Article shall be void.

Civ. '12, § 2445; 1909, XXVI, 19.

(3539) § 10. Attorney General to Enforce Law.—It shall be the duty of the Attorney General to enforce the provisions of this Article by appropriate actions in Courts of competent jurisdiction.

Civ. '12, § 2446; 1909, XXVI, 19.

(3540) § 11. Duty of Secretary of State.—If complaint shall be made to the Secretary of State that any corporation authorized to do business in

this State is guilty of unfair discrimination within the terms of this Article, it shall be the duty of the Secretary of State to refer the matter to the Attorney General, who may, if the facts justify it, in his judgment, institute proceedings in the Courts against such corporation.

Civ. '12, § 2447; 1909, XXVI, 19.

(3541) § 12. Charter of Guilty Corporation to Be Revoked.—If any corporation, foreign or domestic, authorized to do business in this State, is found guilty of unfair discrimination, within the terms of this Article, it shall be the duty of the Secretary of State to immediately revoke the permit of such corporation to do business in this State.

Civ. '12, § 2448; 1909, XXVI, 19.

(3542) § 13. Duty of Attorney General in Case of Continued Violation.—If, after revocation of its permit, such corporation, or any other corporation not having a permit and found guilty of having violated any of the provisions of this Article, shall continue or attempt to do business in this State, it shall be the duty of the Attorney General, by a proper suit in the name of the State of South Carolina, to oust such corporation from all business of every kind and character in this State.

Civ. '12, § 2449; 1909, XXVI, 19.

(3543) § 14. Other Law Not Repealed.—Nothing in this Article shall be construed as repealing any other laws, or parts of laws, but the remedies herein provided shall be cumulative to all other remedies provided by law.

Civ. '12, § 2450; 1909, XXVI, 19.

(3544) § 15. Sales at Less Than Cost of Manufacture, for Purpose of Injuring Competitors, Prohibited.—If any person, persons, company, partnership, association or corporation engaged in the manufacture or sale of any article of commerce or consumption from the raw material produced or mined in this State shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell at less than the cost of manufacture, or give away their manufactured products, for the purpose of driving out competition or financially injuring competitors engaged in the manufacture and refining of raw material in this State, said person, persons, company, partnership, association or corporation resorting to this method of securing a monopoly in the manufacture, refining and sale of the finished product produced or mined in this State, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and, on conviction, shall be subject to the penalties of this Act.

Civ. '12, § 2451; 1902, XXIII, 1057.

(3545) § 16. Penalty for Violation of Article.—Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this Article, shall forfeit not less than two hundred dollars, nor more than five thousand dollars, for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to

be recovered by an action in the name of the State, at the relation of the Attorney General or the Solicitor of the Judicial Circuit within which the offense was committed; the moneys thus collected to go into the State Treasury, and to become a part of the general fund except as hereinafter provided. The amount of the forfeit to be fixed by the Judge before whom the case is tried in each case, within the aforesaid limits; the collection of which penalty shall be enforced as the collections of fines against defendants upon conviction of a misdemeanor.

Civ. '12, § 2452; 1902, XXIII, 1057.

(3546) § 17. Conspiracy to Defraud by Boycott, Etc., Limiting Competition in Trade.—If any two or more persons or corporations, who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding, any such article or thing aforesaid, it shall be a violation of this Article; and any person, firm, corporation or association of persons committing such violation shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this Article.

Civ. '12, § 2453; 1902, XXIII, 1057.

(3547) § 18. Forfeiture of Corporate Franchise or Right to Do Business.—Any corporation created or organized by or under the laws of this State which shall violate any of the provisions of the preceding Sections of this Article shall hereby forfeit its corporate rights and franchises; and its corporate existence shall, upon the proper proof being made thereof in any Court of competent jurisdiction in the State, be by the Court declared forfeited, void and of none effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other State or country which shall violate any of the provisions of the preceding Sections of this Article shall thereby forfeit its right and privilege thereafter to do any business in this State; and upon proper proof being made thereof in any Court of competent jurisdiction in this State, its rights and privileges to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this State has been, while acting as such agent and in the name, behalf or interest of such foreign corporation, violating any provisions of the preceding Sections of this Article, shall be received as *prima facie*

proof of the act of the corporation itself; and it shall be the duty of the Clerk of said Court to certify the decree thereof to the Secretary of State. Civ. '12, § 2454; 1902, XXIII, 1057.

(3548) § 19. Duty of Attorney General and Solicitors to Prosecute.—

It shall be the duty of the Attorney General and the prosecuting attorney of each Circuit where the offense is committed, respectively, to enforce the provisions of this Article. The prosecuting attorney or Solicitor shall institute and conduct all suits begun in the Circuit Courts, and upon appeal the Attorney General shall prosecute said suits in the Supreme Court.

Civ. '12, § 2455; 1902, XXIII, 1057.

(3549) § 20. Provisions of Article Cumulative.—The provisions of the foregoing Sections, and the pains and penalties provided for violations of this Article shall be held and construed to be cumulative to all laws now in force in this State: *And provided*, That the provisions of this Article shall not exempt from punishment or forfeiture any person, firm, association of persons or corporations who may have violated or offended against any law now in existence that may be or may be construed to be repealed by this Article or in conflict herewith: *And provided, further*, That nothing in this Article shall be deemed or construed to affect any suits or prosecutions now pending or hereafter to be instituted upon any course of action, forfeiture or penalty accruing or to accrue prior to the date of the taking effect of this Article, but all such rights to maintain, institute or prosecute all such causes of action are hereby reserved to the State in the same manner and with the same effect as if this law had not been passed.

Civ. '12, § 2456; 1902, XXIII, 1057.

(3550) § 21. Proceedings for Discovery in Aid of Actions to Enforce Antitrust Laws.—Whenever the Attorney General has determined to commence an action or proceeding, under the Act entitled "An Act to prohibit trusts and combinations and to provide penalties," or any Acts amendatory thereto, or any Acts now or hereafter of force, relating to the prohibition or prevention of trusts, combinations or monopolies, or against corporations, foreign or domestic, for any violation of any Acts now or hereafter of force of this State, he may present to any Justice of the Supreme Court, or any Circuit Judge, either before or after beginning such action or proceeding, an application in writing for an order directing the persons mentioned in the application to appear before a Justice of the Supreme Court, a Circuit Judge, or a referee designated in such order, and answer such questions as may be put to them or to any of them, and produce such papers, documents and books concerning any alleged illegal contract, arrangement, agreement, trust, monopoly, or combination or corporate acts in violation of law; and it shall be the duty of the Justice of the Supreme Court, or the Circuit Judge, to whom such application for the order is made, to grant such application. The application upon the proper showing of the necessity of such showing for such order made by the Attorney General must show upon information and belief, or otherwise, that the testimony of such person or persons is material and necessary. The order shall be granted by the Justice of the Supreme Court, or the

Circuit Judge, to whom the application has been made, with such preliminary injunction or stay as may appear to such Justice or Circuit Judge to be proper and expedient, and shall specify the time when, and place where, the witnesses are required to appear, and such examination shall be held either in the city of Columbia or in the judicial district in which the witness resides, or in which the principal office, within this State, of the corporation affected is located. The Justice, Judge or referee may adjourn such examination from time to time, and witnesses must attend accordingly. The testimony of each witness must be subscribed by him, except in case the testimony be taken and subscribed by a sworn stenographer, and all such testimony must be filed in the office of the Clerk of the county in which such order for examination is filed.

Civ. '12, § 2457; 1902, XXIII, 1061.

(3551) § 22. Service of Order on Witness — Endorsement — Subpœna Duces Tecum.—The order for such examination must be signed by the Justice or Judge making it, and the service of a copy thereof, with an endorsement by the Attorney General, signed by him, to the effect that the person named therein is required to appear and be examined at the time and place, and before the Justice, Circuit Judge or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession, or under his control, relating to the subject of such examination. The order shall be served upon the person named in the endorsement aforesaid, by showing him the original order, and delivering to and leaving with him, at the same time, a copy thereof endorsed as above provided, and by paying or tendering to him the fee allowed to witnesses subpœnaed to attend trials of civil actions in a Court of record in this State.

Civ. '12, § 2458; 1902, XXIII, 1061.

(3552) § 23. Witness Compelled to Give Testimony—Protected from Criminal Prosecution.—No person shall be excused from answering any questions that may be put to him, or from producing any books, papers or documents on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but no person shall be prosecuted in any criminal action or proceedings, or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said Justice, Judge or referee appointed in the order for his examination, or in obedience to the subpœna of the Court, or referee acting under such order, or either of them, or in any such case of proceeding.

Civ. '12, § 2459; 1902, XXIII, 1061.

(3553) § 24. Powers of Referee.—A referee appointed as provided in this Article possesses all the powers and is subject to all the duties of a referee appointed under the Code of Civil Procedure, so far as practicable, and may punish for contempt a witness duly served as prescribed in this Article for nonattendance or refusal to be sworn or to testify, or to produce books, papers and documents according to the direction of the endorse-

ments aforesaid, in the same manner and to the same extent as a referee appointed to hear, try and determine an issue of fact or of law.

Civ. '12, § 2460; 1902, XXIII, 1061.

(3554) § 25. Article Cumulative.—This Article shall be deemed and taken as cumulative of all statutes of this State.

Civ. '12, § 2461; 1902, XXIII, 1061.

CHAPTER XXXVI.

Auctions and Vendues.

(3555) § 1. Bond of Auctioneers, Etc., to City or Town Where They Reside.—Every vendue master and auctioneer, before he shall act in such capacity, shall be compelled to give to the Council of the city or town where he may reside full and ample security for the due and faithful performance of his duty as auctioneer or vendue master, as the case may be.

Civ. '12, § 2462; Civ. '02, § 1608; G. S. 1250; R. S. 1350; 1823, VI, 209.

As to liability of sureties. *City Council v. Patterson*, 2 Bail. 165.

(3556) § 2. Liability of Purchasers Refusing to Comply With Terms, Etc.—Losses on Resale.—Every person who shall purchase any lands, horses, cattle, ships, boats, or other vessels, goods, wares, and merchandise, at any public sale in this State, and which purchase shall be entered in the books of the vendue master so selling such property, such person refusing to comply with the conditions of the sale within seven days thereafter shall be liable to all losses arising thereon to the original owner; and for the more speedy ascertaining said losses, the vendue master is authorized to resell such lands, houses, horses, cattle, ships, boats, or other vessels, goods, wares, and merchandise, on the original conditions, giving seven days' notice of said sale; and whatever deficiency shall arise on said purchaser's noncompliance, the vendue master shall recover, at the first ensuing Court having jurisdiction, such loss from every person so declining to comply with the conditions of the original purchase, together with the commissions and other expenses attending the sale. No judgment given in any such cause shall be arrested or stayed for or by reason of any error or mistake in the proceedings.

Civ. '12, § 2463; Civ. '02, § 1609; G. S. 1251; R. S. 1351; 1785, IV, 672.

Liability of auctioneer to seller. *Wilkinson v. Campbell*, 1 Bay 169; *Burnett v. Ballund*, 2 N. & McC. 435. Not entitled to commission unless bid is complied with. *Cochran v. Johnson*, 2 McC. Lien of. *Blum v. Della Torre*, 3 Hill L. 155.

As to entry in book. *Davis v. Robertson*, 1 Mill 71; *Meadows v. Meadows*, 3 McC. 458; *Anderson v. Chick*, Bail. Eq. 118; *Trustees v. Wiley*, 2 Hill Ch. 584; *Carter v. Bennett*, Dudley 142; *Entz v. Mills*, 1 McM. 453; *Savage v. Kinloch*, Speer Eq. 464; *Cathcart v. Kennaghan*, 5 Strob. 129; *Pope v. Chaffee*, 14 Rich. Eq. 69; *Davis v. WinSmith*, 5 S. C. 63. Liability of purchaser—resale. *Hall v. O'Hanlon*, 2 Brev. 46; *Gardner v. Sanders*, 2 Brev. 180; *Campbell v. Ingraham*, 1 Mill 293; *Leman v. Blackwood*, Harp. 219. Notice of adverse claim. *Wainwright v. Read*, 1 DeSaus. 573. Puffing sale. *Jenkins v. Hogg*, 2 Tread. Const. 821. Purchase by agent. *Ib.* The authority need not be in writing to bind principal. *Trustees v. Wiley*, 2 Hill Ch. 584; *Blum v. Della Torre*, Riley 155. Compliance with conditions. *Boinest v. Leignez*, 2 Rich. 465; *Cathcart v. Kennaghan*, 5 Strob. 129; *Sullivan v. Huff*, 24 S. C. 354. Warranty of soundness. *Limehouse v. Gray*, 3 Brev. 231; *Treadw. Const.* 73. Generally, as to such sales. *Farr v. Sims*, Rich. Eq. Cases 122; *Blum v. Della Torre*, 3 Hill 155; *Carter v. Bennett*, Riley 287. Has no authority to rescind sale even before completed by payment of purchase money. *Boinest v. Leignez*, 2 Rich. 464; *Carson v. Law*, 2 Rich. Eq. 296; *Hamilton v. Hamilton*, 2 Rich. Eq. 355; *Martin v. Evans*, 2 Rich. Eq. 363; *Butler v. Beard*, 5 Rich. 542; *Barrett v. Bath Paper Co.*, 13 S. C. 128; *Reagin v. Bishop*, 25 S. C. 585.

(3557) § 3. **Remedy Against Auctioneers.**—The owners of property placed in the hands of vendue masters or auctioneers, either for public or private sale, are authorized and empowered to recover from said vendue master, in the most summary manner, before any Court of competent jurisdiction in the State, for goods or other property by them sold on account of said owners. Judgment given in such case shall not be arrested or stayed for or by reason of any error or mistake in the proceedings.

Civ. '12, § 2464; Civ. '02, § 1610; G. S. 1252; R. S. 1352; 1815, VI, 3.

(3558) § 4. **Responsibility for Loss of Goods Without Fault.**—Nothing in this Chapter shall be so construed or understood as to render vendue masters or auctioneers responsible for the loss of goods or other property occasioned by the act of a public enemy, the act of God, or by any other cause which man could not prevent or foresee.

Civ. '12, § 2465; Civ. '02, § 1611; G. S. 1253; R. S. 1353; 1815, VI, 3.

CHAPTER XXXVII.

Regulations With Respects to Weights and Measures; and Standard Containers, Grades and State Brands of Fresh Fruits and Vegetables.

ARTICLE 1. Of Weights and Measures, 1070.

ARTICLE 2. Of Standard Containers, Grades and State Brands of Fresh Fruits and Vegetables, 1073.

ARTICLE I.

Of Weights and Measures.

(3559) § 1. **To Be Regulated by United States Standard.**—Weights and measures shall be regulated by the standard fixed by the Congress of the United States.

Civ. '12, § 2466; Civ. '02, § 1612; G. S. 1254; R. S. 1354; Con., Art. I, § 8.

(3560) § 2. **To Be Kept by State Treasurer.**—Such weights and measures as have been, or may hereafter be, furnished this State by the Government of the United States, shall be kept by the State Treasurer; and the said weights and measures shall be deemed and taken to be the standard weights and measures, by which all the weights and measures in this State shall be regulated.

Civ. '12, § 2467; Civ. '02, § 1613; G. S. 1255; R. S. 1355; J. R., U. S. Cong., 1836; 5 Stat. at L. 133, No. 7; 1768, IV, 290; 1783, IV, 540.

(3561) § 3. **Kept by Clerks of Court—Weights to Be Purchased by Governor.**—The Clerk of the Court of Common Pleas and General Sessions of each county in this State shall furnish, and is required to keep in his office, the weights and measures established by law, which shall be the standards of all other weights and measures in said county, and to which any person shall have free access to test the same; and the Governor of the State is authorized and required to purchase such standard weights and

measures out of the fines and forfeitures incurred in their respective counties.

Civ. '12, § 2468; Civ. '02, § 1614; G. S. 1256; R. S. 1356; 1840, XI, 773; 1850, XII, 300.

(3562) § 4. Uniform Standard of Weights and Measures.—The following shall be the legal and uniform standard of weights and measures in this State for the sale and purchase of the following named products of the farm, orchard or garden, and articles of merchandise, to wit: Apples, green, shall be $2\frac{1}{2}$ bushels per barrel; apples, green, shall be 50 pounds per bushel; apples, dried, shall be 24 pounds per bushel; apple seed shall be 40 pounds per bushel; blue grass seed shall be 14 pounds per bushel; beans, dried, shall be 60 pounds per bushel; beans, green, in pods, shall be 30 pounds per bushel; beans, green, in pods, shall be $2\frac{1}{2}$ bushels per barrel; beans, castor, shall be 46 pounds per bushel; beets shall be 50 pounds per bushel; blackberries shall be 48 pounds per bushel; blackberries, dried, shall be 28 pounds per bushel; bran shall be 20 pounds per bushel; broom corn seed shall be 42 pounds per bushel; buckwheat shall be 50 pounds per bushel; barley shall be 48 pounds per bushel; beef, net, shall be 200 pounds per barrel; carrots shall be 50 pounds per bushel; cabbage shall be 50 pounds per bushel; cherries, with stems, shall be 56 pounds per bushel; cherries, without stems, shall be 64 pounds per bushel; corn, shelled, shall be 56 pounds per bushel; corn in ear, shucked, shall be 70 pounds per bushel; corn in ear, with shucks, shall be 74 pounds per bushel; corn, green, with shucks, shall be 100 pounds per bushel; corn, green, with shucks, shall be $2\frac{1}{2}$ bushels per barrel; corn, matured, with shucks, shall be 5 bushels per barrel; corn, pop, shall be 70 pounds per bushel; corn meal, bolted or unbolted, shall be 48 pounds per bushel; cucumbers shall be 48 pounds per bushel; chestnuts shall be 50 pounds per bushel; cement shall be 80 pounds per bushel; coke shall be 40 pounds per bushel; charcoal shall be 22 pounds per bushel; coal, stone, shall be 80 pounds per bushel; canary seed shall be 60 pounds per bushel; clover seed, red and white, shall be 60 pounds per bushel; cotton seed shall be 30 pounds per bushel; cotton seed, long staple, shall be 40 pounds per bushel; flax seed shall be 56 pounds per bushel; flour shall be 196 pounds per barrel; fish shall be 200 pounds per barrel; gooseberries shall be 48 pounds per bushel; grapes, with stems, shall be 48 pounds per bushel; grapes, without stems, shall be 60 pounds per bushel; horseradish shall be 50 pounds per bushel; hickory nuts shall be 50 pounds per bushel; hair, plastering, shall be 8 pounds per bushel; hominy shall be 62 pounds per bushel; Hungarian seed shall be 48 pounds per bushel; hemp seed shall be 44 pounds per bushel; land plaster shall be 100 pounds per bushel; lime, unslaked, shall be 80 pounds per bushel; lime, slaked, shall be 40 pounds per bushel; liquids shall be 42 gallons per barrel; melon, cantaloupe, shall be 50 pounds per bushel; melon, cantaloupe, shall be $2\frac{1}{2}$ bushels per barrel; millet, German seed, shall be 50 pounds per bushel; millet, Missouri, shall be 50 pounds per bushel; millet, Tennessee, shall be 50 pounds per bushel; orchard grass seed shall be 14 pounds per bushel; osage orange seed shall be 33 pounds per bushel; oats seed shall be 32 pounds per bushel; onions, matured, shall be 56 pounds per bushel; onions, top buttons, shall be 28 pounds per bushel; onions, button sets, shall be 32 pounds per bushel; parsnips shall be 50 pounds per bushel; peas, dry, shall

be 60 pounds per bushel; peas, green, shall be 30 pounds per bushel; peas, green, in hull, shall be $2\frac{1}{2}$ bushels per barrel; peaches, matured, shall be 50 pounds per bushel; peaches, dried, shall be 25 pounds per bushel; pears, matured, shall be 36 pounds per bushel; pears, dried, shall be 26 pounds per bushel; plums shall be 64 pounds per bushel; pie plant shall be 50 pounds per bushel; potatoes, Irish, shall be $2\frac{1}{2}$ bushels per barrel; potatoes, Irish, shall be 60 pounds per bushel; potatoes, sweet, shall be 50 pounds per bushel; potatoes, sweet, shall be $2\frac{1}{2}$ bushels per barrel; peanuts shall be 23 pounds per bushel; pork, net, shall be 200 pounds per barrel; quinces, matured, shall be 48 pounds per bushel; raspberries shall be 48 pounds per bushel; rye seed shall be 56 pounds per bushel; red top shall be 14 pounds per bushel; rye grass, Italian seed, shall be 20 pounds per bushel; sage shall be 4 pounds per bushel; salt shall be 50 pounds per bushel; sorghum molasses shall be 12 pounds per gallon; sorghum seed shall be 50 pounds per bushel; strawberries shall be 48 pounds per bushel; salads, turnips, kale, shall be 30 pounds per bushel; salads, mustard, spinach, shall be 30 pounds per bushel; turnips shall be $2\frac{1}{2}$ bushels per barrel; turnips shall be 50 pounds per bushel; tomatoes shall be 56 pounds per bushel; timothy seed shall be 45 pounds per bushel; velvet grass seed shall be 7 pounds per bushel; walnuts shall be 50 pounds per bushel; wheat shall be 60 pounds per bushel.

Civ. '12, § 2469; Civ. '02, § 1615; G. S. 1198; R. S. 1305; 1882, XVII, 625; 1900, XXIII, 634; 1913, XXVIII, 201; 1918, XXX, 764.

(3563) § 5. Buying Regulated.—That it shall be unlawful to buy or sell any of the products of any farm, orchard or garden, or articles of merchandise mentioned in Section 4 except in strict accordance with the standard weights and measures provided therein.

1913, XXVIII, 201.

(3564) § 6. Docking—Regulating.—That it shall be unlawful to dock any of the articles mentioned in Section 4, delivered in good condition and in marketable form, on account of keg or barrel or other receptacle, without allowing the value of same.

1913, XXVIII, 201.

(3565) § 7. Commissioner of Agriculture to Enforce Provisions.—That it shall be the duty of the Commissioner of Agriculture of the State, and of the Inspectors employed under the direction of the said Commissioner in the enforcement of the Commercial Feedstuffs Law of the State, to enforce the provisions of this law, and take cognizance of all violations, and said Commissioner shall institute prosecutions whenever evidence deemed sufficient is in his possession. The Commissioner of Agriculture is hereby empowered to prepare and issue such rules and regulations as may be necessary for a proper enforcement of the provisions of this Chapter. "That it shall be the duty of the Commissioner of Agriculture, Commerce and Industries, or his duly authorized representatives, when any scale or scales used in trade are found to be incorrect within the meaning of this Chapter, by written order to forbid the further use in trade of such scale or measure or scales or measures until completely adjusted and 'sealed,' and have been so stamped, when such written order may be annulled. If the scale or

scales are found to be fraudulent or impossible of adjustment, then such scale shall be seized and confiscated by the Commissioner or his authorized agent acting under his instructions.”

1913, XXVIII, 201; 1918, XXX, 762.

(3566) § 8. Misdemeanor to Violate Law.—That any person or persons violating this Article or any part thereof shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than five (\$5) dollars nor more than fifty (\$50) dollars for each offense.

1913, XXVIII, 201.

(3567) § 9. Sale of Corn Meal Regulated.—It shall be unlawful for any person or persons to bag for sale, sell or offer for sale in this State any corn meal or grist except in bags or packages containing by standard weight two bushels, or one bushel, or one-half bushel, or one-fourth bushel, or one-eighth bushel, respectively; each bag or package of corn meal shall have plainly printed or marked thereon whether the meal is bolted or unbolted, the amount it contains in bushels or fraction of a bushel, and the weight: *Provided*, The provisions in this Section shall not apply to the retailing of meal or grist except to consumers from bulk stock when priced and delivered by actual weight or measure.

1913, XXVIII, 201.

(3568) § 10. Weight of Packages.—That all packages of the articles enumerated in Section 4 of this Chapter shall correspond in weights and measures to the standards fixed in Section 4; that in the inspection of scales the Inspectors shall take as the standard such weights and measures as have been or may hereafter be furnished this State by the Government of the United States, which shall be kept by the State Treasurer, and shall act otherwise in accordance with the provisions of Sections 2 and 3 of this Chapter.

1913, XXVIII, 201.

ARTICLE II.

Of Standard Containers, Grades and State Brands for Fresh Fruits and Vegetables.

(3569) § 1. Purpose of Article.—The purpose of this Article is to give authority to investigate marketing conditions and to establish and maintain standard containers and grades and State brands for fresh fruits and vegetables in the State of South Carolina.

1921, XXXII, 264.

(3570) § 2. Division of Markets of Extension Service Charged With Execution—To Be Without Expense to the State.—The Division of Markets of the Extension Service is charged with the execution of the provisions of this Article, and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and

require bonds in such amount as the Chief of the Division of Markets deems advisable, conditioned upon the faithful performance of duties by any employee or agent: *Provided*, That no said compensation, or other expenses involved in the execution of this Article, shall be a charge against the State.

1921, XXXII, 264.

(3571) § 3. Division of Markets to Assist in Marketing Farm Products.—It shall be the duty of the Division of Markets of the Extension Service to investigate the subject of marketing farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States Department of Agriculture.

1921, XXXII, 264.

(3572) § 4. Division of Markets May Establish Standards of Containers, Grades, Etc.—May Regulate Use of Brands, Etc.—After investigation, and from time to time as may be practicable and advisable, the Division of Markets of the Extension Service shall have authority to establish and promulgate standards of open and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality and value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a State brand for any farm product produced in South Carolina: *Provided*, That any standard for any farm product or receptacle therefor, or any requirement for marketing receptacles for farm products, now or hereafter established under authority of the Congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated as the official standard of requirement in this State: *Provided, further*, That no standard established or requirement for marketing prescribed under this Article shall become effective until the expiration of thirty days after it shall have been promulgated.

1921, XXXII, 264.

(3573) § 5. Packing of Farm Products for Sale to Conform to Grades, Receptacles, Etc.—Proviscs—Exceptions.—Whenever any standard for the grade or other classification of any farm product becomes effective under this Article no person thereafter shall pack for sale, offer to sell, or sell within this State any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this Article: *Provided*, That any farm product may be packed for

sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked "Not graded." Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this Article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this Article: *Provided*, That the requirement as to receptacle shall not apply to produce sold or offered for sale in less than car lots. Whenever any requirement for the marketing, branding or labeling of a receptacle for a farm product becomes effective under this Article, no person thereafter shall pack for sale, offer for sale, consign for sale, or sell and deliver, any such farm product in a receptacle to which such requirement is applicable, unless the receptacle be marked, branded or labeled according to such requirement, or unless such product be brought from outside the State and offered for sale, consigned for sale, or sold in the original package. The Chief of the Division of Markets is authorized, at any time, to cause such inspections and classifications to be made and such certificates to be issued, as he may deem necessary to enforce the provisions of this Article. Such inspections to be made without charge only when no request is made by grower, shipper, receiver or any other party and inspection is made for the purpose of demonstration or for enforcing the provisions of this Article.

1921, XXXII, 264.

(3574) § 6. **Designation and License of Inspectors—Inspections—Certificates of Inspection.**—The Chief of the Division of Markets may designate any competent employee or agent of the Division of Markets, and, upon satisfactory evidence of competency, may license any other person, to make upon request inspections and classifications of farm products in accordance with standards which have become effective under this Article, both at shipping points and at designation points when within this State. Inspections may be made in car lots or less than car lots and of products loaded in cars or of products not in cars. The fee to be charged shall be determined by the Chief of the Division of Markets, and the fee for the inspection of a car or less than a car shall in no case exceed \$2.50. When any such inspection and classification is made, blank forms of certificates shall be furnished by the Division of Markets to all State Inspectors, to be filled out by them to accompany each carload or less than carload of fruits and vegetables to market or to cover any produce inspected at destination. Where State inspection is enforced, said certificate shall name the kind and grade of fruits and vegetables and contain such other information as may be required by the Chief of the Division of Markets to be shown in the certificate together with the words, "Graded and packed under State inspection." The Chief of the Division of Markets is authorized to fix, assess and collect, or cause to be collected, fees for such services when they are performed by employees or agents of the Division of Markets. Licensed inspectors may charge and collect, as

compensation for their services, only such fees as may be approved by the Chief of the Division of Markets. The Chief of the Division of Markets may suspend or revoke any license, whenever, after opportunity for a hearing has been afforded to the licensee, the Chief of the Division of Markets shall determine that such licensee is incompetent, or has knowingly or carelessly failed to classify any farm product correctly in accordance with such standards, or has violated any provision of this Article or of the regulations made hereunder. Pending investigation, the Chief of the Division of Markets may suspend a license temporarily without a hearing.

1921, XXXII, 264.

(3575) § 7. Appeals from Classification of Products.—The owner or person in possession of any farm product classified in accordance with the provisions of this Article may appeal from such classification under such rules and regulations as the Division of Markets may prescribe.

1921, XXXII, 264.

(3576) § 8. Division of Markets to Make Rules, Etc.—To Conform to U. S. Regulations.—The Division of Markets is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this Article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the Secretary of Agriculture of the United States prescribed under any Act of Congress of the United States relating to the marketing of farm products.

1921, XXXII, 264.

(3577) § 9. Violation of Article or Interference With Inspector, a Misdemeanor.—Any person who violates any provisions of this Article, or of the rules and regulations made under the Article for carrying out its provisions, or fails or refuses to comply with any of the requirements thereof, or who wilfully interferes with agents or employees in the execution or on account of the execution, of his or their duties, shall be guilty of a misdemeanor.

1921, XXXII, 264.

(3578) § 10. Penalty.—Any person convicted of a misdemeanor under this Article shall be punished by a fine of not more than one hundred (\$100.00) dollars or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment, in the discretion of the Court.

1921, XXXII, 264.

(3579) § 11. Repealing Clause—Invalidity of Part of Article, Not to Affect Remainder—Construction of Article.—All laws and parts of laws in conflict with this Article are repealed. If any part of this Article be declared unconstitutional by any Court of competent jurisdiction, the validity of the remaining part or parts of the Article shall not thereby be affected or impaired. This Article shall not be construed so as to conflict with any statute of the United States regulating commerce among the

several States, or in any place under the exclusive jurisdiction of the United States.

1921, XXXII, 264.

CHAPTER XXXVIII.

Pilotage and Harbor Commission.

(3580) § 1. Commissioner of Pilotage—Appointment—Term—Removal—Vacancies.—The Commissioners of Pilotage for the ports of Georgetown, Little River in Horry County, Beaufort, and North and South Edisto and Stono Rivers shall be appointed by the Governor during the month of February in every second year reckoning from the month of February in the year 1879, and shall serve and continue in office during the term of two years and until their successors are appointed. They may be removed from office at the discretion of the Governor. When a vacancy occurs it shall be filled by appointment by the Governor, and such appointee shall hold the office for the unexpired term, unless sooner removed by the Governor.

Civ. '12, § 2470; Civ. '02, § 1616; G. S. 1260; R. S. 1357; 1872, XV, 53, 62; 1878, XVI, 413; 1888, XX, 61.

(3581) § 2. Composition and Qualification — Jurisdiction.—The Commissioners of Pilotage of Little River shall consist of three persons, two of whom shall be or shall have been seafaring men and one shall be a full branch pilot of the port to which he belongs.

The Commissioners of Pilotage of Georgetown shall consist of six persons, two of whom shall be or shall have been seafaring men, one of whom shall be a full branch pilot, and three of whom shall be merchants of said town.

The Commissioners of Pilotage of Beaufort shall consist of four persons, two of whom shall be or shall have been seafaring men. They shall have jurisdiction over St. Helena, Port Royal and all entrances to the southward.

The Commissioners of Pilotage of North and South Edisto and Stono shall consist of three persons, two of whom shall be or shall have been seafaring men, and shall have jurisdiction over North and South Edisto, Stono River, and all entrances to the same.

The Board of Harbor Commissioners of the port of Charleston shall be the Commissioners of Pilotage for said port, and may invest the Subcommittee of Pilotage of said Board with all the power and authority in all matters relating to the pilotage and pilots of said port of Charleston possessed by the said Board, and the decisions of said Subcommittee shall be final and conclusive.

Civ. '12, § 2471; Civ. '02, § 1617; G. S. 1260, 1286; R. S. 1358; 1873, XV, 440; 1880, XVII, 455; 1881, XVII, 607; 1883, XVIII, 303; 1888, XX, 61; 1897, XXIII, 417.

O'Brien v. DeLarrinaga, 49 S. C. 497, 27 S. E. 481, 483.

(3582) § 3. Harbor Commission of Harbor of Charleston—Of Whom to Consist.—The Board of Harbor Commissioners of the port of Charleston shall consist of thirteen members, as follows: The Mayor of the City of Charleston, the President of the Charleston Chamber of Commerce, the

President of the Charleston Cotton Exchange, the President of the Charleston Merchants' Exchange, the President of the Charleston Young Men's Business League, the Chairman of the Executive Committee of the State Board of Health, if he be a resident of said city, or, if he be not such resident, some member of the Executive Committee resident of said city, to be designated by said Committee, and seven residents of the City of Charleston to be appointed by the Governor, upon the recommendation of the Senator and members of the House of Representatives from Charleston County, or a majority of them, at least two of whom shall be seafaring men, and at least one of such seafaring men shall be a full branch pilot of the port of Charleston. The Mayor of the City of Charleston shall be *ex officio* Chairman of the said Board, and the Board at its first annual meeting, or at the first meeting after the time fixed for such annual meeting, shall elect a Chairman *pro tempore*, to act in the temporary absence, death, resignation or disability of the said Chairman.

Civ. '12, § 2472; Civ. '02, § 1618; 1881, XVII, 604; 1900, XXII, 417.

(3583) § 4. Commissioners of Pilotage to Organize Board of Examination—Port of Charleston Excepted.—The Commissioners of Pilotage for the ports other than Charleston (which port in this regard shall be governed by the provisions of Section 5) shall, from time to time, organize a Board of Examination for the port to which they belong, to consist of three nautical men, one at least of whom shall be a full branch pilot of the port to which they belong; and the said Board shall examine each and all applicants as to his or their competency to work or manage vessels, and, generally, to discharge the duties of a pilot or pilots; and no license or branch shall be granted to any person unless he receive the certificate of competency signed by a majority of such Examining Board.

Civ. '12, § 2473; Civ. '02, § 1619; G. S. 1261; R. S. 1359; 1910, XXVI, 624.

(3584) § 5. Commissioners of Pilotage for Port of Charleston to Organize Board of Examiners.—The Commissioners of Pilotage for the port of Charleston, in similar manner, shall from time to time organize a Board of Examination for the port of Charleston, to consist of three nautical men, at least one of whom shall be a full branch pilot of the port; and the said Board shall examine each and all applicants as to his or their competency to work or manage vessels, and, generally, to discharge the duty of a pilot or pilots. All examinations for a license shall be oral and by demonstration, and shall include, among other things, the following requisites: The rules of the road; the use of compass; the set of currents; the boarding of vessels in heavy weather; bearing of noted objects; numbers, shapes and colors of buoys; the use of the sextant; and taking horizontal and vertical angles; soundings, in accordance with the depths corresponding to the branch or license which they desire. No license or branch shall be granted to any person unless he has received a certificate of his competency signed by the majority of said Examining Board.

Civ. '12, § 2474; 1910, XXVI, 624.

(3585) § 6. Examination Fee.—Each and every applicant for a branch, or license, before he shall receive a certificate from a majority of the Exam-

ining Board, shall pay to said Board the sum of five dollars, to defray the expenses of such examination and of issuing said certificate.

Civ. '12, § 2475; Civ. '02, § 1620; G. S. 1262; R. S. 1360; 1872, XV, 54.

(3586) § 7. Apprentices for Ports Other Than Charleston.—Apprentices for ports other than Charleston (which port in this regard shall be governed by the provisions of Section 8) shall be taken by full branch pilots only, with the approval of the respective Boards of Commissioners of Pilotage, and shall serve two years before receiving a nine-foot branch or license for all other ports; the last year of service it shall be the duty of their masters to take the said apprentices on board of all vessels, so that they may become completely competent to discharge their duties. After holding their branches or licenses for one year, if competent to the satisfaction of their masters, they shall receive a twelve-foot branch or license, which they must hold in service for two years, at the end of which time they may receive a full branch or license. In all cases, however, the applicant for apprenticeship shall be eighteen years of age previous to receiving his nine-foot or ten-foot branch or license.

Civ. '12, § 2476; Civ. '02, § 1621; G. S. 1263; R. S. 1361; 1872, XV, 54; 1894, XX, 801; 1910, XXVI, 625.

(3587) § 8. Apprentices for Port of Charleston.—Apprentices for the port of Charleston shall be taken by full branch pilots only, with the approval of its Board of Commissioners of Pilotage, and they shall not be under eighteen nor over twenty-one years; and must possess at least a common school education, good moral character, with good sight, hearing and other requisite physical and mental qualifications. Satisfactory certificates of the above requirements must be filed with the Board of Pilot Commissioners before the applicant will be accepted as an apprentice.

Apprentices shall serve three years before receiving a fifteen-foot license or branch. During the last year of service it shall be the duty of their masters to take the said apprentices on board of vessels, so that they may become thoroughly competent for the discharge of their duties. They must hold a fifteen-foot license or branch in service one year before receiving a twenty-foot license or branch; and hold a twenty-foot license or branch in service one year before receiving a full license or branch. No apprentice, however, shall be granted a license until the number of pilots shall have fallen below fifteen; although an apprentice may, after his term of service, upon a satisfactory examination by the Examining Board, receive a certificate from the Board of Pilot Commissioners entitling him to a twenty-foot license when a vacancy should occur. Should two or more apprentices be eligible to offer for examination at the same time, the seniority of securing a license shall be determined by the proficiency of the respective apprentices, established at such examination.

No apprentice shall cease to act as such for the period of three months nor absent himself at any time from the port of Charleston, except upon regular cruises, without the permission of the Board of Pilot Commissioners.

Civ. '12, § 2477; Civ. '02, § 1621; G. S. 1263; R. S. 1361; 1892, XV, 54; 1894, XX, 801; 1910, XXVI, 625; 1920, XXXI, 700.

(3588) § 9. Licenses — Oath of Pilots.—The said respective Boards of Pilot Commissioners shall give to the applicants approved by them either a limited license or branch, or a full license or branch, according as the application and discovered fitness of the applicant shall be, signed by a majority of the Examining Board, or by their Chairman, as the majority of said Board may direct, requiring of each applicant, before the delivery to him of such license or branch, to swear and subscribe the following oath, to be administered by the President of the Board, to wit: I, A B, do solemnly swear (or affirm) that I will well and faithfully, and according to the best of my skill and knowledge, execute and discharge the business and duty of a licensed pilot (or apprentice, as the case may be) for the bar and harbor of Charleston (Beaufort or Georgetown, North and South Edisto and Stono, as the case may be); and that I will, at all times, wind, weather and health permitting, use my best endeavors to repair on board of all ships and vessels that I shall see and conceive to be bound for, or coming into, or going out of the port or harbor of Charleston (Beaufort or Georgetown, North and South Edisto and Stono, as the case may be), unless that I am well assured that some other licensed pilot is then on board the same; and I do further swear (or affirm) that I will from time to time, and at all times, make the best dispatch in my power to convey safely over the bar of Charleston (Beaufort or Georgetown, North and South Edisto and Stono, as the case may be) every vessel committed to my care in coming in or going out of the same; and that I will, from time to time, and at all times, truly observe, follow, and fulfill, to the best of my skill and ability and knowledge, all such orders and directions as I shall or may receive from the Commissioners of Pilotage relative to all matters and things that may appertain to the duty of a pilot; and (except applicants for license or branch at the ports of Georgetown and Beaufort), further, that I will not, at the same time, be owner, part owner, nor be interested, directly or indirectly, in more than two boats employed in the business of the pilotage of the bar and harbor of Charleston (North and South Edisto or Stono, as the case may be). So help me, God.

Civ. '12, § 2478; Civ. '02, § 1622; G. S. 1264; R. S. 1362; 1872, XV, 54; 1878, XVI, 415; 1888, XX, 61; 1894, XXI, 801.

Wilson v. Charleston Pilots' Ass'n, 57 Fed. 227.

As to duties specified in this oath. *State v. Commissioners*, 23 S. C. 179.

(3589) § 10. Bond.—After any such person or applicant shall have taken the oath or affirmation aforesaid, and subscribed to the same, the said Board of Commissioners shall require such person to execute to them and their successors in office a bond, with two sureties, to be approved by them, in the sum of five hundred dollars, if his license be of nine or ten or twelve feet, or in the sum of one thousand dollars, if it be a full license; which bond shall be conditioned for the faithful discharge of his duties as such pilot; whereupon the said Board of Commissioners shall deliver to such person a license, to be measured by his respective draft of water; said license to be signed either by the President of the said Board, under direction of a majority thereof, or by such majority themselves. The County Commissioners of their county shall pay all accounts of the said Commissioners of Pilotage incurred for printing licenses or certificates, furnishing

stationery, and the like: *Provided*, That such account shall not exceed in one year fifty dollars.

Civ. '12, § 2479; Civ. '02, § 1623; G. S. 1265; R. S. 1663; 1872, XV, 55.

(3590) § 11. Board May Require Surrender of License or New Bond.—

The Boards of Commissioners of Pilotage shall have power and authority, for any cause or charge to them satisfactorily proven, to order and direct any or all pilots for the port to which they belong to deliver up his or their license or licenses, and to take out a new license or licenses; but no pilot who shall satisfy them of the groundlessness of such cause or the falsity of such charge brought against him shall be required to pay an additional fee for his new license. And if the said Board of Commissioners be not satisfied with the surities on the bond executed by any licensed pilot, every pilot whose surities shall be deemed insufficient shall give a new bond, with surities, to be approved by the said Board of Commissioners, and within such time as shall be required by the said Board of Commissioners; in which case the pilot shall receive a new license, on surrendering the former one. And every pilot not complying with these conditions, or any of them, shall forthwith forfeit his license, and shall be disqualified to act as a pilot for the period of twelve months.

Civ. '12, § 2480; Civ. '02, § 1624; G. S. 1266; R. S. 1364; 1878, XVI, 416.

Pilot cannot act as such while suspended by Board of Pilot Commissioners. *De Zabaljauregui v. Commissioners of Pilotage*, 62 S. C. 511, 40 S. E. 959.

(3591) § 12. Number of Pilots Limited.—The number of pilots for the bar and harbor of Charleston shall not exceed fifteen: *Provided*, That no pilot now licensed shall hereby lose his license, but no other person shall be licensed until the number of pilots is less than fifteen. The number of pilots for the port of Beaufort shall be limited to twelve, and for the bar and harbor of Georgetown to eleven, with power to the said Commissioners of Pilotage to increase the number for the port of Beaufort to fifteen and for Georgetown to fifteen, if in their judgment the commerce of either of said ports shall require such increase. The number of pilots for the other ports shall be fixed by the Commissioners of Pilotage at such ports; but such limit in number shall not operate as an exclusion of any pilot who now holds a regularly issued license. The said Board shall make no distinction in the selection of pilots on account of race, color or previous condition.

Civ. '12, § 2481; Civ. '02, § 1625; G. S. 1266; R. S. 1365; 1894, XXI, 799; 1902, XXIII, 1023.

Wilson v. Charleston Pilots' Ass'n, 57 Fed. 227.

(3592) § 13. Pilots Must Not Engage in Other Business.—No pilot shall engage in any other business or calling while holding his license or branch without the consent of the Commissioners of Pilotage first had and obtained in writing. And any pilot now licensed who, for the space of three months, shall be, or continue to be, engaged in any other business or calling than that of a licensed pilot, without the permission in writing of the Commissioners of Pilotage first had and obtained, shall be deprived of his license for twelve months. And if said pilot shall continue to engage in such other business or calling after the expiration of said twelve months,

without the permission in writing of the Commissioners of Pilotage first had and obtained, he shall forfeit said license.

Civ. '12, § 2482; Civ. '02, § 1626; G. S. 1266; R. S. 1366.

State v. Commissioners, 23 S. C. 179.

(3593) § 14. Pilot Must Not Absent Himself or Discontinue Duties Without Leave.—No licensed pilot shall discontinue to act as such for the period of three months, nor absent himself at any time from the port and harbor to which he may belong, except upon regular cruises, without permission of the said Board of Commissioners. And any pilot so discontinuing or absenting himself shall be liable to the penalties prescribed in the previous proviso of this Section. And it shall be the duty of the Board of Commissioners to grant such permission when applied for in writing, unless it shall appear that by doing so the number of pilots for the said port will be reduced below the number absolutely necessary for said port of Charleston.

Civ. '12, § 2483; Civ. '02, § 1627; G. S. 1266; R. S. 1367.

State v. Commissioners, 23 S. C. 179.

(3594) § 15. Penalty for Dereliction of Duty by Pilot.—A majority of each of the said Boards of Commissioners of Pilotage shall have power and authority to take away the license of a pilot for a given time, or to declare his license null and void, as the nature of the case may demand, upon charge of any dereliction of duty made and proven against him, or if he be found guilty of using abusive or insulting language, or guilty of threatening conduct, while on his business as a pilot, or against whom charges of intoxication or conduct unbecoming a pilot, either when on or off duty, shall be proved to the satisfaction of a majority of the Commissioners; but any pilot against whom any charge shall be made shall be entitled to a hearing before the said Board of Commissioners, and to make any proper defense to such charge. If any pilot has forfeited or been deprived of his license, or is no longer entitled to the use thereof by virtue of this or any other Sections of this Chapter, the said Board of Commissioners shall have the power to order the Harbor Master of the port to which he may belong to call on him for the surrender of his license. And if he shall refuse to give up the same to the Harbor Master on demand, the latter shall give notice for one week in the public daily papers that such person has no longer a right to act as a pilot until he be reinstated by the said Board of Commissioners.

Civ. '12, § 2484; Civ. '02, § 1628; G. S. 1267; R. S. 1368; 1878, XVI, 417; 1902, XXIII, 1023.

As to general power of Commissioners. State v. Commissioners, 23 S. C. 175; State v. Courtney, 23 S. C. 180. May suspend pilot for dereliction of duty not specified. *Ib.* Mandamus proper remedy to compel Board to reverse their order of suspension. *Ib.* Pilot cannot act while suspended. De Zabalgaregui v. Commissioners, 62 S. C. 511, 40 S. E. 959.

(3595) § 16. Pilot May Not Hire Out Boat Without Leave of Board.—No licensed pilot shall hire out his pilot boat to any persons or person whomsoever, unless he substitute another, to be approved of by the Board of Commissioners of Pilotage; and the Board of Commissioners shall never give such permission unless in their opinion there shall be a sufficient number of boats actually engaged in the service of pilotage. Nor shall any pilot substitute or employ as a pilot any one from whom his license has

been taken away or become forfeited; and any pilot herein in any wise offending shall, for each and every such offense, be deprived of his license by the said Board of Commissioners, or a majority of them; and if so deprived, he shall be proceeded against as provided in the latter part of the preceding Section, and shall, moreover, forfeit and pay to the State a sum not exceeding one hundred dollars.

Civ. '12, § 2485; Civ. '02, § 1629; G. S. 1268; R. S. 1369; 1878, XVI, 417.

State v. Commissioners, 23 S. C. 178.

(3596) § 17. Duty of Pilots During War.—In case of war, no pilot shall bring in or furnish supplies to any armed vessels belonging to an enemy at war with the United States, or shall carry out any armed vessel to such enemy, without being ordered to do so by the constituted authorities of the United States. And every pilot herein in any wise offending shall forfeit his license and be disqualified forever from acting as a pilot. And if at any time the President of the United States or the Governor of the State shall prohibit the furnishing with supplies, or the bringing in, or the carrying out, of any vessel or vessels belonging to any nation or State, or to a subject or subjects of any nation or State, it shall be the duty of every such pilot to comply with every such prohibition, on pain of incurring the same penalty and punishment as for like offenses in time of war.

Civ. '12, § 2486; Civ. '02, § 1630; G. S. 1269; R. S. 1370; 1878, XVI, 417.

(3597) § 18. Pilot to Offer Service to Nearest Vessel.—Every pilot cruising or standing out to sea shall offer his services first to the vessel nearest the bar, a penalty of fifty dollars for each and every such neglect except when he sees a more distant vessel in distress, under or refusal, either of approaching the nearest vessel and boarding her if required, or of aiding any vessel showing signals of distress in the case above mentioned; and the Board of Commissioners of Pilotage, or a majority of them, may, at their discretion, deprive the said pilot of his license: *Provided, however*, That nothing herein contained shall extend, or be construed to extend, to vessels of the description mentioned in the preceding Section, all of which vessels it shall be the duty of every such pilot to avoid as much as possible, whenever they are known to or justly suspected by him as such.

Civ. '12, § 2487; Civ. '02, § 1631; G. S. 1270; R. S. 1371; 1878, XVI, 417.

(3598) § 19. Pilot to Convey Vessels to Quarantine.—Whenever the Governor of the State shall issue a proclamation subjecting vessels from certain ports or countries to quarantine, it shall be the duty of every licensed pilot conducting any vessel over the bar of any port to bring her to the quarantine ground, and to remain on board, and go to the quarantine station, without coming up to the city or town, until the port physician shall permit it; and during the time for which any such pilot remains on board any such vessel, or stays at the quarantine station, he shall be allowed four dollars for each and every day of his remaining on board or staying at the quarantine station, as aforesaid, and be found in necessary provisions and accommodation, at the expense of the master, owner, or consignee of such vessel; and every such pilot neglecting or refusing to bring such vessel to the quarantine grounds, or coming to the city without previously obtaining the port physician's permission, or before the time limited by the said port

physician, shall, for each and every offense, be deprived of his license, and shall not obtain another license before the expiration of one year, and shall forfeit and pay the sum of fifty dollars to the State.

Civ. '12, § 2488; Civ. '02, § 1632; G. S. 1271; R. S. 1372; 1878, XVI, 418.

(3599) § 20. Pilotage Ground of Charleston.—The pilot ground of the bar of Charleston shall extend from the said bar thirty miles eastward, southward and northward; and any master or commander of a vessel bearing toward any harbor or bar (all coasters and other vessels under one hundred tons of American register excepted) who shall refuse to receive on board a licensed pilot for the said bar and harbor offering to board shall be liable, on his arrival at the said port, to pay such pilot who first offered to go on board and take charge of such vessel the rates and fares allowed and established as hereinafter mentioned, as if such a pilot had actually brought in such vessel to said port. But if a pilot having a ten or twelve-foot branch or license only, as the case may be, is refused by the master of a vessel of a greater draught, such master shall not be liable to him for her pilotage; and if a pilot refuse to produce his license to the master of a vessel when the latter demands it, the fees of pilotage shall not be charged against the master rejecting the services of such pilot.

Civ. '12, § 2489; Civ. '02, § 1633; G. S. 1272; R. S. 1373; 1878, XVI, 419; 1902, XXIII, 1024.

O'Brien v. DeLarrinaga, 49 S. C. 497, 27 S. E. 481, 483.

(3600) § 21. Fees of Pilots.—Any pilot boarding a vessel on pilot ground shall be entitled to receive from the master, owner, or consignee, four dollars for every day of his being on board previous to her coming into port, in addition to the fees of pilotage.

Every pilot of an inward-bound vessel who shall be directed by the master to anchor in the roads, or is required by the quarantine laws to anchor and leave such vessel at the quarantine grounds and afterwards bring her up to the city or town, shall be entitled to receive four dollars from the master, owner, or consignee; also, four dollars to bring a vessel anchored in the stream (at the request of the master, owner, or consignee) and moor her at the wharf; four dollars to unmoor (at the request of the master, owner, or consignee) and anchor in the stream, or from the stream to the roads, to be paid as aforesaid.

Civ. '12, § 2490; Civ. '02, § 1634; G. S. 1273; R. S. 1374; 1878, XVI, 419.

(3601) § 22. Right to Pilot Vessel—Unlawful Pilotage.—The pilot who brought in the vessel shall have the exclusive right of carrying her out, unless the master or commander of such vessel shall, within a fortnight after his arrival in port, prove to the satisfaction of the Board of Pilotage Commissioners, or a majority of them, that the said pilot had misbehaved during the time he had charge of such vessel, or unless the said pilot shall have been deprived of his license before the departure of such vessel, in either of which cases another pilot may be employed, who shall be entitled to receive the outward pilotage; and every pilot having or becoming entitled to carry out a vessel shall either attend in person or procure another pilot of his own degree to attend for him, on such outward-bound vessel, after twelve hours' notice by the master by the hoisting of his jack at the foretop

masthead for that time during daylight; but if such pilot should neither attend in person nor substitute another pilot of like degree with himself, the master of such vessel shall be at liberty, after the expiration of the above limited space of time, to employ another pilot of equal license, who shall be bound, if not previously engaged, to carry such vessel out, and who shall be entitled to the outward pilotage; and any pilot who shall carry out a vessel, not being entitled to do so, shall be liable to the pilot who had the right in the amount of pilotage paid or due for carrying her out; and any pilot who brought in a vessel shall have a right to demand his fees of pilotage and the lawful charges as aforesaid before her departure from port; and whenever a pilot having a right to carry out a vessel is apprehensive that his fees of pilotage may not be paid by her master, owner, or consignee, he shall have a right to demand his fees in advance, or such security for the payment thereof as shall be reasonable and satisfactory, and on failure thereof may refuse to carry her out.

Civ. '12, § 2491; Civ. '02, § 1635; G. S. 1274; R. S. 1375; 1878, XVI, 420.

McDonald v. Prioleau, 44 Fed. 769.

(3602) § 23. No Unlicensed Pilots to Act.—No person shall be authorized or permitted to conduct and pilot any vessel over the bar, when coming into or going out of port, unless such person shall have a license as aforesaid; and every person not having received such license, or having forfeited the same, or being deprived thereof as aforesaid, who shall presume to bring into or carry out of the aforesaid port any vessel which has to cross the bar, as well as every pilot having a limited license of ten or twelve feet, who shall presume to conduct and pilot a vessel of more than ten or twelve feet, as the case may be, over the said bar, either in coming in or going out, shall be entitled to no fee, gratuity or reward for the same, but shall pay the regular pilotage to the pilot who shall first offer, and shall also be liable to a fine of one hundred dollars, or imprisonment for not more than thirty days, or be suspended: *Provided, however*, That the foregoing prohibition shall not extend to prevent any person from assisting any vessel in distress without a pilot on board, if such person shall deliver up such vessel to the first pilot who shall afterwards come on board and offer to conduct such vessel; and also that the captain and crew of a vessel shall not be liable to such fine for conducting her over the bar without the aid of a pilot, if in either of the two last mentioned cases a signal for a pilot is worn.

Civ. '12, § 2492; Civ. '02, § 1636; G. S. 1275; R. S. 1376; 1878, XVI, 420; 1909, XXVI, 187.

(3603) § 24. Signal for Departure of Vessel.—Every master of an outward-bound vessel shall at the appointed time of his departure have his vessel in readiness for sailing, and as a signal thereof hoist a jack at the foretop masthead; and every master of a vessel who shall detain a pilot at the time appointed, so that he cannot proceed to sea, though wind and weather should permit, shall pay to such pilot four dollars per day during the time of his actual detention on such vessel.

Civ. '12, § 2493; Civ. '02, § 1637; G. S. 1276; R. S. 1377; 1878, XVI, 421.

(3604) § 25. Penalty for Carrying Off a Pilot.—If any master or commander of a vessel shall carry off any of the pilots he shall allow every such

pilot four dollars for each and every day during his absence, and supply him with provisions and other necessities in the same manner as is usual for the maintenance and accommodation of masters of vessels; and the master, as well as the owner, consignee, and security of such vessel, shall be liable for the aforesaid sum: *Provided, however*, That no pilot who is carried off as aforesaid shall be entitled to any of the sums aforesaid if such vessel shall have laid to for the space of sixteen hours after having crossed the bar and no pilot boat shall have appeared at the time to receive such pilot on board: *Provided, also*, That the master, owner, or consignee shall defray the expenses of such pilot back to port to which he may belong.

Civ. '12, § 2494; Civ. '02, § 1638; G. S. 1277; R. S. 1378; 1878, XVI, 421.

(3605) § 26. What Kinds of Boats May Be Used as Pilot Boats in Charleston Harbor.—All boats used in the pilotage for the port and harbor of Charleston shall be of schooner rig, and not less than sixty-eight feet over all; and before being admitted into service, and at all times thereafter, shall be entirely and absolutely subject to the inspection, direction and approval of the Board of Pilotage Commissioners for Charleston. No pilot boat shall be commissioned and used unless owned and manned by at least five (5) pilots; and no pilots in good standing shall be denied the right to participate in the same. All boats used for pilotage shall be used exclusively in the pilotage, and the owner or owners of every pilot boat employed in such pilotage, or pilot or pilots who may hire such boats, or may be employed thereon, shall cause to be put on the most conspicuous place of each boat's mainsail, and, if she be a schooner, on her foresail, such number as may be designated by the Harbor Master of the port, and the figures designating the number of the boats as aforesaid shall be at least five feet in length and be made to appear as conspicuous as possible by being placed on each side of such sail of every boat used in the pilotage; and every pilot omitting or neglecting to number the boat in which he may be interested shall, on conviction before the Board of Pilotage Commissioners of the port to which he belongs, be deprived of his license, and shall, in addition, be liable to a fine of one hundred dollars: *Provided*, That in case of shipwreck or destruction of any of such boats used in the pilotage, it shall be lawful for the Board of Pilotage Commissioners to authorize the use, for a temporary period, of vessels not of schooner rig, said vessels, however, during said period to have the number put, as provided, on its fore and aft sails, and in every other respect be subject to the provisions herein contained.

Civ. '12, § 2495; Civ. '02, § 1639; G. S. 1278; R. S. 1379; 1878, XVI, 421.

(3606) § 27. Pilots to Remain on Board of Vessels If Required.—It shall be the duty of a licensed pilot, if required by the master or commander of a vessel, to remain on board while such vessel is anchored in the roads, outward-bound, at the rate of four dollars per day; and in case of refusal or neglect, the pilot shall be deprived of his license by the Board of Pilotage Commissioners and pay a sum of not exceeding fifty dollars.

Civ. '12, § 2496; Civ. '02, § 1640; G. S. 1279; R. S. 1380; 1878, XVI, 422.

State r. Commissioners, 23 S. C. 178.

(3607) § 28. Rates of Pilotage at Charleston.—The master, owner or consignee of any vessel, for the consideration of the pilotage of the said

vessel inwards to or outwards from the port of Charleston shall pay to the licensed pilot for the said bar and harbor who shall take charge of the same the several sums of money, rates and fees, respectively, set forth in the following schedule, according to her draught of water at the time of such pilotage, to wit:

RATES OF PILOTAGE.—Not more than the following amounts: For six feet of water or under, fifteen dollars; for seven feet of water or under, sixteen 50-100 dollars; for eight feet of water or under, eighteen 50-100 dollars; for nine feet of water or under, twenty-one dollars; for ten feet of water or under, twenty-eight 50-100 dollars; for eleven feet of water or under, thirty-three dollars; for twelve feet of water or under, forty dollars; for twelve and a half feet of water or under, forty-four dollars; for thirteen feet of water or under, forty-five dollars; for thirteen and a half feet of water or under, fifty dollars; for fourteen feet of water or under, fifty-four dollars; for fourteen and a half feet of water or under, sixty-dollars; for fifteen feet of water or under, sixty-six dollars; for fifteen and a half feet of water or under, sixty-nine dollars; for sixteen feet of water or under, eighty-four dollars; for sixteen and a half feet of water or under, one hundred dollars; for seventeen feet of water or under, one hundred and ten dollars; for seventeen and a half feet of water or under, one hundred and twenty dollars; for eighteen feet of water or under, one hundred and thirty dollars; for eighteen and a half feet of water or under, one hundred and forty dollars; for nineteen feet of water or under, one hundred and fifty dollars; for nineteen and a half feet of water or under, one hundred and sixty dollars; for twenty feet of water or under, one hundred and seventy-five dollars; for twenty and a half feet of water or under, one hundred and ninety dollars; for twenty-one feet of water or under, two hundred and five dollars; for twenty-one and a half feet of water or under, two hundred and twenty dollars; for twenty-two feet of water or under, two hundred and thirty-five dollars; for twenty-two and a half feet of water or under, two hundred and fifty dollars; for over twenty and a half feet of water, fifteen dollars additional for each and every additional six inches of water under which said vessel may draw; for taking a vessel around to Ashley River, if requested by the master, eight dollars; for taking letters from the City of Charleston to vessels outside of the bar and waiting orders and delivering them on board, the amount of inward pilotage of such vessel's draught. The rates of pilotage for the outer ports shall be fixed by the Board of Pilotage Commissioners of such ports, except that in the port of Charleston they shall not exceed the rates hereinbefore prescribed.

Civ. '12, § 2497; Civ. '02, § 1641; G. S. 1280; R. S. 1381; 1878, XVI, 422; 1894, XXII, 800.

Liability of consignee. McDonald v Prioleau, 14 Fed. 769, 770.

(3608) § 29. When Not Compelled to Employ a Pilot.—Whenever a vessel has crossed over or is inside of the bar, the master shall not be compelled to take a pilot; but if he demands the services of a pilot, he shall pay the customary fees of pilotage as in other cases.

Civ. '12, § 2498; Civ. '02, § 1642; G. S. 1281; R. S. 1382; 1878, XVI, 423.

(3609) § 30. Board to Prescribe Regulations.—The Board of Pilotage Commissioners for the port to which they belong shall have power and

authority to prescribe to the licensed pilots such orders and regulations, not inconsistent with this Chapter, as to them, or a majority of them, may appear suitable and proper; and any such pilot neglecting or refusing to conform to any such orders or regulations shall forfeit and pay for each offense the sum of fifty dollars.

Civ. '12, § 2499; Civ. '02, § 1643; G. S. 1282; R. S. 1383; 1878, XVI, 423.

O'Brien v. DeLarrinaga, 49 S. C. 497, 27 S. E. 481, 483.

(3610) § 31. Register of Pilots.—The Harbor Master of the port shall be bound to keep constantly a complete register, specifying the licenses of all the licensed pilots for his port (with their residences), and of all boats to which they are severally attached, and the name, number, and the owner or owners of the same, and also to register any change or alteration that may take place in either of the above particulars, which change or alterate the said pilots are hereby required, from time to time, as the same occurs, to report to the said Harbor Master, in order that masters of vessels or persons interested may have it always in their power to know from him at once who are the responsible persons on board of each boat, and thereby obtain such information as they may find necessary. And every such pilot or owner of a pilot boat neglecting or refusing to report as aforesaid, shall, for each omission, forfeit and pay a fine not exceeding fifty dollars; and it shall be the duty of the Harbor Master for the port of Charleston, on the first Monday of each month, to report to the Board of Pilotage Commissioners for the port of Charleston a register as above specified, and also such pilots as may have neglected or refused to comply with the foregoing requisitions. And the said Harbor Master shall furnish every master of a vessel coming to the Harbor Master's office with a copy of the law of pilotage, for the purpose of perusing it at the said office, without charging or being allowed to charge any fee or perquisite for any or either of the aforesaid services; and for every neglect of duty in the premises the said Harbor Master shall be liable to a fine of not exceeding fifty dollars, to be imposed by the said Board of Pilotage Commissioners, or a majority of them.

Civ. '12, § 2500; Civ. '02, § 1644; G. S. 1283; R. S. 1384; 1878, XVI, 423.

(3611) § 32. Board to Examine Causes of Disaster.—It shall be the duty of the Board of Pilotage Commissioners, on the occasion of any marine disaster to any vessel in charge of a licensed pilot, to make a careful examination of the cause or causes of such disaster, by immediately summoning before them the pilot in charge of the vessel, and obtaining such testimony from the parties interested, or not, as the case may be, in their power. And the result of such investigation shall be placed upon record, copies of which shall be furnished, when desired, at the expense of the applicant. The marine reports of the daily papers, or private information, shall be deemed sufficient cause for such investigation by the said Board of Commissioners.

Civ. '12, § 2501; Civ. '02, § 1645; G. S. 1284; R. S. 1385; 1878, XVI, 424.

(3612) § 33. Fines—How Collected.—Each and every fine, forfeiture and penalty, for each and every offense under this Chapter, or any part, clause, or article thereof, shall be prosecuted, sued for, and recovered in any Court of competent jurisdiction, for the use of the State; and the penalties imposed in this Chapter may in every case be recovered, although the

Board of Pilotage Commissioners may not think proper to deprive any licensed pilot liable thereto, or in default, of his license in any instance herein authorized.

Civ. '12, § 2502; Civ. '02, § 1646; G. S. 1284; R. S. 1385; 1878, XVI, 424.

(3613) § 34. Power of Board—Station Duty of Pilot Boats—Penalty.

—The Board of Commissioners of Pilotage for the port of Charleston shall have the power, and are authorized, to establish station boats on the bar of Charleston. Each regular licensed pilot boat for the harbor and bar of Charleston shall perform and keep station duty, unless prevented by stress of weather, at or near the bar of Charleston, alternately, for six days each, whenever it becomes the turn of such said pilot boat to perform the same, or to furnish as a substitute another licensed pilot boat, under a penalty of fifty dollars for each day's offense; said pilot boat to be in charge of a full branch licensed pilot for the bar and harbor of Charleston, and the services of any pilot when on station shall be free of charge.

Civ. '12, § 2503; Civ. '02, § 1647; R. S. 1387; 1891, XX, 1286.

(3614) § 35. Penalty for Violating Rules and Regulations—Fines and Penalties—Appropriation.

—They shall have power to make such rules and regulations for the governing of station boats on duty, not inconsistent with the preceding Sections, as to them, or a majority of them, may appear suitable and proper; and any such pilot boat refusing or neglecting to conform to any such rules and regulations, the pilot at the time in command, shall be subject to a fine in the sum of not exceeding fifty dollars, or in case of nonpayment of fine imposed within thirty (30) days, be suspended for not over sixty (60) days. All fines collected under the provisions of this Section shall be paid over to the Board of Harbor Commissioners for the harbor of Charleston, and by them used and disbursed.

Civ. '12, § 2504; Civ. '02, § 1648; R. S. 1388; 1891, XX, 1286.

(3615) § 36. Jurisdiction of Harbor Commissioners—Penalties—Duties of Solicitor.

—The said Board of Harbor Commissioners shall have jurisdiction over the harbor and bay of Charleston, and the rivers and creeks flowing therein, and shall make such regulations as they may see fit for the regulation and government of vessels entering said port and waters, so as to provide for their safe and convenient use of the same, and for the protection and preservation of the said bay and harbor, rivers and creeks from injury by means of deposit of ballast and other materials, the creation of obstructions, or for any other cause whatsoever, with authority to prescribe such penalties for the violation of the said regulations as they may deem adequate: *Provided*, That such penalty shall not exceed the sum of five hundred dollars for each offense, together with the expense of removing such obstructions or interferences with navigation. And the Solicitor of the Circuit shall be, and he is hereby, charged with the duty of enforcing such penalties upon the information and at the request of the said Board of Harbor Commissioners. They are also invested with full power and authority to preserve peace and good order in said bay and harbor: *Provided*, That none of the said regulations shall be repugnant to the laws of the land.

Civ. '12, § 2505; Civ. '02, § 1649; 1881, XVII, 604; 1885, XXIX, 354.

Powers in reference to quarantine station Charleston Harbor. See ante, § (2493).

(3616) § 37. **Annual and Other Meetings.**—The said Board shall have an annual meeting on the second Monday in January in each year, and shall hold such other stated or special meetings as they may for themselves determine.

Civ. '12, § 2506; Civ. '02, § 1650.

(3617) § 38. **Powers as to Lines, Wharves, Docks, Etc.—Proviso.**—The said Board shall have power to fix the lines along the said bay and harbor, and rivers and creeks, within which riparian owners may erect wharves, docks, and other proper erections and fixtures for commercial, manufacturing, or any other purposes. The said Board, or a majority of them, shall have authority to cause the removal of any wharf, dock, wreck, or other obstruction to navigation, or that may, in their opinion, be injurious to the said bay, harbor, rivers, or creeks, at the expense of the owner or owners, or the parties causing the obstructions: *Provided*, That the rights of any owner or owners of wharves whose lines have heretofore been fixed by grant, or by authority of State legislation, are in no wise to be disturbed.

Civ. '12, § 2507; Civ. '02, § 1651.

(3618) § 39. **Penalty for Building Wharves or Other Obstructions Beyond Limits Without Authority.**—No person or persons shall hereafter build any wharf or other obstruction beyond the lines fixed by the said Board, except where the lines of such wharf have heretofore been fixed by the grant, or by authority of State legislation; and any person or persons doing this shall pay the sum of twenty dollars for every such offense, and shall moreover be fined in the sum of twenty dollars for every day such wharf or other obstruction shall remain. And no person or persons shall hereafter build or extend any wharf or other obstruction in or upon the waters of the bay or harbor of Charleston, or the rivers or creeks flowing therein, without first obtaining, in writing, from said Board, a permit for so doing, except where the lines of such wharf have heretofore been fixed by any grant, or by authority of State legislation, under a penalty of twenty dollars for every day such wharf or obstruction shall remain; and it shall be the duty of said Board to prosecute for fines and penalties by Sections 37 to 45.

Civ. '12, § 2508; Civ. '02, § 1652.

(3619) § 40. **Duties of Harbor Commissioners as to Docks — Owners Liable for Neglect.**—It shall be the duty of the said Board of Harbor Commissioners to examine, or cause to be examined, all the docks, public or private, upon the waters of the said bay and harbor, and the rivers and creeks flowing therein; and when it is the opinion of said Board, or a majority of them, that such docks are not in a proper condition for the purposes for which they were designed and used, they shall cause a notice to be served upon the owner or occupier of said dock, and they shall deepen the same, and if such owner or occupier shall neglect or refuse to attend to such dock after thirty days' notice, such person so offending shall forfeit and pay twenty dollars, and the further sum of five dollars for every day he, she, or they shall neglect or refuse, and shall, moreover, pay all expenses

incurred by reason of such neglect or refusal; and it shall be the duty of the said Board to prosecute for such fines and penalties.

Civ. '12, § 2509; Civ. '02, § 1653.

(3620) § 41. Deposit of Excavated Material—Penalty for Violation.—Hereafter, when any dredging or excavation shall be done in the said bay and harbor, rivers and creeks, or the docks thereon, the material excavated shall be deposited only at such place or places as may be designated by the said Board, under such penalty not exceeding the amount prescribed in Section 36, as the said Board shall prescribe.

Civ. '12, § 2510; Civ. '02, § 1654.

(3621) § 42. Harbor Master and Port Wardens.—The said Board of Harbor Commissioners shall have power to elect or appoint annually a Harbor Master and such number of Port Wardens as in their discretion are necessary for the bay and harbor of Charleston and the rivers and creeks flowing therein, and to define and assign the duties of such Harbor Master and Port Wardens under the rules and regulations for the government of vessels within or entering into the said harbor and waters, or any of them, and for their safe and convenient use of said waters, and regulate their compensation, with power to remove them, or any of them, at their discretion.

Civ. '12, § 2511; Civ. '02, § 1655.

(3622) § 43. Fees and Port Charges.—The said Board of Harbor Commissioners shall be, and are hereby, invested with full power and authority to levy and collect from all vessels entering into and using the port of Charleston such fees and harbor or port charges, not inconsistent with the law, as, in their discretion, may be necessary to pay the said Harbor Master and Port Wardens for the services required of them, and to defray the necessary expenses attendant upon the execution of the duties devolved upon the said Board under Sections 36 to 43 in relation to the regulations for the safety and convenience of vessels entering the said port and waters, or any of them.

Civ. '12, § 2512; Civ. '02, § 1656; 1885, XIX, 354.

(3623) § 44. Payment and Disbursement of Fees, Harbor or Port Charges, Fines and Penalties.—All fees, harbor or port charges, fines and penalties collected under the provisions of Sections 36 to 43, shall be paid over to the said Board of Harbor Commissioners, and be disbursed by the said Board in paying the salaries of the Harbor Master and Port Wardens, and such other officers as the said Board may see fit to appoint to facilitate the discharge of the duties imposed by this Chapter, and such other expenses as may be incident to said duties.

Civ. '12, § 2513; Civ. '02, § 1657; 1881, XVII, 606.

(3624) § 45. Board of Harbor Commissioners Shall Report Annually to General Assembly.—The said Board of Harbor Commissioners shall annually report to the General Assembly the amounts received for fees, harbor or port charges, fines and penalties, and the disbursement thereof, and also generally its actings and doings.

Civ. '12, § 2514; Civ. '02, § 1658; 1881, XVII, 606.

CHAPTER XXXIX.

Dock and Warehouse Commission for Charleston County.

(3625) § 1. **Dock and Warehouse Commission for Charleston County Created.**—There shall be a Dock and Warehouse Commission for the County of Charleston consisting of eleven members as follows: The Mayor of the City of Charleston, five Aldermen and two citizens whose terms of office shall expire with the term of the Mayor appointing them, to be appointed by the Mayor and confirmed by City Council; the President of the Chamber of Commerce, the President of the Cotton Exchange, and the President of the Merchants Exchange: *Provided, however,* That the five Aldermen and the two citizens so nominated and confirmed shall hold office on the said Commission during the term of office of the Aldermen, or until their successors shall have qualified.

1912, XXVII, 661; 1916, XXIX, 1089.

(3626) § 2. **Vacancies, How Filled.**—Any vacancy arising from death, resignation, removal from the city, or incapacity to serve, of any one or more of their number shall be filled as provided in Section 1 hereof: *Provided, always, however,* That in filling such vacancy the basis of representation hereinbefore ordained shall be observed.

1912, XXVII, 661.

(3627) § 3. **Chairman.**—The Chairman of the said Dock Commission shall be one of the five Aldermen, to be elected by the Commission. The City Engineer shall act as Secretary of the Commission without compensation.

1912, XXVII, 661.

(3628) § 4. **Powers.**—The said Dock Commission shall have general supervision of all wharves, warehouses and terminal facilities of all transmitting and transporting corporations, and of all wharves, warehouses and terminal facilities of corporations, firms, companies or individuals engaged in business as public warehousemen or wharfagers and shall examine the same and keep themselves informed as to their condition and the manner in which they are operated, with reference to the security and accommodation of the public and the compliance with all provisions of law applicable thereto.

1912, XXVII, 661.

(3629) § 5. **Notice to Owners of Wharves.**—Whenever in the judgment of said Dock Commission it shall appear that repairs are necessary upon any such wharves, warehouses or terminal facilities, or that any additions, improvements or enlargements in the said wharves, warehouses or terminal facilities, or any change in the mode of operating and conducting said business is reasonable and expedient, in order to promote the security, convenience and accommodation of the public or to provide facilities required by the business offering at the port of Charleston, said Commission shall give information in writing to the owners or operators of said wharves, warehouses and terminal facilities of the improvements, changes, enlarge-

ments and betterments which they judge to be proper, and if the owners or operators of said wharves, warehouses and terminal facilities shall fail within sixty days to adopt the suggestion of said Commission the said Dock Commission shall take such legal proceedings as they may deem expedient.

1912, XXVII, 661.

(3630) § 6. May Order Improvements.—Upon the written petition of the City Council of Charleston, or of any of the patrons of any corporation, company, firm or individual owning or operating wharves, warehouses and terminal facilities for public uses or for hire, alleging that the plant or equipment of such corporation, company, firm or individual is inadequate or unsuited to the public need, the Commission shall fix a time and place for a hearing upon such petition and shall mail notice thereof to the parties in interest, and give due public notice thereof at least one week prior to such hearing. Upon such hearing the Commission may, if it finds wharves, warehouses or terminal facilities to be inadequate or unsuited to the public need, order and prescribe such wharves, warehouses or terminal facilities as shall be adequate and suitable, and fix a time within which such corporation, company, firm or individual owning or operating the same shall construct such additions or improvements. It shall thereupon be the duty of such corporation, company, firm or individual to construct such additions or improvements to its plant or equipment within the time so fixed.

1912, XXVII, 661.

(3631) § 7. May Examine.—The said Dock Commission shall be authorized to examine into all wharves, warehouses and terminal facilities, and the approaches to the same, in the County of Charleston.

1912, XXVII, 661.

(3632) § 8. Duties of Wharf Owners.—That the owners or occupiers of any wharves, warehouses and terminal facilities within the County of Charleston shall at all times, as long as said properties are used for public purposes, keep the same, and the sheds thereon, and the approaches thereto, in proper condition and repair; and if said wharves, warehouses, terminal facilities, superstructures or the approaches to the same are dangerous to life or limb, or unsafe or unsuitable for the persons using the same, the Commission shall notify in writing the said owner or occupier of said wharves, warehouses or terminal facilities to put the same in proper repair or condition; and if the said owner or occupier shall neglect or refuse to put the said wharves, warehouses, terminal facilities, superstructures or approaches in proper condition within thirty days after notice, such owner or occupier so offending shall be subject to a penalty of one hundred (\$100) dollars, and the further sum of ten (\$10) dollars for each and every day such neglect shall continue, and shall moreover pay all expense incurred by reason of such neglect or refusal. And if such wharf, warehouse or terminal facility be at the said time used for public purposes, the said Commission shall have the right to repair and put the same in safe and suitable condition at the expense of the owner or occupier: *Provided, however,* That owners or occupiers of any such properties shall, within ten

days after notice is served upon them to repair the same, have the right to apply to the Dock Commission for a hearing.

1912, XXVII, 661.

(3633) § 9. Penalty.—If any corporation, company, firm or individual having wharves, warehouses or terminal facilities used for public purposes shall be guilty of a violation of the rules and regulations provided and prescribed by the said Commission, such corporation, company, firm or individual owning or operating such wharf, warehouse or terminal facility, shall incur a penalty for each offense of not less than \$100 nor more than \$300, to be fixed by the presiding Judge. An action for the recovery of such penalty shall be in any Court of competent jurisdiction in the State where such violation has occurred or wrong has been perpetrated.

1912, XXVII, 661.

(3634) § 10. Appeals.—*Provided, however,* Such corporation, company firm or individual shall have the right to appeal from any order, ruling or requirement of such Commission, to the Court of Common Pleas for Charleston County, to be heard and determined by the presiding Judge thereof, as if tried *de novo* before him, who shall pass upon and determine the reasonableness of such order, ruling or requirement, and such appeal shall stay the execution of any order, ruling or requirement appealed from, and that no fines or penalties imposed by said Commission shall be operative or commence to run until the final determination of such appeal: *Provided,* That this Chapter shall not apply to any portion of Charleston County not included in the City of Charleston and not included in the portion of the county lying to the north of said city and between the Ashley and Cooper Rivers.

1912, XXVII, 661.

CHAPTER XL.

Money—Interest—Bills of Exchange and Promissory Notes; Negotiable Instrument Act—Agency.

ARTICLE 1. Money—Interest, 1094.

ARTICLE 2. Bills and Notes, 1099.

ARTICLE 3. Agency, 1140.

ARTICLE I.

Money—Interest.

(3635) § 1. Public Account Expressed in Dollars, Dimes, Cents and Mills.—All accounts in the public offices of this State, the verdicts of juries on all contracts, and all accounts of public officers, shall be expressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousandths; a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar.

Civ. '12, § 2515; Civ. '02, § 1659; G. S. 1287; R. S. 1389; 1795, V, 262.

Tate v. Lenhardt et al, 110 S. C. 569, 96 S. E. 720.

(3636) § 2. Decree and Judgment to Draw Interest—Legal Interest—

In all money decrees and judgments of Courts enrolled or entered, in all cases of accounts stated; and in all cases wherein any sum or sums of money shall be ascertained, and, being due, shall draw interest according to law, the legal interest shall be at the rate of seven per centum per annum

Civ. '12, § 2516; Civ. '02, § 1660; G. S. 1289; R. S. 1392; 1866, XIII, 463.

Seven per cent. in the absence of special agreement. *Reid v. Stevens*, 38 S. C. 519, 17 S. E. 358. Agreement for higher rate must be in writing. *Bank v. Miller*, 39 S. C. 175, 17 S. E. 592; *Bank v. Parrott*, 30 S. C. 61, 8 S. E. 199.

As to decrees and judgments. *Lumpkin v. Nance*, 2 Brev. 99; *Norwood v. Manning*, 2 N. & McC. 395; *Rochelle v. Campbell*, 1 McC. Ch. 53; *Winslow v. Ancrum*, 1 McC. Ch. 100; *Thomas v. Wilson*, 3 McC. 166; *Williamson v. Broughton*, 4 McC. 212; *Harrington v. Glenn*, 1 Hill 79; *Kirk v. Richbourg*, 2 Hill 352; *Crouther v. Sawyer*, 2 Speer 573; *Daub v. Martin*, 2 Bay 193; *Pinkney v. Singleton*, 2 Hill 343; *Phinizy v. Augusta, etc., R. Co.*, 63 Fed. 923. Decreed on sum assessed for equality of partition. *Craig v. Craig*, Bail Eq. 102. Purchaser at judicial sale may be required to pay 8 per cent. on deferred payments. *Association v. Powell*, 55 S. C. 316, 33 S. E. 355. Attorney's fees after being placed in judgment bear interest. *Id.* Costs and disbursements bear interest after being placed in judgment. *Johnson v. Masters*, 49 S. C. 525, 27 S. E. 474; *Addison v. Sujette*, 60 S. C. 58, 38 S. E. 229.

As to accounts stated. *Dickenson v. Legare*, 1 Dess. 537; *Knight v. Mitchell*, 3 Brev. 506; *Farrand v. Bouchell*, Harp. 83; *Chisholm v. Neyle*, Harp. 274; *Furman v. Peay*, 2 Bail. 394; *Smetz v. Kennedy*, Riley 218; *Heyward v. Searson*, 1 Speer 249; *Trenholm v. Bampfield*, 3 Rich. 376; *Church v. Washington*, 3 Rich. 380; *Johnson v. Bennett*, 1 Speers 209.

Not recoverable on open or book accounts, without special agreement, or on any unliquidated demand previous to finding of jury. *Skirving v. Stobo*, 2 Bay 233; *Edwards v. Dargan*, 30 S. C. 177, 8 S. E. 858; *Holmes v. Missoury*, 1 Treadw. Const. 21; *Schemerhorn v. Perman*, 2 Bailey 173; *Ordinary v. Bonnell*, 2 Hill 468; *Bishop v. Ross*, 21.

As to sums ascertained and due. *Grimke v. Grimke*, 1 Dess. 366; *Bowles v. Drayton*, 1 Dess. 489; *Holmes v. Bigelow*, 3 Dess. 497; *Harrison v. Long*, 4 Dess. 110; *Bulow v. Goddard*, 1 N. & McC. 45; *Barelli v. Brown*, 1 McC. 499; *Elliott v. Minott*, 2 McC. 125; *Ryan v. Baldrick*, 3 McC. 498; *Conyers v. Magrath*, 4 McC. 392; *Black v. Goodman*, 1 Bail. 201; *Siter v. Robinson*, 2 Bail. 274; *Wardlaw v. Gray*, Dud. Eq. 85; *Marvin v. McRae*, Cheves 61; *Ancrum v. Sloane*, 2 Speer 594; *Smith v. Godbold*, 4 Strob. Eq. 186; *Kennedy v. Barnwell*, 7 Rich. 124; *Kimball v. Glover*, 13 Rich. 191; *Arnold v. House*, 12 S. C. 608; *Childs v. Frazee*, 15 S. C. 612; *Witte Bros. v. Clark*, 17 S. C. 328; *Sullivan v. Susong*, 30 S. C. 306, 9 S. E. 156; *Garlington v. Copeland*, 32 S. C. 57, 10 S. E. 615; *Railway Co. v. Greenville*, 49 S. C. 499, 27 S. E. 652; *Greer v. Latimer*, 47 S. C. 176, 25 S. E. 136.

Money paid. *Thompson v. Stevens*, 2 N. & McC. 493.

Bonds. *Surety Company, Murray v. Aiken Mfg Co.*, 39 S. C. 457, 18 S. E. 5; *Replevin, Hart v. Tobias*, 2 Bay 408.

Annuities. *Stevenson v. Axson*, 1 Bailey Ch. 274; *Irby v. McCrae*, 4 DeS. 422.

From maturity of debt. *Kinard v. Glenn*, 29 S. C. 590, 8 S. E. 203.

Rate recoverable against surety. *Sloan v. Gibbs*, 35 S. E. 408, 56 S. C. 480.

Balances on accounts of Trustees, etc. *Tucker v. Richards*, 58 S. C. 22, 36 S. E. 3; *Gee v. Humphries*, 49 S. C. 253, 27 S. E. 101; *Cunningham v. Cauthen*, 44 S. C. 95, 21 S. E. 800; *Nicholson v. Whitlock*, 57 S. C. 36, 35 S. E. 412; *Black v. Blakely*, 2 McC. Ch. 1; *Wright v. Wright*, *Id.* 185; *McCaw v. Blewit*, *Id.* 90; *Myers v. Myers*, *Id.* 214; *Rowland v. Best*, *Id.* 317; *Edwards v. Crenshaw*, Harp. Eq. 24; *Howard v. Schmidt*, Rich. Eq. Cases 452; *Dixon v. Hunter*, 3 Hill 204; *Patterson v. Clawson*, 4 Rich. Eq. 92; *Baker v. Lafitte*, 4 Rich. Eq. 392; *Crosby v. Crosby*, 1 S. C. 337; *Livingston v. Wells*, 8 S. C. 347; *Johnson v. Henegan*, 11 S. C. 93; *Koon v. Monroe*, 11 S. C. 140; *Davis v. Wright*, 2 Hill 560; *Dixon v. Distributees*, 3 Hill 204.

The following five paragraphs from the monograph on annual interest, by the Hon. Silas Johnston, late of Newberry, at page 165 of Appendix to his Equity Digest, is a concise summary of the law in relation to the subject.

1. The rate of interest prescribed by law attaches to a debt after it becomes due, unless by the terms of the contract, expressed or necessarily implied, the rate fixed on its face is to continue after the maturity of the contract. *Henderson v. Laurens*, 2 DeS. Eq. 170; *Gaillard v. Bail*, 1 Nott & McC. 67; *Langston v. R. R. Co.*, 2 S. C. 248; *Bell v. Bell*, 25 S. C. 149; *Briggs v. Wisnsmith*, 10 S. C. 132; *Maner v. Wilson*, 16 S. C. 470; *Carolina Savings Bank v. Parrott*, 30 S. C. 61, 8 S. E. 199; *Smith v. Smith*, 33 S. C. 210, 11 S. E. 761; *Sharpe v. Lee*, 14 S. C. 341; *Kennedy v. Boykin*, 25 S. C. 61, 14 S. E. 809; *Bank v. Miller*, 39 S. C. 175, 17 S. E. 592; *Thatcher v. Massey*, 20 S. C. 542.

A higher rate after maturity was held contracted for in *Mobley v. Devaga*, 16 S. C. 75; *Watkins v. Lang*, 17 S. C. 18; *Bowen v. Barksdale*, 33 S. C. 142, 11 S. E. 640; *Miller v. Hall*, 18 S. C. 141. Where a higher than legal rate is to be paid after maturity, but no time is stipulated within which such rate is to be paid, it continues until payment in full. *Ellis v. Sanders*, 32 S. C. 584, 16 S. E. 824.

2. Where a party contracts to pay a sum of money, with interest thereon, at a given day, when the day arrives the interest becomes principal, and if the debt be not paid, the aggregate of principal and interest then bears interest, for the future. *Doig v. Barkley*, 3 Rich. L. 125; *DeBuhl v. Neuffer*, 3 Strob. L. 426; *Singleton v. Allen*, 2 Strob. Eq. 166; *Carolina Savings Bank v. Parrott*, 30 S. C. 61, 8 S. E. 199; *Bowen v. Barksdale*, 33 S. C. 142, 11 S. E. 640.

3. On a bond due at twelve months, or at a shorter time than twelve months, with annual interest from its date, the interest accrues annually, as well after as before the debt falls due. *Singleton v. Lewis*, 2 Hill 408; *O'Neal v. Bookman*, 9 Rich. L. 80; *Sharp v. Lee*, 14 S. C. 341; *Westfield v. Westfield*, 19 S. C. 85.

Same principle applied where monthly interest was reserved in *Piester v. Piester*, 23 S. C. 139. 4. The contract being for the payment of a sum of money, at a longer time than twelve months, with annual interest from its date, annual interest is to be computed up to the day the debt falls due, and simple interest afterwards, until the debt is paid off. *Gibbes v. Chisholm*, 2 N. & McC. 38;

O'Neill v. Sims, 1 Strob. L. 115; DeBruhl v. Neuffer, 1 Strob. L. 426; Westfield v. Westfield, 19 S. C. 85; Wilson v. Kelly, Ib. 161; Ehrhardt v. Varn, 51 S. C. 550, 29 S. E. 225.

Same principle where monthly interest was reserved was applied in Smith v. Smith, 33 S. C. 210, 11 S. E. 761.

5. If the contract be, by express stipulation or by reasonable implication, to pay interest annually beyond the time fixed for the payment of the principal, if forbearance should extend beyond that time, annual interest is recoverable after the maturity of the obligation as well as before. O'Neill v. Bookman, 9 Rich. L. 80; Wright v. Eaves, 10 Rich. Eq. 582.

Action for usury against National Banking Association must be brought within two years under U. S. Revised Statutes, Section 5198. Garfinkle v. Bank of Charleston, N. B. A., 79 S. C. 404, 60 S. E. 942.

Interest allowed only from date of judgment confirming report of referee and not from date of report showing amount then ascertained to be due. Brown v. Rogers, 76 S. C. 180, 56 S. E. 680. Interest on value of property considered as an element of damages. Walker v. Southern Railway Co., 76 S. C. 308, 56 S. E. 952.

Mortgage may be referred to to ascertain interest on bond. Ex parte Powell, 74 S. C. 193, 54 S. E. 236.

Gwathmey et al v. Burgiss, 98 S. C. 152, 82 S. E. 394; Wakefield v. Spoon, 100 S. C. 100, 84 S. E. 418; Burris et al v. Burris et al, 113 S. C. 370, 101 S. E. 863.

(3637) § 3. Law of This State Regulating Interest Governs Contracts Secured by Realty Mortgage.—All contracts secured by mortgage of real estate situate within this State shall be subject to and construed by the laws of this State regulating the rate of interest allowed, and in all other respects, without regard to the place named for the performance of the same.

Civ. '12, § 2517; Civ. '02, § 1661; 1896, XXII, 747.

The Act of 1898 held not retroactive in Loan and Investment Co. v. Logan, 55 S. C. 295, 33 S. E. 372; Association v. Powell, 55 S. C. 316, 33 S. E. 355; Tobin v. McNab, 53 S. C. 73, 30 S. E. 827.

In contracts made prior to above Act, where a contract was made in one State to be performed in another, the parties could, in good faith, stipulate for the rate of interest allowed in either State. Mortgage Co. v. Bates, 58 S. C. 551, 36 S. E. 917; Ass'n v. Vance, 49 S. C. 402, 27 S. E. 274; Ass'n v. Hoffman, 50 S. C. 303, 27 S. E. 692; Turner v. Ass'n, 51 S. C. 33, 27 S. E. 947; Carpenter v. Lewis, 60 S. C. 23, 38 S. E. 244; Equitable B. & L. Ass'n v. Corley, 72 S. C. 404, 52 S. E. 48, 110 Am. St. Rep. 615. Contract construed according to law of State where it was to be performed. Meares v. Finlayson, 55 S. C. 105, 32 S. E. 986; Tobin v. McNab, 53 S. C. 73, 30 S. E. 827; Carpenter v. Lewis, 60 S. C. 23, 38 S. E. 244. See also Quince v. Carpenter, 1 DeS. 160. As to remedy and relief to be afforded, if the contract is usurious, the *lex fori* prevails. Meares v. Finlayson, 55 S. C. 105, 32 S. E. 986; Carpenter v. Lewis, 60 S. C. 23, 38 S. E. 244, 249.

(3638) § 4. Interest Regulated.—No greater interest than seven (7) per cent. per annum shall be charged, taken, agreed upon or allowed upon any contract arising in this State for the hiring, lending or use of money or other commodity, either by way of straight interest, discount or otherwise, except upon written contracts wherein, by express agreement, a rate of interest not exceeding eight per cent. may be charged: *Provided*, That where any insurance company, as a condition for a loan by such company, of money upon mortgage or other security, shall require that the borrower insure either his life or that of another, or his property, with such company and assign to such company, or cause to be assigned to it, any policy of insurance as security for such loan, or agree to pay premiums thereon during the continuance of such loans, whether such premiums be paid annually or in installments, such premiums shall not be considered as interest on such loan within the meaning of this Section, nor shall any loan be rendered usurious by reason of any such requirements where the rate of interest charged for the loan does not exceed the rate above fixed, and where the premiums charged for the insurance do not exceed premiums charged to other persons under like circumstances and conditions who do not obtain loans.

Civ. '12, § 2518; Civ. '02, § 1662; G. S. 1288; R. S. 1390; 1877, XVI, 325; 1882, XVIII, 35; 1889, XX, 376; 1898, XXII, 749; 1912, XXVII, 573.

Piyler v. McGee, 76 S. C. 450, 451, 57 S. E. 180, 121 Am. St. Rep. 950; Ehrhardt v. Varn, 51 S. C. 550, 29 S. E. 225; Merchants', etc., Bank v. Sarratt, 77 S. C. 141, 146, 57 S. E. 621, 122 Am. St. Rep. 562.

Contract providing for interest after maturity, until paid, at rate of ten per cent. per annum, payable annually, is usurious. Union Mort., etc., Trust Co. v. Hagood, 97 Fed. 360, 363.

Lewis et al v. Dunlap et al, 112 S. C. 544, 100 S. E. 170; People's Bank of Dillon v. Perritt et al. Same v. Bracy, 114 S. C. 362, 103 S. E. 711.

(3639) § 5. Usury.—Any person or corporation who shall receive, or contract to receive, as interest any greater amount than is provided for in the preceding Section shall forfeit all interest, and the costs of the action and such portion of the original debt as shall be due shall be recovered without interest or costs, and where any amount so charged or contracted for has been actually received by such person or corporation, he or she, or they shall also forfeit double the total amount received in respect of interest, to be collected by a separate action or allowed as a counterclaim in any action brought to recover the principal sum.

Civ. '12, § 2519; Civ. '02, § 1663; R. S. 1391; 1877, XVI, 325; 1882, XVIII, 35; 1889, XX, 376; 1898, XXII, 749.

Party receiving usury, honestly believing in his right to do so, is liable to the penalty. Plyler v. McGee, 76 S. C. 450, 451, 57 S. E. 180, 121 Am. St. Rep. 950. Compound interest; usury. Earle v. Owings, 72 S. C. 366, 51 S. E. 930. Receipt through mistake of fact. Rushton v. Woodham, 68 S. C. 110, 46 S. E. 943. "Contracting to receive." Strait v. British and American Mortgage Co., 77 S. C. 367, 57 S. E. 1100.

All et al v. British & American Mortgage Co., Limited, 104 S. C. 239, 88 S. E. 529; Tate v. Lendarth et al, 110 S. C. 569, 96 S. E. 720; Lewis et al v. Dunlap et al, 112 S. C. 544, 100 S. E. 170.

(3640) § 6. Where Usury Not Maintainable.—No lender shall be charged with usury under the preceding Sections by reason of money paid or agreed to be paid others by the borrower in order to obtain a loan where the lender neither took nor contracted to take more than lawful interest: *Provided, however,* That suit may be brought within six months from the date of such transaction against such other persons as may have charged excessive fees or excessive commissions, and recovery may be had thereon for the excess over and above a reasonable fee or reasonable commissions.

1916, XXIX, 923.

(3641) § 7. Who May Plead Usury.—The borrower, and his heirs, devisees, legatees or personal representative, or any creditor or any person having a legal or equitable interest in the estate or assets of such borrower, may plead the benefit of the provisions of the preceding Section as plaintiff or defendant and the same shall be effectual at any suit at law, or in equity, and any person offending against the same shall be compelled to answer, on oath, any complaint that may be exhibited against him for the discovery of any sum of money or things in action, so charged, agreed upon, reserved or taken, in violation of the foregoing provisions, or either of them. The provisions of this and the last two preceding Sections shall not apply to contracts made prior to the second day of March, 1898.

Civ. '12, § 2520; Civ. '02, § 1664; 1877, XVI, 325; 1882, XVIII, 35; 1889, XX, 376; 1898, XXII, 749.

Usurious Contracts.—Excessive rate of interest for deferred payments on contract for sale of land. People's Bank v. Jackson, 43 S. C. 86, 20 S. E. 786, 27 L. R. A. 569, and note: On sale of personal property. Thompson v. Nesbit, 2 Rich. 73; Sumter Bldg., etc., Ass'n v. Winn, 45 S. C. 381, 23 S. E. 29; Ass'n v. Dorsey, 15 S. C. 467; Columbia Ass'n v. Bollinger, 12 Rich. Eq. 124. An agreement to pay taxes assessed on loan in addition to principal and legal interest. Mortimer v. Pritchard, Bail. Eq. 505. Where agent of lender with knowledge of his principal, exacts from borrower a commission for his services, which with the interest charged, exceeds the highest legal rate, the loan is rendered usurious. Brown v. Brown, 38 S. C. 173, 17 S. E. 452; Mortgage Company v. Gillam, 49 S. C. 359, 26 S. E. 990; New England Co. v. Baxley, 44 S. C. 81, 21 S. E. 444. A contract for illegal interest after maturity. Savings Bank v. Strother, 28 S. C. 504, 6 S. E. 313. Changing an indent from its real to nominal value. Atkinson v. Executors of Scott, 1 Bay 307. Forbearance of pre-existing debt at excessive interest. Harp v. Chandler, 1 Strob. 466. As to compound interest. O'Neal v. Sims, 1 Strob. 116. A note given to secure indulgence on judgment for sum exceeding legal interest thereon. Caughman v. Drafts, 1 Rich. Eq. 415; Cleveland v. Dare, Harp. 407. A sale of stock to person in necessitous circumstances at a price much above par, in order to enable purchaser to raise money thereon. Anon. 2 DeS. 334. Sale of note of third party for such purpose. Brown v. Fausset, Harper 81. A bond or note made without consideration for purpose of raising money and discounted at usurious rate. Stock v. Parker, 2 McC. 376; Cantey v. Blair, 1 Rich. 41. Renewal note at usurious rate. Langford v. Woodruff, 1 Rich. 1; Edwards v. Skirving, 1 Brev. 548; Motte v. Dorrill, McC. 350; Quarles v. Brannon, 5 Strob. 151; Clark v. Hunter, 2 Spears 83.

Not Usurious—A decree directing credit portion of purchase money at judicial sale to bear interest at 8 per cent. *Ass'n v. Powell*, 55 S. C. 316, 33 S. E. 355. A contract providing that the total amount received by the lender should not exceed the amount loaned and 8 per cent. interest. *Thompson v. Gillison*, 28 S. C. 534, 6 S. E. 333; *Ass'n v. Powell*, 55 S. C. 316, 33 S. E. 355; *Turner v. Ass'n*, 47 S. C. 397, 25 S. E. 278; *Buist v. Bryan*, 44 S. C. 121, 21 S. E. 537. A contract for the highest legal rate of interest to be paid in advance. *Bank v. Parrott*, 30 S. C. 61, 8 S. E. 199, or bear interest at same rate if not paid. *Newton v. Woodley*, 55 S. C. 132, 32 S. E. 531. Discounting at 30 days per month, or 360 days per year. *Merchants, etc., Bank v. Sarraat*, 77 S. C. 141, 57 S. E. 621. Sale of note given for valuable consideration in open market bona fide. *Flemming v. Milligan*, 2 McC. 173; *King v. Johnson*, 3 McC. 365; *Harriek v. Jones*, 4 McC. 402. A verbal agreement for higher rate than 7 per cent. *Utey v. Cavender*, 31 S. C. 282, 9 S. E. 957. Commission contract with factor. *Witte v. Weinberg*, 37 S. C. 579, 17 S. E. 681; *Norwood & Co. v. Faulkner*, 22 S. C. 370. An agreement to buy land for cash, and to reconvey for larger sum on long time. *Wheeler v. Marchbanks*, 32 S. C. 594, 10 S. E. 1011. Building and Loan Contract where payments on stock are distinct from interest on loan. *Ass'n v. Vance*, 49 S. C. 402, 27 S. E. 274. Interest from a period anterior to date of instrument. *Levy v. Hampton*, 1 McC. 145; *Dickson v. Seguinier*, 3 Brev. 417; 2 Treadw. Const. 501. Bond for partial payments and interest on entire sum. *Gibbes v. Chisholm*, 2 N. & M. 38. Use of mortgaged property in lieu of interest. *Wurtz v. Thynes*, 2 Hill Ch. 171. Other instances. *Brook v. Thompson*, 1 Bailey 322; *Miller v. Reid*, 345; *Heyward v. Williams*, 63 S. C. 470, 41 S. E. 550. The lender will not be relieved of the legal consequences of usury on the ground of mistake, absence of knowledge or intent. *Gilland v. Phillips*, 1 S. C. 157; *Thompson v. Nesbit*, 2 Rich. 73; *Brunner v. Wilks*, 2 McC. 178; *Bank v. Parrott*, 300 S. C. 61, 8 S. E. 199; *Mitchell v. Bailey*, 57 S. C. 341, 35 S. E. 581; *Plyler v. McGee*, 76 S. C. 450, 57 S. E. 180, 121 Am. St. Rep. 950. But not so under former Statute. *Mortimer v. Pritchard*, Bailey Eq. 505.

Equitable owner of land may plead usury. *Cunningham v. Cunningham*, 81 S. C. 506, 515, 62 S. E. 845.

Discounting at 8 per cent. when contract did not provide for that rate. *Bank v. Sarraat*, 77 S. C. 141, 57 S. E. 621, 122 Am. St. Rep. 562. Building and Loan contract held usurious in *Cunningham v. Cunningham*, 81 S. C. 506, 515, 62 S. E. 845.

Action against a national bank under Act of Congress for receiving usurious interest. *Garfunkle v. Bank of Charleston*, N. B. A., 79 S. C. 404, 60 S. E. 942.

Receipt of usurious interest on contract prevents lender from collecting more than principal sum lent without interest or costs; but debtor is not entitled to have all payments of interest applied to principal. *Butler v. Butler*, 62 S. C. 165, 40 S. E. 138; *Bird v. Kendall*, 62 S. C. 178, 40 S. E. 142.

Application of payments on contract with an insolvent building and loan company. *Butler v. Butler*, *supra*. But in determining the amount due on a contract with an insolvent Building and Loan Association all payments made by the borrower will be applied to his debt. *Meares v. Finlayson*, 63 S. C. 537.

Usury must be pleaded. *Butler v. Butler*, *supra*.

Presumption that contract is solvable under laws of State in which it is made payable may be rebutted by other evidence. *Galletley v. Strickland*, 74 S. C. 394, 54 S. E. 576.

Usurious contract of foreign building and loan association. *Galletley v. Strickland, Jr.*; *Association v. Rice*, 68 S. C. 235, 47 S. E. 63, 1 Am. & Eng. Ann. Cas. 239.

Usurious contract and remedy under Act of 1882. *Earle v. Owings*, 72 S. C. 362, 51 S. E. 980.

Legal Effect on Contract—Only amount lent to be recovered, under former Acts, without interest or costs. *Gilliland v. Phillips*, 1 S. C. 157; *Pelzer, Rogers & Co. v. Steadman*, 22 S. C. 291; *Hardin v. Trimmer*, 27 S. C. 110, 3 S. E. 46; *Bank v. Parrott*, 30 S. C. 61, 8 S. E. 199; *Brown v. Brown*, 38 S. C. 173, 17 S. E. 452. Also without attorneys' fee stipulated for in contract. *Mortgage Co. v. Gilliam*, 49 S. C. 345, 26 S. E. 990. Where contract was not usurious in its inception the penalties may be incurred by subsequently charging and receiving usurious interest. *Ehrhardt v. Varn*, 51 S. C. 550, 29 S. E. 225. Under former statute usurious contracts were void. *Payne v. Trezvan*, 2 Bay 23; *Solomons v. Jones*, 1 Treadw. 144; 3 Brev. 54; *Moncure v. Dermott*, 13 Peters 345; *Magwood v. Duggan*, 1 Hill 182; *Gaillard v. LeSeigneur*, 1 McMull. 225; *Brunner v. Wilks*, 2 McC. 178; *Fleming v. Mulligan*, Ib. 173; but a contract will not be declared void as usurious at instance of the lender. *Miller v. Kerr*, 1 Bailey 4. Nor will usurious acts subsequent to creation of contract affect innocent purchasers. *Foltz v. Mey*, 1 Bay 486; *King v. Johnson*, 3 McC. 365. But an endorser might become liable thereon by reason of fraudulent representations. *Odell v. Cook*, 2 Bail 59.

As a Defense—Must be specially pleaded. *Pelzer v. Morris*, 56 S. C. 88, 34 S. E. 22; *Campbell v. Linder*, 50 S. C. 169, 27 S. E. 648; *Bank v. Miller*, 39 S. C. 175, 17 S. E. 592; *Ex parte Monteith*, 1 S. C. 232; *Bird v. Kendall*, 62 S. C. 178. — S. E. —. But not under former statute where contract was sold. *Solomons v. Jones*, 3 Brev. 54, 1 Treadw. 144.

Prior to the last act the plea of usury was personal to the borrower. *Bird v. Kendall*, 62 S. C. 178, — S. E. —.

Holder of equitable title to land may set up usury in foreclosure of mortgage given by one holding legal title. *Cunningham v. Cunningham*, 81 S. C. 506, 515, 62 S. E. 845.

Answer Held Sufficient to Raise Plea—*Harrair v. Parrott*, 45 S. C. 611, 23 S. E. 946.

May Be Plead by One of Several Joint Contractors—*Bank v. Jackson*, 49 S. C. 86, 20 S. E. 786, 27 L. R. A. 278. Under Act of 1777 (4 Stats. 163), the privilege of pleading usury extended to all parties from whom it was demanded. *Phillip v. Caldwell*, 2 Rich. 2. Who may not plead. *Jeffries v. Allen*, 29 S. C. 501, 7 S. E. 828.

As a Counter Claim for Penalty—Statutes of Limitations has no application. *Mortgage Co. v. Gilliam*, 49 S. C. 345, 26 S. E. 990, 29 S. E. 203; *Allen v. Petty*, 59 S. C. 240, 36 S. E. 586; *Earle v. Owings*, 72 S. C. 362, 51 S. E. 980. Payments on contracts prior to statute. *McDown v. McSween*, 29 S. C. 130, 7 S. E. 45. Can only be interposed in an action for the recovery of the principal debt. *Witte v. Weinberg*, 37 S. C. 681, 17 S. E. 681; *Porter v. Jeffries*, 40 S. C. 92, 18 S. E. 229. Under Act of 1882 the amount of penalty recoverable was double the excessive interest paid and not doubled the entire interest paid. *Hardin v. Trimmer*, 30 S. C. 391, 9 S. E. 342; *Utey v. Cavender*, 31 S. C. 282, 9 S. E. 957. Prior to the Act of 1898 the right to counter claim did not survive to the personal representative. *Allen v. Petty*, 59 S. C. 240, 36 S. E. 586; *Garris v. Thomas*, 66 S. C. 57, 60, 44 S. E. 374.

Separate Action to Recover Penalty—Estopped by former judgment to set up usury. *Pickett v. Pickett*, 2 Hill Ch. 470. Debtor estopped to bring, where usurious interest was collected under judgment. *Ryan v. Ass'n*, 50 S. C. 185, 27 S. E. 618; *Fowler v. Henry*, 2 Bail. 54; *Strait v. Boam*

Mfg. Co., 77 S. C. 367, 57 S. E. 1100. Party paying usurious interest may bring. *Turner v. Ass'n*, 47 S. C. 397, 25 S. E. 278.

Prior to the statute money paid voluntarily on a usurious contract could be recovered back. *Caughman v. Drafts*, 1 Rich. Eq. 414. When right of action for penalty accrues. *Stewart v. Fowler*, Harper 403. But equity will not relieve against usury unless the borrower offers to pay amount actually due. *Anon.* 2 DeS. 344; *Jones v. Kilgore*, 2 Rich. Eq. 64.

The right of action for penalty for receiving usurious interest does not survive against the personal representative of the lender. *Butler v. Butler*, 62 S. C. 165, — S. E. —.

Evidence, Strict Proof Required—*Moffat v. McDowall*, 1 McC. 434; *Stock v. Parker*, 2 Ib. 376. *Circumstantial*—*Fulmer v. Hays*, 3 McC. 256.

Appeal—Point that usury statute does not apply because repealed by this section not considered, because not made below. *Blackwell v. McNinch*, 67 S. C. 541, 545, 46 S. E. 477.

(3642) § 8. Usury Not Available by Corporations as to Coupon or Registered Bonds.—No corporation shall, by way of defense, or otherwise, avail itself of any of the provisions of the preceding Sections of this Article, to avoid or defeat the payment of any interest which it has agreed upon, allowed or contracted to pay, in any issue or sale of its coupon or registered bonds, heretofore or hereafter made by it.

Civ. '12, § 2521; 1902, XXIII, 1022.

ARTICLE II.

Bills and Notes.

(3643) § 1. Promissory Notes Made Negotiable and Assignable.—All notes in writing that shall be made and signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant, or trader, who is usually intrusted by him, her, or them, to sign such promissory notes for him, her, or them, whereby such person or persons, body politic and corporate, his, her, or their servant or agent, as aforesaid, doth or shall promise to pay to any other person or persons, body politic and corporate, his, her, or their order, or unto bearer, any sum of money mentioned in such note, shall be taken and construed to be, by virtue thereof, due and payable to any such person or persons, body politic and corporate, to whom the same is made payable; and also every such note payable to any person or persons, body politic and corporate, his, her, or their order, shall be assignable or endorsable over, in the same manner as inland bills of exchange are or may be, according to the custom of merchants; and the person or persons, body politic and corporate, to whom such sum of money is or shall be by such note made payable, shall and may maintain an action for the same, in such manner as he, she, or they might do upon any inland bill of exchange, made or drawn according to the custom of merchants, against the person or persons, body politic and corporate, who, or whose servant or agent, as aforesaid, signed the same; and any person or persons, body politic and corporate, to whom such note that is payable to any person or persons, body politic and corporate, his, her, or their order, is endorsed or assigned, or the money therein mentioned, ordered to be paid by endorsement thereon, shall and may maintain his, her, or their action for such sum of money, either against the person or persons, body politic and corporate, who, or whose servant or agent, as aforesaid, signed such note, or against any of the persons that endorsed the same, in like manner as in cases of inland bills of exchange. And in every such action the plaintiff or plaintiffs shall recover his, her, or their damages and costs of suit; and if such plaintiff or plaintiffs shall be nonsuited,

or a verdict be given against him, her, or them, the defendant or defendants shall recover his, her, or their costs against the plaintiff or plaintiffs; and every such plaintiff or plaintiffs, defendant or defendants, respectively, recovering, may take out execution for such damages and costs.

Civ. '12, § 2522; Civ. '02, § 1665; G. S. 1290; R. S. 1393; 3 and 4 Ann., c. 9; 1712, II, 544.

The making of one's mark a sufficient signature. *Gervais v. Beard*, 2 Brev. 87; *Paisley v. Snipes*, 1b. 200; *Shiver v. Johnson*, 1b. 397.

Second signer's liability. *Ives v. Pickett*, 2 McC. 271.

Where payee signs as maker. *Glenn v. Simms*, 1 Rich. 34; *Freeman v. Clark*, 3 Stro. 281; *Devore v. Mundy*, 4 Stro. 15.

No precise form of words is necessary to constitute promissory note. Any unconditional written promise sufficient. *Pepon v. Stag*, 1 N. & McC. 102; *Woodfork v. Leslie*, 2 Ib. 585; *Mordecai v. Gadsden*, 2 Speers, 565; *Hammett v. Brown*, 44 S. C. 397, 22 S. E. 482.

As to necessity of words order or bearer. *Pratt v. Thomas*, 2 Hill 654. As to words value received. *Hubble v. Fogartie*, 3 Rich. L. 413; *Kendrick v. Gains*, 2 Const. 339; *Chappel v. Proctor*, Harp. 49. As to endorsement. *Frampton v. Dudley*, 1 N. & McC. 128; *Browne v. Depau*, Harp. 251; *Haviland v. Simons*, 4 Rich. 338; *Wilthaus v. Ludecus*, 5 Rich. 326; *Pride v. Berkeley*, 5 Rich. 537; *Hanks v. Dunlap*, 10 Rich. Eq. 139. This section only relates to notes for payment of money. *Peay v. Pickett*, 1 N. & McC. 254; *Wallace v. Dyson*, 1 Speer 127. Contingency as to time of payment. *Wiggins v. Vaughn*, Cheves 91; *Coggeshall v. Coggeshall*, 1 Stro. 43; *Wingo v. McDowell*, 8 Rich. 446. Payment of hire for slave in clothing, etc. *Barnes v. Gorman & Ling*, 9 Rich. 297. Effect of being payable with current exchange on negotiability. *Read v. McNulty*, 12 Rich. 445.

A cheque is substantially an inland bill of exchange. *Sutcliffe v. McDowell*, 2 N. & McC. 251. An endorsement on bond. *Bay v. Freazer*, 1 Bay 66. Foreign bill drawn on person in another State. *Duncan v. Course*, 1 Const. 100; *Bank v. Steinmetz*, 1 Hill 442. Instruments payable to order of makers. *Rambo v. Metz*, 5 Stro. 108; *Keith v. Keith*, 11 Rich. Eq. 83. Instruments to alternative payees. *Ellis v. McLeomore*, 1 Bailey 13. Instruments payable at death of maker. *Carter v. King*, 11 Rich. 125. Due bill payable in "paper medium." *Lange v. Kohne*, 1 McC. 115. Fertilizer note. *Dowie v. Joyner*, 25 S. C. 123. Paper executed in blank. *Carson v. Hill*, 1 McMul. 76. A note is not a formal instrument in which a married woman was required to express her intention to bind her separate estate. *Singluff v. Tindal*, 40 S. C. 504, 19 S. E. 137. Sealed notes are specialties. *Cunningham v. Smith*, Harp. Eq. 91; *Giles v. Mauldin*, 7 Rich. L. 11. But an instrument under corporate seal may be negotiable. *Bank v. R. R. Co.*, 5 S. C. 156.

Action on last note or check. *Smith v. Nelson*, 83 S. C. 294, 65 S. E. 261, 137 Am. St. Rep. 808, 24 L. R. A., N. S., 644n.

Joint maker on renewal note. *Bank of Spartanburg v. Mahon*, 75 S. C. 255, 55 S. E. 529.

Innocent purchaser before maturity. *Spencer National Bank v. Inman Mills*, 74 S. C. 76, 53 S. E. 951.

Presumption that drawer knows signature of drawee. *Ford v. People's Bank of Orangeburg*, 74 S. E. 180, 54 S. E. 204, 114 Am. St. Rep. 986, 7 Am. & Eng. Ann. Cas. 744, 10 L. R. A., N. S. 63n.

Name of payee not essential in negotiable note. *Fretwell v. Carter*, 78 S. C. 531, 59 S. E. 639.

(3644) § 2. Bill of Exchange a Payment. — Drawer, Acceptor or Endorser Not Discharged.—If any person accept any such bill of exchange for and in satisfaction of any former debt or sum of money formerly due unto him, the same shall be accounted and esteemed a full and complete payment of such debt, if such person accepting any such bill for his debt doth not take his due course to obtain payment thereof by endeavoring to get the same accepted and paid, and make his protest as aforesaid, either for nonacceptance or nonpayment thereof; but nothing herein contained shall extend to discharge any remedy that any person may have against the drawer, acceptor or endorser of such bill.

Civ. '12, § 2527; Civ. '02, § 1669; G. S. 1295; R. S. 1397; 1712, II, 546.

Cunningham v. Smith, Harp. Eq. 90; *Castelo v. Cave*, 2 Hill 528; *Fiske v. Judge*, 2 Speer 436; *Bank v. Bobo*, 9 Rich. 31; *Bryce v. Bowers*, 11 Rich. 41; *Johnson v. Clarke*, 15 S. C. 72; *Bolt v. Dawkins*, 16 S. C. 214; *Union Bank v. Wando Co.*, 17 S. C. 339; *Compton v. Patterson*, 28 S. C. 115, 5 S. E. 270.

(3645) § 3. Protest Good Evidence If Notary Be Dead or Absent.—Whenever a Notary Public who may have made protest for nonpayment of any inland bill or promissory note shall be dead, or shall reside out of the county in which said bill or note is sued, his protest of said bill or note shall be received as sufficient evidence of notice in any action by any person whatsoever against any of the parties to such bill or note.

Civ. '12, § 2528; Civ. '02, § 1670; G. S. 1296; R. S. 1398; 1822, VI, 182.

Sharpe v. Bingley, 1 Mill 373; *Haig v. Newton*, 1 Mill 423; *Dobson v. Laval*, 4 McC. 57; *Bank v. Green*, 2 Bail. 230; *Aiken v. Cathcart*, 2 Speer 642.

City National Bank v. Given, 103 S. C. 174, 87 S. E. 998.

(3646) § 4. Protested Bill to Carry Interest.—Where any bill of exchange is or shall be drawn for the payment of any sum of money, for value received, and such bill shall be protested for nonacceptance or non-payment, the same shall carry interest from the time such bill shall become due and payable, at the rate of seven per cent. per annum, until the money therein drawn for, together with damages and costs, be fully satisfied and paid.

Civ. '12, § 2530; Civ. '02, § 1672; G. S. 1298; R. S. 1400; 1786, IV, 741; 1866, XIII, 463.

(3647) § 5. Damages Allowed Upon Certain Protested Bills.—All bills of exchange drawn upon persons resident within the United States, and out of this State, and returned protested, the damages of such protested bills shall be ten per cent. on the sum drawn for; and all bills in like manner drawn upon persons resident in any other part of North America, or within any of the West India islands, and protested, the damages shall be twelve and a half per cent.; and all bills drawn on persons resident in any other part of the world, being protested, the damages shall be fifteen per cent. on the sums mentioned in such bills respectively, and all charges incidental thereto, with lawful interest, until the same be paid.

Civ. '12, § 2531; Civ. '02, § 1673; G. S. 1299; R. S. 1401; 1786, IV, 741.

No damages are recoverable where one draws a bill on himself. *McCandish v. Cruger*, 2 Bay 277. See, also, *Bain v. Ackworth*, 1 Const. R. 107; *Winthrop v. Pepon*, 1 Bay 461. Damages not recoverable where the bill was given as an additional security to a bottomry bond. *Hazelhurst v. Kean*, 4 Yeates (Pa.) 19.

(3648) § 6. Jury May Render Verdict for Difference of Exchange on Foreign Bills.—In any action which shall be commenced for the recovery of any bill of exchange, or any debt due and made payable in any other country, wherein the plaintiff shall recover, the jury shall have power to find a verdict with such difference of exchange as shall be just and agreeable to the true difference of exchange; any law, usage, or custom to the contrary notwithstanding.

Civ. '12, § 2532; Civ. '02, § 1674; G. S. 1300; R. S. 1402; 1786, IV, 741.

(3649) § 7. Notes, Etc., for Less Than One Dollar Void—Penalty for Issuing.—All bills, or promissory notes, payable to order or bearer, which shall be issued by any individual or company, or body corporate, within this State, for any sum or sums under one dollar, shall be void; and any person or persons who shall pass, or attempt to pass, or receive any such bill in payment, shall be liable to be indicted therefor, and on conviction thereof shall be fined not exceeding ten dollars.

Civ. '12, § 2533; Civ. '02, § 1675; G. S. 1301; R. S. 1403; 1816, VI, 34.

(3650) § 8. When Paper Maturing on Sunday or Legal Holiday Collectible.—Any commercial paper, or other security, which shall mature and become payable and collectible on Sunday, or on any legal holiday, shall be deemed and taken and treated as maturing and becoming payable and collectible on the next day thereafter, provided such next day shall not be Sunday or a legal holiday; in which latter event the same shall be deemed, taken and treated as due, maturing and collectible on the first day thereafter which is not Sunday or a legal holiday.

Civ. '12, § 2534; Civ. '02, § 1676; R. S. 1404; 1891, 1052.

(3651) § 9. What Considered Sealed Instruments.—Whenever it shall appear from the attestation clause or from the other parts of any instrument in writing, that it was the intention of the party or parties thereto that said instrument should be a sealed instrument, then said instrument shall be construed to be, and shall have the effect of, a sealed instrument, although no seal be actually attached thereto.

Civ. '12, § 2535; Civ. '02, § 1677; 1899, XXIII, 48.

This creates a statutory rule of evidence and is applicable to all cases tried since the passage of this Act. *Cook v. Cooper*, 59 S. C. 560, 38 S. E. 218. Applied to scroll or word "seal" written in place of notarial seal. *Wallingford v. Western Union Tel. Co.*, 60 S. C. 201, 38 S. E. 403, 444.

The Negotiable Instrument Act.

(3652) § 1. Title I—Negotiable Instruments in General—Article I—Form and Interpretation.—An instrument to be negotiable must conform to the following requirements:

- (1) It must be in writing and signed by the maker or drawer;
- (2) Must contain an unconditional promise or order to pay a sum certain in money;
- (3) Must be payable on demand, or at a fixed or determinable future time;
- (4) Must be payable to order or to bearer; and
- (5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3653) § 2. The Sum Payable.—The sum payable is a sum certain within the meaning of this Article, although it is to be paid:

- (1) With interest; or
- (2) By stated installments; or
- (3) By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or
- (4) With exchange, whether at a fixed rate or at the current rate; or
- (5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Civ. '12, § 2523; 1903, XXIV, 69; 1914, XXVIII, 668.

Note dated in 1901 containing provision for 10 per cent. attorney's fees in case of collection is non-negotiable. *Green v. Spires*, 71 S. C. 107, 50 S. E. 554, 4 Am. & Eng. Ann. Cas. 261. See *Machine Co. v. Badham*, 81 S. C. 63, 61 S. E. 1031.

(3654) § 3. Unliquidated Order or Promise.—An unqualified order or promise to pay is unconditional within the meaning of this Article, though coupled with:

- (1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
- (2) A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3655) § 4. Instrument, When Payable.—An instrument is payable at a determinable future time, within the meaning of this Article, which is expressed to be payable:

- (1) At a fixed period after date or sight; or
- (2) On or before a fixed or determinable future time specified therein; or
- (3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 110.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3656) § 5. When Instrument Non-negotiable.—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

- (1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
- (2) Authorizes a confession of judgment if the instrument be not paid at maturity; or
- (3) Waives the benefit of any law intended for the advantage or protection of the obligor; or
- (4) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this Section shall validate any provision or stipulation otherwise illegal.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3657) § 6. When Validity Not Affected.—The validity and negotiable character of an instrument are not affected by the fact that:

- (1) It is not dated; or
- (2) Does not specify the value given, or that any value has been given therefor; or
- (3) Does not specify the place where it is drawn or the place where it is payable; or
- (4) Bears a seal; or
- (5) Designates a particular kind of current money in which payment is to be made.

But nothing in this Section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3658) § 7. When Payable on Demand.—An instrument is payable on demand:

(1) Where it is expressed to be payable on demand, or at sight, or on presentation; or

(2) In which no time for payment is expressed.

Where an instrument is issued, accepted, or endorsed when overdue, it is, as regards the person so issuing, accepting, or endorsing it, payable on demand.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3659) § 8. When Payable to Order.—The instrument is payable to order where it is drawn payable to the order of a specified person, or to him or his order. It may be drawn payable to the order of:

(1) A payee who is not maker, drawer, or drawee; or

(2) The drawer or maker; or

(3) The drawee; or

(4) Two or more payees jointly; or

(5) One or some of several payees; or

(6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3660) § 9. When Payable to Bearer.—The instrument is payable to bearer:

(1) When it is expressed to be so payable; or

(2) When it is payable to a person named therein or bearer; or

(3) When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or

(4) When the name of the payee does not purport to be the name of any person; or

(5) When the only or last endorsement is an endorsement in blank.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3661) § 10. When Instrument Conforms to This Article.—The instrument need not follow the language of this Article, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3662) § 11. Date of Instrument Prima Facie True Date.—Where the instrument or an acceptance or any endorsement thereon is dated, such date

is deemed *prima facie* to be the true date of the making, drawing, acceptance, or endorsement as the case may be.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3663) § 12. When Invalid.—The instrument is not invalid for the reason only that it is antedated or postdated: *Provided*, This is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3664) § 13. Date May Be Inserted When Undated.—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3665) § 14. Instrument May Be Completed — When.—Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3666) § 15. When Incomplete Instrument Invalid.—Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3667) § 16. When Contract Irrevocable.—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or endorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3668) § 17. Language Ambiguous.—Where the language of the Instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an endorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3669) § 18. When Person Not Liable.—No person is liable on the instrument whose signature does not appear thereon, except as herein

otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3670) § 19. How Signature May Be Made.—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3671) § 20. Additions to Signature.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3672) § 21. Signature by Procuration.—A signature by “procuration” operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3673) § 22. Certain Endorsements Pass Title to Instrument.—The endorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3674) § 23. Forged Signature.—Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge thereof, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3675) § 24. Article II—Consideration.—Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3676) § 25. Value.—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such, whether the instrument is payable on demand or at a future time.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3677) § 26. When Value Given—Effect.—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
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(3678) § 27. Lien on Instrument.—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3679) § 28. Failure of Consideration—Defense.—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense *pro tanto* whether the failure is an ascertained and liquidated amount or otherwise.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3680) § 29. Accommodation Party—Who Is.—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or endorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
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(3681) § 30. Article III—Negotiation.—An instrument is negotiated when it is transferred from one person to another in such manner as to

constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the endorsement of the holder completed by delivery.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3682) § 31. Where Endorsement to Appear.—The endorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the endorser, without additional words, is a sufficient endorsement.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3683) § 32. What Must Consist of.—The endorsement must be an endorsement of the entire instrument. An endorsement, which purports the transfer to the endorsee a part only of the amount payable, or which purports to transfer the instrument to two or more endorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be endorsed as to the residue.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3684) § 33. Kinds of Endorsements.—An endorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3685) § 34. Special Endorsement.—A special endorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the endorsement of such endorsee is necessary to the further negotiation of the instrument. An endorsement in blank specifies no endorsee, and an instrument so endorsed is payable to bearer, and may be negotiated by delivery.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3686) § 35. How Endorsements Converted.—The holder may convert a blank endorsement into a special endorsement by writing over the signature of the endorser in blank any contrast consistent with the character of the endorsement.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

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(3687) § 36. Restrictive Endorsement.—An endorsement is restrictive which either:

- (1) Prohibits the further negotiation of the instrument; or
- (2) Constitutes the endorsee the agent of the endorser; or
- (3) Vests the title in the endorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an endorsement restrictive.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3688) § 37. What Conferred by It.—A restrictive endorsement confers upon the endorsee the right:

- (1) To receive payment of the instrument;
- (2) To bring any action thereon that the endorser could bring;
- (3) To transfer his rights as such endorsee, where the form of the endorsement authorizes him to do so.

But all subsequent endorsees acquire only the title of the first endorsee under the restrictive endorsement.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3689) § 38. Qualified Endorsement.—A qualified endorsement constitutes the endorser a mere assignor of the title to the instrument. It may be made by adding to the endorser's signature the words "without recourse" or any words of similar import. Such an endorsement does not impair the negotiable character of the instrument.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3690) § 39. Conditional Endorsement — When Disregarded.—Where an endorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the endorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so endorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person endorsing conditionally.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3691) § 40. Payable to Bearer.—Where an instrument, payable to bearer, is endorsed specially, it may nevertheless be further negotiated by delivery; but the person endorsing specially is liable as endorser to only such holders as take title through his endorsement.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3692) § 41. Payable to Two or More.—Where an instrument is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has authority to endorse for the others.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3693) § 42. Payable to "Cashier."—When an instrument is drawn or endorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the endorsement of the bank or corporation, or the endorsement of the officer.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3694) § 43. Name of Payee or Endorsee Wrongly Designated.—Where the name of a payee or endorsee is wrongly designated or misspelled, he may endorse the instrument as therein described, adding, if he think fit, his proper signature.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3695) § 44. Endorsement in Representative Capacity.—Where any person is under obligation to endorse in a representative capacity, he may endorse in such terms as to negative personal ability.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3696) § 45. When Negotiation Deemed Effective.—Except where an endorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3697) § 46. Place of Endorsement.—Except where the contrary appears, every endorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3698) § 47. When Negotiability Ceases.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively endorsed or discharged by payment or otherwise.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3699) § 48. Endorsement May Be Stricken Out—When.—The holder may at any time strike out any endorsement which is not necessary to his title. The endorser whose endorsement is struck out, and all endorsers subsequent to him, are thereby relieved from liability on the instrument.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3700) § 49. Transfer of Title.—Where the holder of an instrument payable to his order transfers it for value without endorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires, in addition, the right to have the endorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the endorsement is actually made.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3701) § 50. Instruments May Be Reissued.—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this Article, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3702) § 51. Article IV—Rights of the Holder.—The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3703) § 52. Who is Holder.—A holder in due course is a holder who has taken the instrument under the following conditions:

(1) That it is complete and regular upon its face;

(2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(3) That he took it in good faith and for value;

(4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3704) § 53. When Not Deemed Holder in Due Course.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3705) § 54. Notice of Infirmity.—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3706) § 55. Defective Title.—The title of a person who negotiates an instrument is defective within the meaning of this Article when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3707) § 56. Notice of Infirmity.—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3708) § 57. Holder in Due Course Free from Defects.—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3709) § 58. Holder Not in Due Course Subject to Defense.—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect to all parties prior to the latter.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3710) § 59. Prima Facie Holder — When.—Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3711) § 60. Article V—Liabilities of Parties.—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to endorse.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3712) § 61. What Drawer Admits.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor; and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent endorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3713) § 62. Engagement of Acceptor.—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to endorse.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3714) § 63. What Constitutes Endorsement.—A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an endorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3715) § 64. Same.—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as endorser in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties;

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer;

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3716) § 65. What Endorsement Warrants.—Every person negotiating an instrument by delivery or by a qualified endorsement, warrants:

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has a good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this Section do not apply to persons negotiating public or corporate securities, other than bills and notes.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3717) § 66. What Endorser Without Qualification Warrants.—Every endorser who endorses without qualification, warrants to all subsequent holders in due course:

(1) The matters and things mentioned in subdivision one, two and three of the next preceding Section; and

(2) That the instrument is at the time of his endorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor; and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he

will pay the amount thereof to the holder, or to any subsequent endorser who may be compelled to pay it.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3718) § 67. Liabilities of Endorsement.—Where a person places his endorsement on an instrument negotiable by delivery he incurs all the liabilities of an endorser.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3719) § 68. Liability Between Endorsers.—As respects one another, endorsers are liable *prima facie* in the order in which they endorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint endorsers who endorse are deemed to endorse jointly and severally.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3720) § 69. Broker's Negotiation of Instrument.—Where a broker or other agent negotiates an instrument without endorsement, he incurs all the liabilities prescribed by Section 55 of this Article, unless he discloses the name of his principal, and the fact that he is acting only as agent.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3721) § 70. Article VI—Presentment for Payment.—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and endorsers.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3722) § 71. When Presentment Made.—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3723) § 72. When Presentment Sufficient.—Presentment for payment, to be sufficient, must be made:

(1) By the holder, or by some person authorized to receive payment on his behalf;

(2) At a reasonable hour on a business day;

(3) At a proper place as herein defined;

(4) To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3724) § 73. Place of Presentment.—Presentment for payment is made at the proper place:

(1) Where a place of payment is specified in the instrument and it is there presented;

(2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

(3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3725) § 74. Instrument to Be Exhibited.—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3726) § 75. Payable at Bank.—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3727) § 76. No Place of Payment Specified.—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if

such there be, and if, with the exercise of reasonable diligence, he can be found.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3728) § 77. When Persons Liable as Partners.—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3729) § 78. Several Liable.—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3730) § 79. When Presentment Not Required.—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

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(3731) § 80. Same.—Presentment for payment is not required in order to charge an endorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3732) § 81. Delay in Presentment.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3733) § 28. When Dispensed With.—Presentment for payment is dispensed with:

(1) Where after the exercise of reasonable diligence presentment as required by this Article cannot be made;

(2) Where the drawee is a fictitious person;

(3) By waiver of presentment, express or implied.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3734) § 83. When Dishonored by Nonpayment.—The instrument is dishonored by nonpayment when:

(1) It is duly presented for payment and payment is refused or cannot be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3735) § 84. Right of Holder on Dishonor.—Subject to the provisions of this Article, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3736) § 85. Payable Without Grace.—Every negotiable instrument is payable at the time fixed therein without grace. When day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Civ. '12, § 2529; Civ. '02, § 1671; G. S. 1297; R. S. 1399; 1748, XI, 512; 1914, XXVIII, 668.

(3737) § 86. Payable at Fixed Period.—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3738) § 87. When Payable at Bank—Order to Pay.—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3739) § 88. **When Payment Made in Due Course.**—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3740) § 89. **Article VII — Notice of Dishonor.**—Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each endorser, and any drawer or endorser to whom such notice is not given is discharged.

Civ. '12, §§ 2524, 2525; Civ. '02, §§ 1666, 1667; G. S. 1292, 1293; R. S. 1394, 1395; 1712, II, 545, 546; 1914, XXVIII, 668.

Bank v. Steinmetz, 1 Hill 44.

(3741) § 90. **To Whom Given.**—The notice may be given by or on behalf of the holder, or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

1712, II, 545, 546; 1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3742) § 91. **Same.**—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3743) § 92. **To Whose Benefit Notice Enures.**—Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3744) § 93. **Same.**—Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3745) § 94. **When Agent May Give Notice.**—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal.

If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3746) § 95. What Constitutes Notice.—A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3747) § 96. May Be Written or Oral.—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3748) § 97. To Whom Given.—Notice of dishonor may be given either to the party himself or to his agent in that behalf.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3749) § 98. When Party Dead.—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3750) § 99. When Parties Are Partners.—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3751) § 100. Notice to Joint Parties.—Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3752) § 101. Notice to Bankrupts.—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3753) § 102. When Given.—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this Article.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3754) § 103. Time Within Which Given.—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

(2) If given at his residence, it must be given before the usual hours of rest on the day following;

(3) If sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3755) § 104. Where Parties Reside in Different Places.—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

(1) If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter;

(2) If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3756) § 105. Notice Deposited in Postoffice.—Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3757) § 106. When Deemed Deposited.—Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3758) § 107. Receipt of Notice.—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3759) § 108. Notice Sent to Address Given.—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

(1) Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or

(2) If he live in one place, and have his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this Article, it will be sufficient, though not sent in accordance with the requirements of this Section.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3760) § 109. Notice May Be Waived.—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3761) § 110. When Embodied in Instrument.—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an endorser, it binds him only.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3762) § 111. What Waiver of Protest Deemed.—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3763) § 112. When Dispensed With.—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3764) § 113. Delay in Notice.—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3765) § 114. When Notice Not Required.—Notice of dishonor is not required to be given the drawer in either of the following cases:

- (1) Where the drawer and drawee are the same person;
- (2) Where the drawee is a fictitious person or a person not having a capacity to contract;
- (3) Where the drawer is the person to whom the instrument is presented for payment;
- (4) Where the drawer has no right to expect to require that the drawee or acceptor will honor the instrument;
- (5) Where the drawer has countermanded payment.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3766) § 115. Same.—Notice of dishonor is not required to be given to an endorser in either of the following cases:

- (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the instrument;
- (2) Where the endorser is the person to whom the instrument is presented for payment;
- (3) Where the instrument was made or accepted for his accommodation.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3767) § 116. Subsequent Notices.—Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3768) § 117. Omission of Notice.—An omission to give notice of dishonor by nonacceptance does not prejudice the right of a holder in due course subsequent to the omission.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3769) § 118. When Protest Required.—Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required, except in the case of foreign bills of exchange.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3770) § 119. Article VIII — Discharge of Negotiable Instruments.—A negotiable instrument is discharged:

- (1) By payment in due course by or on behalf of the principal debtor;
- (2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
- (3) By the intentional cancellation thereof by the holder;
- (4) By the other act which will discharge a simple contract for the payment of money;
- (5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3771) § 120. When Secondary Liability Discharged.—A person secondarily liable on the instrument is discharged:

- (1) By any act which discharges the instrument;
- (2) By the intentional cancellation of his signature by the holder;
- (3) By the discharge of a prior party;
- (4) By a valid tender of payment made by a prior party;
- (5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
- (6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless

made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3772) § 121. When Payment Not Discharge.—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent endorsements, and again negotiate the instrument; except:

(1) Where it is payable to the order of a third person and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3773) § 122. Holder May Renounce Rights.—The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3774) § 123. Unintentional Cancellation.—A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3775) § 124. Alteration of Instrument.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent endorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al., 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3776) § 125. Effective Alterations.—Any alteration which changes

- (1) The date;
- (2) The sum payable, either for principal or interest;
- (3) The time or place of payment;
- (4) The number or the relation of the parties;
- (5) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect is a material alteration.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3777) § 126. Title II—Bills of Exchange—Article I—Form and Interpretation.—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3778) § 127. Bill Not Assignment of Funds.—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3779) § 128. Two or More Drawees.—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3780) § 129. Inland Bill.—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3781) § 130. When Drawer and Drawee Same Person—How Treated.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract,

the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3782) § 131. Referee in Case of Need.—The drawer of a bill and any endorser may insert thereon the name of a person to whom the holder may resort in case of need—that is to say, in case the bill is dishonored by non-acceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3783) § 132. Article II—Acceptance.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3784) § 133. Kind of Acceptance Required.—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3785) § 134. When Written Acceptance Not Binding.—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3786) § 135. Unconditional Written Acceptance.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3787) § 136. Time Allowed to Accept Bill.—The drawee is allowed twenty-four hours after presentment in which to decide whether or not he

will accept the bill; but the acceptance if given dates as of the day of presentation.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3788) § 137. When Drawee Destroys Bill.—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3789) § 138. When Bill Not Accepted.—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3790) § 139. Kinds of Acceptance.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3791) § 140. General Acceptance.—An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3792) § 141. Qualified Acceptance.—An acceptance is qualified which is:

(1) Conditional—that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(2) Partial—that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(3) Local—that is to say, an acceptance to pay only at a particular place;

(4) Qualified as to time;

(5) The acceptance of some one or more of the drawees, but not of all.
1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3793) § 142. Qualified Acceptance—How Treated.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored for nonacceptance. Where a qualified acceptance is taken, the drawer and endorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequent assent thereto. When the drawer or an endorser receives notice of a qualified acceptance he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3794) § 143. Article III—Presentment for Acceptance.—Presentment for acceptance must be made:

(1) Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance; or

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3795) § 144. When to Be Presented for Acceptance.—Except as herein otherwise provided, the holder of a bill which is required by the next preceding Section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all endorsers are discharged.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3796) § 145. Must Be at Reasonable Hour.—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to

accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3797) § 146. What Days May Be Presented.—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of Sections 72 and 85 of this Article. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 o'clock noon on that day.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3798) § 147. Delay in Presentation.—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and endorsers.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3799) § 148. Presentment When Excused.—Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases:

(1) Where the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill;

(2) Where, after the exercise of reasonable diligence, presentment cannot be made;

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3800) § 149. When Nonacceptance Dishonors Bill.—A bill is dishonored by nonacceptance:

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this Article is refused or cannot be obtained; or

(2) When presentment for acceptance is excused and the bill is not accepted.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3801) § 150. When Treated as Dishonored.—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance, or he loses the right of recourse against the drawer and endorsers.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3802) § 151. Rights Accruing on Dishonor.—When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and endorsers accrues to the holder and no presentment for payment is necessary.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3803) § 152. Article IV—Protest.—Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and endorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

Civ. '12, §§ 2524, 2525; 1914, XXVIII, 668.

Bank v. Steinmetz, 1 Hill 44.

(3804) § 153. What Protest Must Specify.—The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the Notary making it, and must specify:

(1) The time and place of presentment;

(2) The fact that presentment was made and the manner thereof;

(3) The cause or reason for protesting the bill;

(4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3805) § 154. Who May Protest.—Protest may be made by:

(1) A Notary Public; or

(2) Any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3806) § 155. When Protest to Be Made.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3807) § 156. Where Protested.—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3808) § 157. Protest for Nonpayment.—A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3809) § 158. Protest in Case of Bankruptcy.—Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and endorsers.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3810) § 159. When Protest Dispensed With.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3811) § 160. Protest of Lost Bill.—Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3812) § 161. **Article V — Acceptance for Honor.** — Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

1914, XXVIII, 668.

First National Bank of Hartsville *v.* Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al *v.* Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank *v.* Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson *v.* Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3813) § 162. **Must Be Written.** — An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

1914, XXVIII, 668.

First National Bank of Hartsville *v.* Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al *v.* Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank *v.* Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson *v.* Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3814) § 163. **For Whose Honor Made.** — Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

1914, XXVIII, 668.

First National Bank of Hartsville *v.* Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al *v.* Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank *v.* Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson *v.* Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3815) § 164. **To Whom Acceptor for Honor Liable.** — The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

1914, XXVIII, 668.

First National Bank of Hartsville *v.* Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al *v.* Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank *v.* Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson *v.* Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3816) § 165. **Obligation of Acceptor for Honor.** — The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

1914, XXVIII, 668.

First National Bank of Hartsville *v.* Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al *v.* Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank *v.* Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson *v.* Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3817) § 166. **Calculation of Time.** — Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

1914, XXVIII, 668.

First National Bank of Hartsville *v.* Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al *v.* Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank *v.* Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson *v.* Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3818) § 167. Acceptance for Honor Supra Protest.—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3819) § 168. How Presentment for Payment Made.—Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity;

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in Section 104.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3820) § 169. When Provisions of Section 81 Applied.—The provisions of Section 81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3821) § 170. Protest for Nonpayment by Acceptor for Honor.—Where the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3822) § 171. Article VI—Payment for Honor.—Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3823) § 172. Payment for Honor Supra Protests.—The payment for honor supra protests, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3824) § 173. Notarial Act of Honor.—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3825) § 174. Payees for Honor.—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3826) § 175. Discharge by Payment for Honor.—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3827) § 176. Refusal to Receive Payment Supra Protest.—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3828) § 177. Rights of Payer for Honor.—The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incident to its dishonor, is entitled to receive both the bill itself and the protest.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3829) § 178. Article VII—Bills in a Set.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3830) § 179. Title to Bills in a Set.—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holder the true owner of the bill. But noth-

ing in this Section affects the rights of a person who in due course accepts or pays the part first presented to him.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3831) § 180. Liability of Endorser.—Where the holder of a set endorses two or more parts to different persons, he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed, as if such parts were separate bills.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3832) § 181. Acceptance Where Written.—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3833) § 182. Payment Without Surrender of Part Bearing Acceptance.—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3834) § 183. When Whole Bill Discharged.—Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3835) § 184. Title III—Promissory Notes and Checks.—Article I.—A negotiable promissory note within the meaning of this Article is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until endorsed by him.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
 Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
 F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
 Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3836) § 185. Check.—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Article applicable to a bill of exchange payable on demand apply to a check.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3837) § 186. When Presented for Payment.—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3838) § 187. Certified Check.—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3839) § 188. Effect of Endorsers.—Where the holder of a check procures it to be accepted or certified the drawer and all endorsers are discharged from liability thereon.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3840) § 189. Check Not Assignment of Funds.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3841) § 190. Title IV—General Provisions—Article I.—This Article shall be known as the Negotiable Instruments Law.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.
Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.
F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.
Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3842) § 191. Definitions.—In this Article unless the context otherwise requires:

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counterclaim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or endorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Endorsement” means an endorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written ” includes printed, and “writing” includes print.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3843) § 192. Same.—The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3844) § 193. Same.—In determining what is a “reasonable time” or an “unreasonable time” regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3845) § 194. When Act to Be Done Falls on Sunday.—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3846) § 195. Not Retroactive.—The provisions of this Article do not apply to negotiable instruments made and delivered prior to the passage hereof.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 96 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

(3847) § 196. **Law Merchant.**—In any case not provided for in this Article the rules of the law merchant shall govern.

1914, XXVIII, 668.

First National Bank of Hartsville v. Wood et al, 109 S. C. 70, 95 S. E. 140.

Loveland et al v. Collins, 109 S. C. 294, 95 S. E. 124.

F. & M. Bank v. Bank of Hemingway, 113 S. C. 140, 101 S. E. 746.

Patterson v. Orangeburg Fert. Co., 117 S. C. 140, 108 S. E. 401.

ARTICLE III.

Agency.

(3848) § 1. **Act of Agent Good, Though Principal Be Dead—Proviso.**

—If any agent, constituted by power of attorney or other authority, shall do any act for his principal which would be lawful if such principal were living, the same shall be valid and binding on the estate of said principal, although he or she may have died before such act was done: *Provided*, The party treating with such agent dealt *bona fide*, not knowing at the time of the doing of such act that such principal was dead.

Civ. '12, § 2536; Civ. '02, § 1678; G. S. 1302; R. S. 1405; 1828, VI, 359.

Generally: Power not coupled with interest does not survive. Johnson v. Johnston, 27 S. C. 309, 3 S. E. 606.

Agency shown by acts of agency. Woodward v. Cave, 79 S. C. 578, 61 S. E. 82.

Scope of agency a question for the jury. Blowers v. Southern Railway, 74 S. C. 222, 54 S. E. 368; Fail v. Western Union Telegraph Co., 80 S. C. 207, 60 S. E. 697, 61 S. E. 258.

Agent and independent contractor distinguished. Banks v. Southern Express Co., 73 S. C. 211, 55 S. E. 166.

Declarations within scope of agency. Stroud v. C., N. & L. E. R. Co., 79 S. C. 447, 60 S. E. 963.

When broker entitled to commissions on sale. Goldsmith v. Cox, 80 S. C. 341, 61 S. E. 555.

(3849) § 2. **Notes Made Before Death of Principal and Passed Away by Agent After.**—If any note or bill, whether filled up before or after having been signed or endorsed, shall be passed away after the death of such drawer or endorser, by an agent duly constituted in his or her lifetime, the same shall be valid and binding on his or her estate, in like manner as though he or she had not died before such passing away: *Provided*, The receiver of such note or bill received the same *bona fide*, without a knowledge of such death, and that the act of the agent would have been binding on the principal if it had been done before such death; the act to be done, either under the power of attorney or authority, or in relation to the bill or note, must be done within nine months after the death of the principal, or of the drawer or endorser of such note or bill.

Civ. '12, § 2537; Civ. '02, § 1679; G. S. 1291; R. S. 1406; 1828, VI, 359.

CHAPTER XLI.

Limited Partnerships.

(3850) § 1. **May Be Formed by Whom, and for What Purposes.**—

Limited partnerships, for the transaction of any mercantile, mechanical or manufacturing business, or for the transportation of passengers, products of the soil, or merchandise, within this State, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities, herein described; but these provisions shall

not be construed to authorize any such partnership for the purpose of banking or making insurance.

Civ. '12, § 2538; Civ. '02, § 1680; G. S. 1303; R. S. 1407; 1737, VI, 578, 587; 1846, XI, 365; 1866, XIII, 431.

Answer and statement by defendant's attorney held to be admission of general partnership. *Spool Cotton Co., v. King*, 68 S. C. 196, 46 S. E. 1005.

(3851) § 2. General and Special Partners and Their Liabilities.—Such partnerships may consist of one or more persons, who shall be called general partners (who shall be jointly and severally responsible, as general partners now are by law), and of one or more persons who shall contribute, in actual cash payments, a specific sum as capital to the common stock, who shall be called special partner or partners, and who shall not be liable for the debts of the partnership beyond the funds so contributed by him or them to the capital.

Civ. '12, § 2539; Civ. '02, § 1681; G. S. 1304; R. S. 1408; 1737, VI, 579.

Liability of general partners. *Pope Mfg. Co. v. Welch*, 55 S. C. 528, 33 S. E. 787.

(3852) § 3. Powers of General Partners.—The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same.

Civ. '12, § 2540; Civ. '02, § 1682; G. S. 1305; R. S. 1409; 1737, VI, 579.

(3853) § 4. Partners to Sign Certificate — Its Contents.—The persons desirous of forming such partnership shall make, and severally sign, in the presence of two subscribing witnesses, a certificate, which shall contain:

- (1) The name or firm under which such partnership is to be conducted;
- (2) The general nature of the business intended to be transacted;
- (3) The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence;
- (4) The amount of capital which each special partner shall have contributed to the common stock;
- (5) The period at which the partnership is to commence, and the period at which it will terminate.

Civ. '12, § 2541; Civ. '02, § 1683; G. S. 1306; R. S. 1410; 1737, VI, 579.

Where this section is not substantially complied with the special are liable as if general partners. What is not a sufficient compliance. *Spencer Co. v. Johnson*, 53 S. C. 533, 31 S. E. 392.

(3854) § 5. Certificate to Be Proved.—The certificate shall be proved in the same manner that deeds of conveyances for lands are required by law to be proved.

Civ. '12, § 2542; Civ. '02, § 1684; G. S. 1307; R. S. 1411; 1737, VI, 579.

(3855) § 6. To Be Filed and Recorded in County Clerk's Office.—The certificates so proved, with the probate, shall be filed in the office of the Clerk of the Court of that county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him, at large, in a book so kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, a transcript of the certificate and of the probate thereof, duly certified by the Clerk in whose office it shall be filed, under his official seal, shall be filed and

recorded in like manner in the office of the Clerk of the Court in every such county.

Civ. '12, § 2543; Civ. '02, § 1685; G. S. 1308; R. S. 1412; 1737, VI, 579.

(3856) § 7. Affidavit of Sums Contributed by Each to Be Filed.—At the time of the filing the original certificate, with the evidence of the execution thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually, and in good faith, paid in cash.

Civ. '12, § 2544; Civ. '02, § 1686; G. S. 1309; R. S. 1413; 1737, VI, 579.

(3857) § 8. When Partnership Deemed Formed.—No such partnership shall be deemed to have been formed until a certificate shall have been made, proved, filed and recorded, nor until an affidavit shall have been filed, as above directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof, as general partners.

Civ. '12, § 2545; Civ. '02, § 1687; G. S. 1310; R. S. 1414; 1737, VI, 579.

(3858) § 9. Publication of Terms—When and How Made—Partnership General If Not Made.—The partners shall publish the terms of partnership, when registered, for at least once a week for six weeks, immediately after such registry, in any one of the newspapers in the county in which the business of such partnership is carried on; and if no newspaper be published in said county, then the notice thereof shall be published as aforesaid in any one of the newspapers of any adjoining county in which newspapers or a newspaper may be published, and be posted up on the door of the Court House of the county in which the said firm may be located. If such publication be not made, nor such notice given, for the time prescribed, the partnership shall be deemed general.

Civ. '12, § 2546; Civ. '02, § 1688; G. S. 1311; R. S. 1415; 1737, VI, 579; 1859, XII, 833.

(3859) § 10. Proof of Publication.—Affidavits of the publication of such notice, by the printers of the newspapers in which the same shall be published, may be filed with the Clerk in whose office the original certificate shall have been recorded, and shall be evidence of the facts therein stated.

Civ. '12, § 2547; Civ. '02, § 1689; G. S. 1312; R. S. 1416; 1837, VI, 579.

(3860) § 11. Renewals of Partnerships.—Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, proved, and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

Civ. '12, § 2548; Civ. '02, § 1690; G. S. 1313; R. S. 1417; 1837, VI, 580.

(3861) § 12. Dissolved by Alterations and Deemed General Partnership.—Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolu-

tion of the partnership, and every such partnership which shall in any manner be carried on after such alteration shall have been made shall be deemed a general partnership, unless renewed as a limited partnership according to the provisions of the preceding Section.

Civ. '12, § 2549; Civ. '02, § 1691; G. S. 1314; R. S. 1418; 1837, VI, 580.

(3862) § 13. Firm Name, Etc.—The business of the partnership shall be conducted under a firm, in which the name or names of the general partner or partners only shall be inserted, without the addition of the word "Company," or any other general term; and if the name of any special partner shall be used in such firm with his privity he shall be deemed a general partner.

Civ. '12, § 2550; Civ. '02, § 1692; G. S. 1315; R. S. 1419; 1837, VI, 580.

(3863) § 14. Suits to Be Conducted by General Partners.—Suits in relation to the business of the partnership shall be brought and conducted by and against the general partners in the same manner as if there were no special partners.

Civ. '12, § 2551; Civ. '02, § 1693; G. S. 1316; R. S. 1420; 1837, VI, 580.

(3864) § 15. Rights of Special Partners.—A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management; but if he shall take any active part in transacting the business of the partnership, except as attorney, counsel or solicitor, he shall be liable as a general partner.

Civ. '12, § 2552; Civ. '02, § 1694; G. S. 1317; R. S. 1421; 1837, VI, 580.

(3865) § 16. General Partners to Account.—The general partners shall be liable to account to each other and to the special partners for the management of their concerns, both in law and equity, as other partners now are by law.

Civ. '12, § 2553; Civ. '02, § 1695; G. S. 1318; R. S. 1422; 1837, VI, 580.

(3866) § 17. Punishment of Partners for Fraud.—Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damages; and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the Court by which he shall be tried.

Civ. '12, § 2554; Civ. '02, § 1696; G. S. 1319; R. S. 1423; 1837, VI, 580.

(3867) § 18. Sales by Insolvent Partnership Void—Judgments, Etc., by Same Void Against Creditors.—Every sale, assignment or transfer of any of the property or effects of such partnership made by such partnership when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every judgment confessed, lien created, or security given by such partnership, under the like circumstances and with the like intent, shall be void as against the creditors of such partnership.

Civ. '12, § 2555; Civ. '02, § 1697; G. S. 1320; R. S. 1424; 1837, VI, 580.

(3868) § 19. Certain Transfer of Effects of Partner Void.—Every such sale, assignment or transfer of any of the property or effects of a general or special partner made by such general or special partner when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over the creditors of the partnership, and every judgment confessed, lien created or security given by any such partner under the like circumstances and with the like intent, shall be void as against the creditors of the partnership.

Civ. '12, § 2556; Civ. '02, § 1698; G. S. 1321; R. S. 1425; 1837, VI, 580.

(3869) § 20. When Special Partners Liable as General Partners.—Every special partner who shall violate any provision of the last two preceding Sections, or who shall concur in or consent to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

Civ. '12, § 2557; Civ. '02, § 1699; G. S. 1322; R. S. 1426; 1837, VI, 580.

(3870) § 21. When Not to Claim as Creditors.—In case of the insolvency or bankruptcy of the partnership, no special partner shall under any circumstances be allowed to claim as creditor until the claims of all the other creditors of the partnership shall be satisfied.

Civ. '12, § 2558; Civ. '02, § 1700; G. S. 1323; R. S. 1427; 1837, VI, 580.

(3871) § 22. No Dissolution by Act of Partners Without Notice—Same to Be Filed, Etc., in Clerk of Court's Office, Etc.—No dissolution of such partnership, by the acts of the parties, shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the Clerk's office in which the original certificate was recorded, and published for three months in two or more newspapers most contiguous to the place or places where such partnership exists, and be posted on the door of the Court House of the county in which the partnership may be located.

Civ. '12, § 2559; Civ. '02, § 1701; G. S. 1324; R. S. 1428; 1837, VI, 580.

(3872) § 23. Clerk's Fees.—The Clerk of the Court shall receive for his services the same compensation now allowed by law to the Register of Mesne Conveyances for similar services.

Civ. '12, § 2560; Civ. '02, § 1702; G. S. 1325; R. S. 1429; 1837, VI, 580.

(3873) § 24. No Part of the Capital Stock to Be Withdrawn—Interest Allowed in Certain Cases.—No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid, loaned, or transferred to him as profits, dividends, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of the capital after payment of all the debts of the partnership; and if, after the payment of such debts and interest, any profits shall remain, he may receive his portion thereof.

Civ. '12, § 2561; Civ. '02, § 1703; G. S. 1329; R. S. 1430; 1837, VI, 580.

(3874) § 25. Against Whom Creditors May Bring Suit.—Any creditor of a limited partnership may, at his option, include in his suit against the same the special partner, or partners, who may become liable as general partners by failure to comply with the provisions of this Chapter; and all the facts necessary to affirm or negative the liability of such special partner, or partners, may be given in evidence under the general issue; and the failure of the plaintiff to establish such liability shall not be cause of nonsuit.

Civ. '12, § 2562; Civ. '02, § 1704; G. S. 1330; R. S. 1431; 1837, VI, 580.

(3875) § 26. Provisions as to Sign Inapplicable to Special Partners of Limited Partnership.—Nothing contained in the next four Sections shall apply to the special partners of a limited partnership.

Civ. '12, § 2565; Civ. '02, § 1707; G. S. 1328; R. S. 1434; 1837, VI, 581.

(3876) § 27. Names of Owners of Mercantile and Industrial Establishments to Be Filed With Clerk of Court and Exhibited at Place of Business.—That all mercantile and industrial establishments, other than lawfully chartered incorporations, except an individual conducting his business under and in his own individual name, having a place or places of business in this State, shall file with the Clerk of Court of the county in which the principal place of business of each mercantile and industrial establishment is located the name or names of the owner or owners, proprietor or proprietors thereof, and in case of copartnerships, the name of each and every partner having any interest therein, and shall exhibit on a sign or alongside the entrance of each place of business of each mercantile or industrial establishment the name or names of the owner or owners, proprietor or proprietors thereof, including the name of each partner of a copartnership; such name or names to be printed in Roman letters of such size as to be read easily.

Civ. '12, § 2563; Civ. '02, § 1705; G. S. 1326; R. S. 1432; 1837, VI, 580; 1918, XXX, 879; 1919, XXXI, 259.

"Every mercantile partnership" applies only to limited partnership. *Kaufman v. Carter*, 67 S. C. 312, 313, 45 S. E. 211.

(3877) § 28. Retiring Owner or Partner to Be Liable for Debts, Unless Sign Changed and Notice Filed.—In case there be any change in the owner or owners, proprietor or proprietors of any such mercantile or industrial establishment, any person retiring from such ownership or proprietorship shall file in the office of the Clerk of Court of the county in which the principal place of business of such mercantile or industrial establishment is located a notice of such change, and shall have the sign or signs herein provided for changed, and until both such notice shall be filed and such change made on such signs, such person shall be liable for all debts and contracts of such mercantile or industrial establishment according to the interest he or she formerly had therein.

1918, XXX, 879.

(3878) § 29. Record of Statements—Clerk's Fee.—The Clerk of Court shall keep all such statements of ownership or proprietorship on file and shall record the same in a book to be provided for that purpose, and shall

keep such book indexed. He shall receive as a fee for filing any such statement or notice of change the sum of twenty-five cents.

1918, XXX, 879; 1919, XXXI, 259.

(3879) § 30. **Violation a Misdemeanor—Penalty.**—Any person violating any of the provisions of Sections 27, 28 and 29 herein shall be guilty of a misdemeanor, and shall be fined ten dollars or be imprisoned for five days for each day such mercantile establishment shall do business. In case of a fine being paid, one-half of the amount paid shall be paid to the person serving out the warrant. In case of a copartnership each partner shall be severally liable.

Civ. '12, § 2564; Civ. '02, § 1706; G. S. 1327; R. S. 1434; 1837, VI, 581; 1918, XXX, 879.

CHAPTER XLII.

Common Carriers, Warehousmen and Other Bailees for Hire.*

(3880) § 1. **Sworn List of Individuals of Unchartered Association Constituting Carriers for Hire.**—When any association of individuals not having a charter from this State shall undertake to carry for hire, by railroad, in whole or in part, the said individuals are required to publish, in three newspapers of this State, a correct list, to be sworn to before one of the Clerks of Common Pleas and General Sessions in this State, of the names and residences of the parties interested in the business of carrying. The said list shall appear at least once in two months during the time they are engaged in said business.

Civ. '12, § 2566; Civ. '02, § 1708; G. S. 1331, 1332; R. S. 1435; 1863, XIII, 216.

*Telephone Companies as common carriers. *Gwynn v. Citizens Tel. Co.*, 61 S. C. 83, 39 S. E. 257.

(3881) § 2. **Carriers' Liability at Common Law Not Affected by Public Notice, Etc.**—No public notice or declaration shall limit or in any wise affect the liability at common law of any public common carriers for or in respect of any goods to be carried and conveyed by them; but they shall be liable, as at common law, to answer for the loss of or injury to any articles and goods delivered to them for transportation, any public notice or declaration by them made, and given contrary thereto or in any wise limiting such liability notwithstanding.

Civ. '12, § 2567; Civ. '02, § 1709; G. S. 1333; R. S. 1436; 1864, XIII, 262.

McClure v. Hammond, 1 Bay 99; *Gaither v. Barrett*, 2 Brev. 488; *McDonald v. Clerk*, 3 McC. 223; *Bason v. Steamboat Company*, Harp. 262; *Campbell v. Morse*, Harp. 468; *Ewart v. Street*, 2 Bail. 157; *Smvrl v. Niolin*, 2 Bail. 421; *Blair v. Jeffries*, Dud. 59; *Pattin v. Magrath*, Dud. 159; *Faulkner v. Wright*, Rice 107; *Goodwyn v. Douglas*, Cheves 174; *Littlejohn v. Jones*, 2 McM. 365; *Ross v. English*, 2 Speer 393; *Swindler v. Hilliard*, 2 Rich. 286; *Singleton v. Hilliard*, 1 Strob. 203; *Peixotto v. McLaughlin*, 1 Strob. 468; *McCall v. Brock*, 5 Strob. 119; *McClenaghan v. Brock*, 5 Rich. 17; *Cameron v. Rich*, 5 Rich. 352; *Shaw v. R. R. Co.*, 5 Rich. 462; *Dill v. R. R. Co.*, 7 Rich. 158; *Nettles v. R. R. Co.*, 7 Rich. 190; *Lipford v. R. R. Co.*, 7 Rich. 409; *Maybin v. R. R. Co.*, 8 Rich. 240; *Baker v. Brinson*, 9 Rich. 201; *Burnside v. Steamboat Co.*, 10 Rich. 113; *Kayle v. R. R. Co.*, 10 Rich. 382; *Wardlaw v. R. R. Co.*, 11 Rich. 337; *Porcher v. R. R. Co.*, 14 Rich. 181; *Porter v. Express Co.*, 4 S. C. 135; *Levy v. Express Co.*, 4 S. C. 234; *Faust v. R. R. Co.*, 8 S. C. 115; *Bamberg v. R. R. Co.*, 9 S. C. 61; *Spear v. R. R.*, 11 S. C. 158; *Ex parte Benson & Co.*, 18 S. C. 43; *Brown v. R. R. Co.*, 19 S. C. 56; *Piedmont v. R. R. Co.*, 19 S. C. 364; *Wallingford v. R. R. Co.*, 26 S. C. 258, 2 S. E. 19; *Edwards v. R. R. Co.*, 32 S. C. 117, 10 S. E. 822.

To make carrier liable for damages resulting from refusal to carry melons in iced cars, it is not necessary for jury to find that carrier failed to furnish cars after holding itself out or having agreed to do so. *Mathis v. Southern Railway*, 65 S. C. 271, 282, 43 S. E. 684, 61 L. R. A. 824.

Where carrier transports car of horses without issuing bill of lading or inquiring about value or notifying shipper of limitations put on value for rate named to him on inquiry, and when it is not shown that classification and rates published by railroad commission were brought to attention of shipper, liability of carrier is at common law. *Faulk v. Columbia, etc., R. Co.*, 82 S. C. 369, 375, 64 S. E. 383.

(3882) § 3. Common Carriers to Transport Freight Within Time Specified.—Every common carrier doing business in this State shall transport to its destination all freight received by them for transportation within this State within a reasonable time after receipt thereof, to wit: Between points not over one hundred miles apart, seventy-two hours; between points over one hundred and not over two hundred miles apart, ninety-six hours; and between points over two hundred miles apart, one hundred and twenty hours. The nearest route by railroad shall be taken in each case as the distance between the points: *Provided*, That notice be given to the receiving common carrier that prompt shipment of such freight is required, and, when requested, such common carrier shall insert in the bill of lading the words, "Prompt shipment required," which shall be conclusive evidence of such notice, and each such common carrier shall extend such notice to its connecting line or be liable for the consequences of its failure to do so.

Civ. '12, § 2568; 1904, XXIV, 671.

Only so much of 24 Stat. 671 as is inconsistent with act, 25 Stat. 490 (1907), is repealed thereby. *Sanford v. Seaboard Air Line Railway*, 79 S. C. 519, 522, 61 S. E. 74; *McSutcheon v. Atlantic Coast Line R. R. Co.*, 81 S. C. 71; *Farrell v. R. Co.*, 82 S. C. 410, 414, 64 S. E. 226.

A shipment from a point within this State through a portion of another State to a point within this State is an interstate shipment, and statute does not apply. *Hunter v. Charleston, etc., R. Co.*, 81 S. C. 169, 170, 62 S. E. 13.

Weinraub v. Southern Ry. Co., 103 S. C. 264, 87 S. E. 1009.

(3883) § 4. Penalty for Failure to Comply.—Any such common carrier failing to comply with the provisions of Section 3, except for good and sufficient cause, the burden of proof of which shall be on the common carrier so failing, shall be subject, in addition to the liabilities and remedies now existing for unreasonable delay in the transportation of freight, to a penalty of five dollars per day for every day of delay in excess of the time hereinafter limited, to be recovered by any consignee who may be injured in any way by such delay or by the owner or holder of the bill of lading, in any Court of competent jurisdiction: *Provided*, That the sum of the penalty recovered shall not exceed the value of the goods and transportation charges thereon: *Provided, further*, That any such common carrier shall, within ten days after demand in writing therefor by any consignee of delayed freight, or the owner or holder of the bill of lading, furnish a statement in writing, specifying the date of its receipt of such freight, the cause of delay and the name of the common carrier responsible therefor. Any common carrier failing to furnish such statement shall forfeit to the party demanding it, one dollar a day for each day in default, to be recovered as aforesaid: *Provided, further*, That if any such common carrier shall prove that no delay in violation of this Chapter occurred in the transportation of such freight after receipt thereof by it, and that it extended the notice that prompt shipment was required to its connecting line, and that, by the exercise of due diligence, it was unable to discover the cause of delay or the name of the common carrier responsible therefor, it shall be excused from liability under this Chapter: *Provided*, That provisions of this Chapter shall not apply to any common carrier by water routes.

Civ. '12, § 2569; 1904, XXIV, 671; 1912, XXVII, 630; 1915, XXIX, 152.

24 Stat. 671, does not violate U. S. Const., Sec. 1, Art. XIV, or State Const. Sec. 15, Art. 1.

Sanford v. Seaboard Air Line Railway, 79 S. C. 519, 522, 61 S. E. 74.

Does not apply to loss of freight. Action cannot be maintained for penalty by consignee after accepting compensation for loss. *Macon v. Southern Railway*, 81 S. C. 167, 168, 62 S. E. 6; *Cousar Mercantile Co. v. Southern Railway*, 82 S. C. 307, 309, 64 S. E. 391.

Weinraub v. Southern Ry. Co., 103 S. C. 264, 87 S. E. 1009.

(3884) § 5. Measure of Damages for Conversion of Property by Common Carrier.—If any common carrier shall convert and appropriate to its own use, any property of another held by it on consignment or in course of transportation, it shall be liable to the consignee or other owner of such property, not only for the value of such property, but an additional amount, as a penalty for such conversion, equivalent to five times the value of the property so appropriated to its own use; and shall be further liable to the consignee or other owner of such property, for such special damages as may have been suffered in consequence of such conversion, and such punitive or exemplary damages as may be recovered in an action against such common carrier. That there may be recovered in the same action, and included in the same verdict, all the amounts above provided for: *Provided, however,* That so much of this Section as provides for a penalty of five times the value of the property converted shall have no application when the common carrier has converted the said property in consequence of a wreck of the car in which the property being transported is contained; when the conversion is in consequence of the property being so damaged in transportation as to render it unfit for the purpose intended, or when the common carrier through error, delivers the property being transported to the wrong consignee.

Civ. '12, § 2570; 1902, XXIII, 1052; 1906, XXV, 108.

(3885) § 6. Adjustment of Freight Charges by Common Carriers.—All common carriers doing business in this State shall settle their freight charges according to the rate stipulated in the bill of lading: *Provided,* The rate therein stipulated be in conformity with the classifications and rates made and filed with the Interstate Commerce Commission, in case of shipments from without this State, and with those of the Railroad Commissioners of this State, in case of shipments wholly within this State; by which classifications and rates all consignees shall in all cases be entitled to settle freight charges with such carriers; and it shall be the duty of such common carrier to inform any consignee or consignees of the correct amount due for freight, according to such classifications and rates; and upon payment or tender of the amount due on any shipment, or on any part of any shipment, which has arrived at its destination, according to such classifications and rates, such common carrier shall deliver the freight in question to the consignee or consignees, and any failure or refusal to comply with the provisions hereof shall subject each carrier so failing or refusing to a penalty of fifty dollars for each such failure or refusal, to be recovered by any consignee or consignees aggrieved by suit in any Court of competent jurisdiction.

Civ. '12, § 2571; 1903, XXIV, 81.

Fennell Infirmary v. Southern Ry. Co., 101 S. C. 134, 85 S. E. 237.

(3886) § 7. Responsibility of Carriers Under Certain Contracts—Loss or Damage to Be Adjusted—Fine.—In every case of loss, damage, destruction or failure to deliver any property by a common carrier shipped over its line or any connecting line, it shall be the duty of the initial, every intermediate and terminal carrier, upon notice of such loss, damage, destruction, or failure to deliver out within forty days or to trace such property lost, damaged, or destroyed, and inform the said party so notify-

ing when, where and by which carrier the said property was lost, damaged, or destroyed within said forty days. Every carrier, failing or refusing to trace such property and inform the notifying party as above stated, within forty days after such notice, shall be liable for the full amount of the claim for loss, damage, destruction, or failure to deliver, in the same manner and to the same extent as if such loss, damage, destruction, or failure to deliver occurred on its line, and, in addition thereto, a penalty of fifty dollars, upon each claim, to be recovered in any Court of competent jurisdiction, in the same action with the claim, or in a separate action. The claimant shall also be entitled to recover interest on his claim from the date of filing same. If such initial, intermediate or terminal carrier upon the trial of the case, shall prove that it exercised due diligence and was unable to trace the property and inform as above provided, it shall thereupon be excused from liability under this Section. This Section shall in no way repeal any other provisions of this Chapter: *Provided*, That only one penalty shall be recoverable upon the same cause of action: *And provided, further*, That the actions authorized hereunder may be commenced in any county in the State in which the carrier with which the claim is filed is engaged in business.

Civ. '12, § 2572; Civ. '02, § 1710; 1894, XXI, 822; 1910, XXVI, 717.

Bradley v. Northwestern R. Co., 77 S. C. 317, 318, 57 S. E. 1101.

This section does not regulate, burden or materially interfere with interstate commerce. Skipper v. Seaboard Air Line Railway, 75 S. C. 276, 278, 55 S. E. 454, 117 Am. St. Rep. 901, 9 Am. & Eng. Ann. Cas. 808, 7 L. R. A. N. S., 388n.

As to what contracts this section as it appeared in 1902 Code, § 1710, refers to, see Venning v. Atlantic, etc., R. Co., 78 S. C. 42, 48, 55, 58 S. E. 983, 125 Am. St. Rep. 768, 12 L. R. A., N. S., 1217; Mayfield v. Southern Railway, 84 S. C. 393, 398, 66 S. E. 405; Willett v. Southern Railway, 66 S. C. 477, 478, 480, 45 S. E. 93; Moody v. Southern Railway, 79 S. C. 297, 300, 60 S. E. 711; Cave v. C. M. Ry. Co., 53 S. C. 496, 31 S. E. 359.

Opinion of witness as to whether forty days allowed for tracing lost freight is sufficient is incompetent. Moody v. Southern Railway, 79 S. C. 297, 299, 60 S. E. 711.

Presumption that terminal carrier damaged goods delivered in bad condition is not affected by this section. Willett v. Southern Railway, 66 S. C. 477, 480, 45 S. E. 93.

Charge that omits so much as exonerates carrier if it is unable to trace line upon which damage occurred, is defective. If information furnished consignee of freight at time of delivery is same as that he would have received of terminal carrier after due diligence, jury may relieve terminal carrier of liability. Winslow Bros. & Co. v. Atlantic, etc., Railroad Co., 79 S. C. 344, 60 S. W. 709.

(3887) § 8. Freight Adjustments to Be Made in Certain Time.—Every claim for freight overcharged or for loss of or damage to property and baggage, while in the possession of such common carrier, shall be adjusted and paid within thirty (30) days in case of shipments wholly within this State and within forty (40) days in case of shipments from without this State, after the filing of such claim with the agent of such carrier at the point of destination of such shipment; when there is no agent at such point, then such claim to be filed with the agent at the nearest station to such point of destination having an agent: *Provided*, That no such claim shall be filed until after the arrival of the shipment, or of some part thereof, at the point of destination, or until after the lapse of a reasonable time for the arrival thereof. In every case such common carrier shall be liable for the amount of such loss or damage, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods respectively herein prescribed shall subject each common carrier so failing to a penalty of fifty dollars for each and every such failure, to be recovered by any consignee or consignees aggrieved in any Court of competent jurisdiction: *Provided*, That unless such consignee or consignees recover in such action the full

amount claimed no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid: *Provided, further*, That no common carrier shall be liable under this Section for property which never came into its possession if it complies with the provisions of Section 7 above.

Civ. '12, § 2573; Civ. '02, § 1711; 1897, XXII, 443; 1903, XXIV, 81; 1908, XXV, 1077; 1910, XXVI, 719.

This section construed to apply only to loss or damage to freight occurring on line of carrier sued in this State, and as thus construed is not violative of interstate commerce clause of Federal Constitution. *Venning v. Atlantic, etc., R. Co.*, 78 S. C. 42, 55, 58 S. E. 983, 125 Am. St. Rep. 768, 12 L. R. A., N. S., 1217; *Charles v. Atlantic, etc., R. Co.*, 78 S. C. 36, 41, 58 S. E. 927, 125 Am. St. Rep. 762; *Atlantic, etc., R. Co. v. Mazursky*, 216 U. S. 122, 129, 54 Law Ed. 411, 416.

Penalty statute, 24 Stat. 81, is not unconstitutional as an attempt to regulate interstate commerce. *Winslow Bros. & Co. v. Atlantic, etc., R. Co.*, 79 S. C. 344, 348, 60 S. E. 709; *Fraser v. Charleston, etc., Railway*, 73 S. C. 140, 147, 52 S. E. 964; *Bullock v. Charleston, etc., Railway*, 82 S. C. 375, 376, 64 S. E. 234; *Colleton, etc., Mfg. Co. v. Atlantic, etc., R. Co.*, 82 S. C. 121, 62 S. E. 6; *Charles v. Atlantic, etc., R. Co.*, 78 S. C. 36, 58 S. E. 927, 125 Am. St. Rep. 762; *Von Lehe v. Atlantic Coast Line R. Co.*, 78 S. C. 168, 59 S. E. 1135; *Cooper v. Seaboard Air Line Railway*, 78 S. C. 81, 58 S. E. 930; *Venning v. Atlantic, etc., R. Co.*, 78 S. C. 42, 57, 58 S. E. 983, 125 Am. St. Rep. 768, 12 L. R. A., N. S., 1217; *Coffey v. Atlantic, etc., R. Co.*, 79 S. C. 150, 60 S. E. 447.

Act, 24 Stat. 81, is not in violation of 14th amendment of U. S. Const. or of Art. I, Sec. 5, State Const. *Seegers Bros. v. Seaboard Air Line Railway*, 73 S. C. 71, 72, 52 S. E. 797, 121 Am. St. Rep. 921, affirmed in 207 U. S. 76, 52 L. Ed. 108.

Design of statute was to bring about reasonably prompt settlement of all proper claims and as compensation of claimant for trouble and expense of suit which carrier's unreasonable delay and refusal made necessary. *Best v. Seaboard Air Line Railway*, 72 S. C. 479, 483, 484, 52 S. E. 223.

Section 1711, Code of 1902, is repealed by this section. *Johnson v. Southern Railway*, 69 S. C. 322, 48 S. E. 260.

Does not apply in case of delay in shipment of freight or damages to consignee because of such delay. *Cousar Mercantile Co. v. Southern Railway*, 82 S. C. 307, 64 S. E. 391.

Filing Claims—*Harter v. Charleston, etc., R. Co.*, 85 S. C. 192, 195, 67 S. E. 290.

Filing claim with soliciting freight agent at destination is sufficient filing with agent of common carrier at destination of shipment. *Bell v. Southern Railway*, 77 S. C. 78, 57 S. E. 689. Filing claim with another officer or carrier and by him, in discharge of his official duties, forwarded to agent at destination of freight, ninety days before action brought, is not such filing as is requisite to entitle consignee to penalty. *Brown v. Southern Railway*, 71 S. C. 273, 274, 51 S. E. 151.

Receivers appointed by Federal Courts liable to penalty. *Hugoelet v. Warfield*, 84 S. C. 87, 89, 65 S. E. 985. Carrier is liable whether goods were lost by conversion or otherwise. *Wilson v. Atlantic, etc., R. Co.*, 79 S. C. 198, 200, 60 S. E. 663. Recovery of one-half cent less than amount for which claim filed, entitles plaintiff to recover the penalty. *White Laundry Co. v. Charleston, etc., R. Co.*, 83 S. C. 209, 211, 65 S. E. 239, 18 Am. & Eng. Ann. Cas. 690. Carrier must seek claimant and make payment within time fixed by statute to prevent penalty attaching, but carrier may relieve itself of hardship of seeking claimant by requiring him to designate on claim place where he desires payment made, and tender at that place will relieve of penalty. *Berley v. Columbia, etc., R. Co.*, 82 S. C. 232, 64 S. E. 397. Carrier is not liable to consignee for the value of goods and penalty where goods tendered after the time limited by statute for adjusting the loss or damage, even if carrier was negligent in tracing them. *Bullock v. Charleston, etc., Railway*, 82 S. C. 375, 64 S. E. 234.

Waiver—Consignee of freight cannot recover penalty after he accepts, after time provided in Act, amount claimed for loss of freight before bringing action for penalty. *Best v. Seaboard Air Line Railway*, 72 S. C. 479, 483, 52 S. E. 223.

This section imposes no liability to which last proviso can be applied. *Venning v. Atlantic, etc., R. Co.*, 78 S. C. 42, 56, 58 S. E. 983, 125 Am. St. Rep. 768, 12 L. R. A., N. S., 1217; *Atlantic Co. L. R. Co. v. Mazursky*, 216 U. S. 122, 131, 54 L. Ed. 411.

Last proviso has no application to carriers into whose possession goods have come. *Charles v. Atlantic, etc., R. Co.*, 78 S. C. 36, 41, 58 S. E. 927, 125 Am. St. Rep. 762.

Penalty could not be recovered under Act of February, 1903 (24 Stat. 81), unless jury found fact of loss of goods while they were in defendant's possession. *Venning v. Atlantic, etc., R. Co.*, 78 S. C. 42, 55, 58 S. E. 927, 125 Am. St. Rep. 762; *Burress v. Atlantic, etc., R. Co.*, 79 S. C. 250, 254, 60 S. E. 692.

Actions—Claims for loss or damage and for penalty may be sued in separate actions commenced at same time, but judgment for penalty cannot be rendered until judgment for full amount claimed as damages. *Jenkins v. Atlantic, etc., R. Co.*, 84 S. C. 343, 66 S. E. 409.

Loss is presumed to have occurred on terminal carrier. *Colleton, etc., Mfg. Co. v. Atlantic, etc., R. Co.*, 82 S. C. 121, 62 S. E. 6; *Cooper v. Seaboard Air Line Railway*, 78 S. C. 81, 58 S. E. 930. Held constitutional. *Porter v. Charleston, etc., R. Co.*, 63 S. C. 169, 41 S. E. 108.

Varnville Furniture Co. v. Charleston & W. C. Ry. Co., 98 S. C. 63, 79 S. E. 700; *Brooks v. Southern Ry. Co.*, 96 S. C. 427, 81 S. E. 151; *Wichman v. Atlantic Coast Line R. Co.*, 100 S. C. 138, 84 S. E. 420; *Spence v. Southern Ry. Co.*, 101 S. C. 436, 85 S. E. 1053; *Sauls-Baker Co. v. Atlantic Coast Line R. Co.*, 109 S. C. 285, 96 S. E. 118.

(3888) § 9. Regulation of Reports and Remittances on C. O. D. Shipments.—That all common carriers doing business in this State and making collections on C. O. D. shipments for shippers or other party, designated by the shipper, shall pay over to such shipper or party designated by such shipper, the returns or moneys collected on C. O. D. shipments within fifteen days after date of such collection from consignee.

1914, XXVIII, 593.

(3889) § 10. **Penalty.**—Every carrier failing or refusing to make payment or remittance within the time stipulated above shall be liable for the full amount of the C. O. D. collection and in addition thereto a penalty of twenty-five (\$25.00) dollars, to be recovered in any Court of competent jurisdiction, either in the same suit on the claim or in a separate action.

1914, XXVIII, 593.

(3890) § 11. **Connecting Lines of Common Carriers Defined and Their Liability Fixed.**—All common carriers over whose transportation lines, or parts thereof, any freight, baggage or other property received by either of such carriers for through shipment or transportation by such carriers on a contract for through carriage, recognized, acquiesced in or acted upon by such carriers, shall in this State, with the respect to the undertaking and matters of such transportation, be considered and construed to be connecting lines, and be deemed and held to be the agents of each other, each the agent of the others, and all the others the agents of each, and shall be held and deemed to be under a contract with each other and with the shipper, owner and consignees of such property for the safe and speedy through transportation thereof from point of shipment to destination; and such contract as to the shipper, owner or consignee of such property shall be deemed and held to be the contract of each of such common carriers; and in any of the Courts of this State, any through bill of lading, way bill, receipt, check or other instrument issued by either of such carriers, or other proof showing that either of them has received such freight, baggage or other property for such through shipment or transportation, shall constitute *prima facie* evidence of the subsistence of the relations, duties and liabilities of such carriers as herein defined and prescribed, notwithstanding any stipulations or attempted stipulations to the contrary by such carriers, or either of them.

Civ. '12, § 2574; 1903, XXIV, 2.

Act, 24 Stat. 1, is infringement on interstate commerce clause of Federal Constitution, but is not in contravention of § 5, Art. I, State Const., or of 14th Amendment to U. S. Const. *Vanning v. Atlantic, etc., R. Co.*, 78 S. C. 42, 48, 58 S. E. 983, 125 Am. St. Rep. 768, 12 L. R. A., N. S., 1217, distinguishing *Skipper v. Seaboard Air Line Ry.*, 75 S. C. 276, 55 S. E. 454, 117 Am. St. Rep. 901, 9 Am. & Eng. Ann. Cas. 808, 7 L. R. A., N. S., 388n; *Winslow Bros. & Co. v. Atlantic, etc., R. Co.*, 79 S. C. 344, 348, 60 S. E. 709; *Harter v. Charleston, etc., R. Co.*, 85 S. C. 192, 194, 67 S. E. 290; *Burress v. Atlantic, etc., R. Co.*, 79 S. C. 250, 254, 60 S. E. 692.

Connecting carrier, acting on through bill of lading, is responsible for the error of the initial carrier. *Reynolds v. Seaboard Air Line Railway*, 81 S. C. 383, 386, 62 S. E. 445.

Where terms of bill of lading are not disclosed by record, Supreme Court cannot assume it furnished no evidence of defendant's liability as connecting carrier. *Abrams v. Columbia, etc., Railroad*, 73 S. C. 542, 543, 53 S. E. 819.

Glenn v. Atlantic Coast Line R. Co., 96 S. C. 357, 80 S. E. 898; *Marion Cotton Oil Co. v. Atlantic Coast Line R. Co.*, 109 S. C. 150, 95 S. E. 336.

(3891) § 12. **Same.**—For any damages for injury, or damage to, or loss, or delay of any freight, baggage or other property sustained anywhere in such through transportation over connecting lines, or either of them, as contemplated and defined in the next preceding Section, either of such connecting carriers which the person or persons sustaining such damages may first elect to sue in this State therefor, shall be held liable to such person or persons, and such carrier so held liable to such person or persons shall be entitled in a proper action to recover the amount of any loss, damage or injury it may be required to pay such person or persons from the carrier

through whose negligence the loss, damage or injury was sustained, together with costs of suit.

Civ. '12, § 2575; 1903, XXIV, 2.

GleNN v. Atlantic Coast Line R. Co., 96 S. C. 357, 80 S. E. 898; *Marion Cotton Oil Co. v. Atlantic Coast Line R. Co.*, 109 S. C. 150, 95 S. E. 336.

(3892) § 13. Place of Trial of Claims for Penalty on Freight Claims.—Any action to recover a penalty for the loss, delay or damage to freight against any common carrier may be brought in any county in this State where the cause of action for the damage in such case may be brought, before any Court of competent jurisdiction.

Civ. '12, § 2576; 1909, XXVI, 22.

Darby v. Southern Ry. Co. et al, 108 S. C. 145, 93 S. E. 716.

(3893) § 14. Liability of Railroad Companies Having Relief Department.—When any railroad company has what is usually called a relief department for its employees, the members of which are required or permitted to pay some dues, fees, moneys or compensation to be entitled to the benefits thereof, upon the death or injury of the employee, a member of such relief department, such railroad company be, and is hereby, required to pay to the person entitled to same, the amount it was agreed the employee or his heirs at law should receive from such relief department; the acceptance of which amount shall not operate to estop or in any way bar the right of such employee, or his personal representative, from recovering damages of such railroad company for injury or death caused by the negligence of such company, its agents or servants, as now provided by law; and any contract, or agreement to the contrary, shall be ineffective for that purpose.

Civ. '12, § 2577; 1903, XXIV, 79.

(3894) § 15. Special Officers or Constables Appointed for Protection of Common Carriers.—Upon the application of the superintendent or manager of any railway or other common carrier doing business in this State the Governor shall appoint special officers, or constables, for the protection and safety of all property and interest of such common carriers, provided such officers and constables are paid by the common carriers applying for their appointment.

Civ. '12, § 2578; 1911, XXVII, 157.

(3895) § 16. Duties.—The special officers or constables herein provided shall have all the powers, duties and responsibilities of deputy sheriffs and other police officers during the term for which they are commissioned.

Civ. '12, § 2579; 1911, XXVII, 157.

(3896) § 17. Bond.—Each and every special officer or constable appointed under the provisions of this Chapter shall be required to enter into a good and sufficient bond in the sum of five hundred dollars, conditioned for the faithful performance of his duties, said bond to be approved by the Attorney General.

Civ. '12, § 2580; 1911, XXVII, 157.

(3897) § 18. Torts of Special Constable.—Nothing herein shall limit the liability of any common carrier for any trespass or tort of such special officer or constable.

Civ. '12, § 2581; 1911, XXVII, 157.

(3898) § 19. Public Warehousemen.—Any person engaged in the business of a warehouseman, or any corporation organized under the laws of this State and whose charter authorizes them to engage in the business of a warehouseman within this State, may become a public warehouseman and authorized to keep and maintain public warehouses for the storage of cotton, goods, wares and other merchandise as hereinafter prescribed, and upon giving the bond hereinafter required.

Civ. '12, § 2582; Civ. '02, § 1712; 1896, XXII, 206.

(3899) § 20. Warehousemen to Give Bond—Limitation and Continuation of Bond—Liabilities Incurred While Bond Was in Force Not Affected.—Every person or corporation so authorized under the preceding Section to become a public warehouseman shall give bond in a surety company authorized to do business in South Carolina in an amount equal to ten (10) per cent. of the estimated value of the goods for which said warehouseman will provide storage; such bond to be conditioned for the faithful performance of the duties of a public warehouseman, and to be given to the Secretary of State, who shall cause a copy of the same to be filed with the Clerk of the Court in each county in which such warehouseman proposes to maintain a warehouse. Said bond may extend over a limited period not less than one year from its date and may provide for a continuation thereof upon payment and acceptance of the annual premium in advance: *Provided*, That the limitation shall not affect liabilities under the bond incurred while it was in force.

Civ. '12, § 2583; Civ. '02, § 1713; 1896, XXII, 206; 1914, XXVIII, 2; 1915, XXIX, 154.

(3900) § 21. Liability of Warehouseman on Bond.—Whenever such warehouseman fails to perform his duty, or violates any of the provisions of this Chapter, any person injured by such failure or violation may bring an action in his name, and to his own use, in any Court of competent jurisdiction, on the bond of said warehouseman; and in case he shall fail in said action he shall be liable to the defendant for any costs which the defendant may recover in the action.

Civ. '12, § 2584; Civ. '02, § 1714; 1896, XXII, 206.

Trakas v. Charleston, etc., R. Co., 87 S. C. 206, 209, 69 S. E. 209.

(3901) § 22. When Shall Insure Property Left in Warehouse—Receipt for Goods.—Every such warehouseman shall, when requested thereto, in writing, by a party placing property with him, or it, on storage, cause such property to be insured for whom it may concern. Every such warehouseman shall, except as hereinafter provided, give to each person depositing property with him for storage a receipt therefor, which shall be negotiable in form, and shall describe the property, distinctly stating the brand or distinguishing marks upon it, and if such property is grain the quantity and inspected grade thereof. The receipt shall also state the rate of charges for storing the property, and amount and rate of insurance thereon, and

also the amount of the bond given to the Clerk of the Court as hereinabove provided: *Provided, however*, That every such warehouseman shall, upon request of any person depositing property with him for storage, give to such person his nonnegotiable receipt therefor, which receipt shall have the word "nonnegotiable" plainly written, printed or stamped on the face thereof.

Civ. '12, § 2585; Civ. '02, § 1715; 1896, XXII, 206.

(3902) § 23. No Warehouse or Other Receipt for Property to Be Given Unless Actually Received.—No warehouseman, wharfinger, public or private inspector or custodian of property, or other person, shall issue any receipt, acceptance of an order or other voucher for or upon any goods, wares, merchandise, provisions, grain, flour or other produce or commodity to any person or persons purporting to be the owner or owners thereof, or entitled or claiming to receive the same, unless such goods, wares, merchandise, provisions, grain, flour or other commodity shall have been actually received into the store or upon the premises of such warehouseman, wharfinger, inspector, custodian or other person, and shall be in store or on the said premises as aforesaid and under his control at the time of issuing such receipt, acceptance or voucher.

Civ. '12, § 2586; Civ. '02, § 1716; 1887, XIX, 852.

(3903) § 24. Receipts of Warehouseman Not to Be Issued Unless Goods Are in Custody.—No warehouseman, wharfinger or other person shall issue any receipt or other voucher upon any goods, wares, merchandise, grain, flour or other product or commodity to any person or persons as security for any money loaned or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity shall be at the time of issuing such receipt in the custody of such warehouseman, wharfinger or other person, and shall be in store or upon the premises and under his control at the time of issuing such receipt or other voucher as aforesaid.

Civ. '12, § 2587; Civ. '02, § 1717; 1887, XIX, 852.

(3904) § 25. No Duplicate Receipt to Be Issued by Warehouseman, Etc., Unless So Marked.—No warehouseman, wharfinger, inspector, custodian or other person shall issue any second or duplicate receipt, acceptance or other voucher for or upon any goods, wares, merchandise, provisions, grain, flour or other produce or commodity while any former receipt, acceptance or voucher for or upon any such goods, wares, merchandise, provisions, flour, grain or other produce or commodity as aforesaid, or any part thereof, shall be outstanding and uncanceled, without writing in ink across the face of the same "Duplicate."

Civ. '12, § 2588; Civ. '02, § 1718; 1887, XIX, 852.

(3905) § 26. Goods to Be Removed Without Assent of Person Holding Receipt.—No warehouseman, wharfinger or other person shall sell or encumber, ship, transfer or in any manner remove beyond his immediate control any goods, wares, merchandise, grain, flour or other produce or commodity for which a receipt shall have been given by him as aforesaid, whether received for storing, shipping, grinding, manufacturing or other

purposes, without the written assent of the person or persons holding such receipt.

Civ. '12, § 2589; Civ. '02, § 1719; 1887, XIX, 852.

(3906) § 27. Warehouse, Etc., Receipts Transferable — Transferee's Rights — Delivery of Receipts — Receipts Marked "Not Negotiable" — Warehouse receipts given for any goods, wares, merchandise, cotton, grain, flour, produce or other commodity and chattels stored or deposited with any warehouseman, wharfinger, or other person, may be transferred by endorsement and delivery thereof, to the purchaser or pledgee, signed by the person to whom the receipt was originally given, or by an endorsee of such receipt; and any person to whom the same may be so transferred shall be deemed and taken to be the owner of the goods, wares and merchandise therein specified, so far as to give validity to any pledge, lien or transfer made or created by such person or persons; but no property shall be delivered except on surrender and cancellation of said original receipt or the endorsement of such delivery thereon in case of partial delivery. The assignment of warehouse receipts which shall have the words "Not negotiable" plainly written or stamped on the face thereof shall not be effective until recorded on the books of the warehouseman issuing them.

Civ. '12, § 2590; Civ. '02, § 1720; 1887, XIX, 852; 1896, XXII, 206.

(3907) § 28. Provisions Inapplicable as to Goods Replevied or Removed by Law. — So much of the preceding Sections 26 and 27 as forbids the delivery of property except on surrender and cancellation of the original receipt or the endorsement of such delivery thereon, in the case of partial delivery, shall not apply to property replevied or removed by operation of law.

Civ. '12, § 2591; Civ. '02, § 1721; 1887, XIX, 852.

(3908) § 29. Warehouse Receipt Title to Grain. — When grain or other property is stored in public warehouses in such a manner that different lots or parcels are mixed together, so that the identity thereof cannot be accurately preserved, the warehouseman's receipt for any portion of such grain or property shall be deemed a valid title to so much thereof as is designated in said receipt, without regard to any separation or identification.

Civ. '12, § 2592; Civ. '02, § 1722; 1896, XXII, 206.

(3909) § 30. Warehouseman Shall Keep a Book of Entry. — Every such warehouseman shall keep a book in which shall be entered an account of all his transactions relating to warehousing, storing and insuring cotton, goods, wares and merchandise, and to the issuing of receipts therefor, which books shall be open to the inspection of any person actually interested in the property to which such entries relate.

Civ. '12, § 2593; Civ. '02, § 1723; 1896, XXII, 206.

(3910) § 31. Action for Damages Under Provisions as to Warehousemen. — All and every person or persons aggrieved by the violation of any of the provisions of Sections 23 to 28 may have and maintain an action at law against the person or persons violating any of the provisions thereof to recover all damages, immediate or consequential, which he or they may have

sustained by reason of any such violation as aforesaid, before any Court of competent jurisdiction, whether such person shall have been convicted as hereinbefore mentioned or not.

Civ. '12, § 2594; Civ. '02, § 1724; 1887, XIX, 852.

(3911) § 32. Use of Cotton on Storage With Warehousemen Unlawful Without Written Consent of Owners.—Every person, firm or corporation taking cotton on storage as warehousemen for hire or not is hereby prohibited from using any of said cotton or allowing anyone else to use or consume any of such cotton in manufacture or otherwise without the written consent of the owner.

1919, XXXI, 293.

(3912) § 33. Damages for Violation.—Such person, firm or corporation violating the provisions of Section 32 above shall answer to the owner thereof suing therefor in punitive damages not to exceed five thousand dollars, and shall also answer for any special or other damages which any such owner may suffer by such unlawful conduct.

1919, XXXI, 293.

(3913) § 34. When Warehouseman May Sell Property Left With Him.—Every public warehouseman who shall have in his possession any property by virtue of any agreement or warehouse receipt for the same, storage of the same, on which a claim for storage is at least one year overdue, may proceed to sell the same at public auction, and out of the proceeds may return all charges for storage of such goods, wares and merchandise, and any advances that may have been made thereon by him or them, and the expenses of advertising and sale thereof. But no sale shall be made until after the giving of printed or written notice of such sale to the person or persons in whose name such goods, wares and merchandise were stored, requiring him or them, naming them, to pay the arrears or amount due for such storage, and in case of default in so doing the goods, wares and merchandise may be sold to pay the same at a time and place to be specified in such notice.

Civ. '12, § 2595; Civ. '02, § 1725; 1896, XXII, 206.

(3914) § 35. Service of Notice of Sale by Warehousemen.—The notice required in the last preceding Section shall be served by delivering it to the person or persons in whose name such goods, wares and merchandise were stored, or by leaving it at his usual place of abode, if within this State, at least thirty days before the time of such sale, and a return of the service shall be made by some officer authorized to serve civil process, or by some other person, with an affidavit of the truth of the return. If the party storing such goods cannot with reasonable diligence be found within this State, then such notice shall be given by publication once in each week for two successive weeks, the last publication to be at least ten days before the time of such sale, in a newspaper published in the city or town where such warehouse is located; or if there be no such paper, in one of the principal newspapers published in the county in which said city or town is located. In the event that the party storing such goods shall have parted with the

same, and the purchaser shall have notified the warehousemen, with his address, such notice shall be given to such person in lieu of the person storing the goods.

Civ. '12, § 2596; Civ. '02, § 1726; 1896, XXII, 206.

(3915) § 36. Surplus After Sale by Warehousemen.—Such warehousemen shall make an entry, in a book kept for that purpose, of the balance or surplus, of the proceeds of sale, if any, and such balance or surplus, if any, shall be paid over to such person or persons entitled thereto on demand. If such balance or surplus is not called for or claimed by such party or owner of said property within six months after such sale, such balance or surplus shall be paid by said warehouseman to the Clerk of the Court of the county in which said warehouse is located, who shall pay the same to the parties entitled thereto, if called for or claimed by the original owner within five years after the sale thereof, and such warehouseman shall at the same time file with said Clerk an affidavit in which shall be stated the name and place of residence, so far as the same are known.

Civ. '12, § 2597; Civ. '02, § 1727; 1896, XXII, 206.

(3916) § 37. Disposition of Perishable Property in Warehouses.—Whenever a public warehouseman has in his possession any property which is of a perishable nature, or will deteriorate greatly in value by keeping, or upon which the charges for storage will be likely to exceed the value thereof, or which by its odor, leakage, inflammability, or explosive nature, is likely to injure other goods, such property having been stored upon nonnegotiable receipt, and when said warehouseman has notified the person in whose name the property was received to remove said property, but such person has refused or omitted to receive and take away such property and to pay the storage and proper charges thereon, said public warehouseman may in the exercise of a reasonable discretion sell the same at public or private sale, without advertising, and the proceeds, if there are any proceeds after deducting the amount of said storage and charges and expenses of sale, shall be paid or credited to the person in whose name the property was stored; and if said person cannot be found, on reasonable enquiry, the sale may be made without any notice, and the proceeds of such sale, after deducting the amount of storage, expenses of sale, and other proper charges, shall be paid to the Clerk of the Court of the county wherein said warehouse is situated, who shall pay the same to the person entitled thereto if called for or claimed by the rightful owner within one year of the receipt thereof by said Clerk.

Civ. '12, § 2598; Civ. '02, § 1728; 1896, XXII, 206.

(3917) § 38. Liability of Warehouseman on Sale of Perishable Property.—Whenever a public warehouseman, under the provisions of the preceding Section, has made a reasonable effort to sell perishable and worthless property, and has been unable to do so, because of its being of little or no value, he may then proceed to dispose of such property in any lawful manner, and he shall not be liable in any way for property so disposed of.

Civ. '12, § 2599; Civ. '02, § 1729; 1896, XXII, 206.

(3918) § 39. **Owner's Liability for Storage Where Warehouse Charges Not Covered by Sale.**—Whenever a public warehouseman, under the provisions of the two preceding Sections, has sold or otherwise disposed of property and the proceeds of such sale or disposition have not equalled the amount necessary to pay the storage charges, expenses of sale and other charges against said property, then the person in whose name said property was stored shall be liable to said public warehouseman for an amount which, added to the proceeds of such sale, will be sufficient to pay all of the proper charges upon said property; or in case such property was valueless and there were no proceeds realized from its disposition, the person in whose name said property was stored shall be liable to said public warehouseman for all proper charges against said property.

Civ. '12, § 2600; Civ. '02, § 1730; 1896, XXII, 206.

(3919) § 40. **Maximum Rates for Selling Leaf Tobacco Upon Floor of Tobacco Warehouse.**—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses in this State shall not exceed the following scale of prices, to wit: For auction fees, fifteen (15) cents on all piles of one hundred pounds or less, and twenty-five (25) cents on all piles of over one hundred pounds and less than two hundred pounds; fifty (50) cents per pile for piles of two hundred pounds or over. For weighing and handling, ten (10) cents per pile for all piles of less than one hundred pounds; for all piles of over one hundred pounds, at the rate of ten (10) cents per hundred pounds; for commission on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum. The proprietor of each and every warehouse shall render to each seller of tobacco in his warehouse a bill, plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the commission charged for such sales; and it shall be unlawful for any other charges or fees exceeding those herein named to be made or accepted: *Provided*, That the provisions of this Section shall not apply to the Counties of Sumter, Pickens and Chesterfield.

Civ. '12, § 2601; Civ. '02, § 1731; 1896, XXII, 206; 1904, XXIV, 468; 1905, XXIV, 968.

(3920) § 41. **Warehousemen to Keep Tobacco Statistics.**—The warehouseman of each and every leaf tobacco warehouse doing business in this State shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily.

Civ. '12, § 2602; 1909, XXVI, 126.

(3921) § 42. **Tobacco Warehousemen to Make Reports.**—On or before the fifth day of each month the said warehouseman shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the statement at once, to the Commissioner of Agriculture at Columbia, South Carolina. The reports so made to the Commissioner of Agriculture shall be so arranged and classified as to show the number of pounds of tobacco, the grade and price sold for the producers of tobacco from first hand; the number of pounds, grade and price sold for dealers; and the number of pounds, grade and price

resold by the warehouseman for his own account or for the account of some other warehouse.

Civ. '12, § 2603; 1909, XXVI, 126.

(3922) § 43. Reports of Warehousemen as to Tobacco to Be Kept and Published.—The Commissioner of Agriculture shall cause said statement to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the State, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco, the number of pounds sold by producers, and the number of pounds resold upon each market, and the said Commissioner of Agriculture shall keep said books open to the inspection of the public, and shall, on or before the tenth day of each month, after the receipt of the reports above required to be made to him on or before the fifth day of each month, cause the said reports to be published in the Bulletin issued by the Agricultural Department, and in one or more journals

Civ. '12, § 2604; 1909, XXVI, 126.

(3923) § 44. "Warehouseman" Defined.—A warehouseman within the published in the State, having a large circulation therein. meaning of Sections 41, 42, 43, 44 and 45 shall be construed to mean the person, firm or corporation operating a warehouse for the sale of leaf tobacco, whether such person, firm or corporation be the owner or lessee of said warehouse.

Civ. '12, § 2605; 1909, XXVI, 126.

(3924) § 45. Commissioner of Agriculture to Furnish Blanks to Warehousemen.—The said Commissioner of Agriculture shall prescribe the form of the statement herein required, and furnish a sufficient number of blanks to the several warehousemen of the State.

Civ. '12, § 2606; 1909, XXVI, 126.

(3925) § 46. Railroad Commission to Fix Storage Charges on Freight.—Power is hereby conferred on the Railroad Commission of South Carolina, and they are required to fix and prescribe a schedule of maximum rates and charges for storage of freight made and charged by railroad companies doing business in this State, and to fix at what time, after the reception of freight at place of destination, such charges of storage shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination, and residence of consignee, and such other facts as in their judgment should be considered in fixing the same.

All the provisions of the Act creating said Railroad Commission, and Acts amendatory thereof, prescribing the procedure of said Commission in fixing freight and passenger traffics, and hearing complaints of carrier and shippers, and of altering and amending said tariffs, shall apply to the subject of fixing and amending rates and charges for storage, as aforesaid.

Civ. '12, § 2607; Civ. '02, § 1732; 1901, XXIII, 720.

(3926) § 47. Discrimination and Excessive Charges Prohibited.—No railroad company shall make or retain, directly or indirectly, any charge

for storage or freight greater than that fixed by the Commission for each particular storage, nor shall they discriminate directly or indirectly by means of rebate, or any device in such charges, between persons.

Civ. '12, § 2608; Civ. '02, § 1733; 1901, XXIII, 720.

(3927) § 48. Penalty for Overcharge of Storage.—If any railroad company shall violate the provisions of this Chapter, either by exceeding the rates of storage prescribed, or by discriminating, as aforesaid, the person or persons so paying such overcharge, or subjected to such discrimination, shall have the right to sue for the same in any Court of this State having jurisdiction of the claim, and shall have all the remedies, and be entitled to recover the same penalties and measure of damages as is prescribed in the case of overcharge of freight rates, upon making like demand as is prescribed in such case, and after like failure to pay the same.

Civ. '12, § 2609; Civ. '02, § 1734; 1901, XXIII, 720.

(3928) § 49. Regulating Sale of Unclaimed Freight — Amendment.—That any railroad, steamboat, express or transportation company which shall have refused freight, not perishable, in its possession for a period of thirty (30) days, may, after having given the consignor and the consignee, when known, written notice, by United States mail or otherwise, of its intention so to do, proceed to sell the same at public sale at such point as it may deem to the best interests of all parties concerned, and out of the proceeds may retain the charges of transportation, storage and demurrage on such freight and all other lawful charges assessed against the same, as well as the expenses of advertising (when it has been advertised) and sale thereof. The expenses incurred in advertising (if advertised) shall be a lien upon such freight in a ratable proportion, according to the number of articles, packages or parcels, if more than one.

Civ. '12, § 2610; Civ. '02, § 1735; G. S. 1663; R. S. 1444; 1887, XIX, 858; 1913, XXVIII, 140.

(3929) § 50. May Sell Unclaimed Freight.—That any railroad, steamboat, express or transportation company which shall have had unclaimed freight, not perishable, in its possession for a period of sixty (60) days may, after having given the consignor and consignee, when known, written notice, by United States mail or otherwise, of its intention so to do, proceed to sell the same at public sale at such point as it may deem to the best interests of all parties concerned, and out of the proceeds may retain the charges of transportation, storage and demurrage on such freight and all lawful charges assessed against the same, as well as the expenses of advertising (when it has been advertised) and sale thereof. The expenses incurred in advertising (if advertised) shall be a lien upon such freight in a ratable proportion, according to the number of articles, packages or parcels, if more than one.

Civ. '12, § 2611; Civ. '02, § 1736; G. S. 1664; R. S. 1445; 1887, XIX, 858; 1913, XXVIII, 140.

(3930) § 51. Perishable Freight.—That in case such refused or unclaimed freight shall be in its nature perishable, then in order to protect the interests of all concerned, the same may be sold as soon as it can be.

The proceeds of such sale shall be applied to the charges of transportation, storage and demurrage, on such freight and all other lawful charges assessed against the same, as well as any legitimate expense connected with the sale thereof, and the balance shall be accounted to the rightful owner, upon satisfactory proof of ownership.

1913, XXVIII, 140.

(3931) § 52. Live Stock.— That in case such refused or unclaimed freight is live stock, then, in order to protect the interests of all concerned, the same may be sold after ten (10) days' notice in writing to the consignor and the consignee, when known, by United States mail or otherwise. The proceeds of such sale shall be applied to the charges of transportation, demurrage, and to the expenses incurred in caring for such live stock and all other lawful charges assessed against the same, as well as any legitimate expense connected with the sale thereof, and the balance shall be accounted for to the rightful owner upon satisfactory proof of ownership.

1913, XXVIII, 140.

(3932) § 53. Carriers to Keep Records.— That such railroad, steamboat, express or transportation company shall keep books of record of all such sales as aforesaid, containing copies of such notices, proofs of advertisements and postings, where required to be made, affidavit of sale, with the amount thereof, the total amount of charges against such freight, and the amount held for the owner, which books shall be open for inspection by claimants, at the principal office of said company, and at the office where sale was made, and at any time within five years thereafter shall refund any surplus, so retained, to the owner of such freight, his heirs or assigns, on satisfactory proof of such ownership; if no person shall claim such surplus within five (5) years, said surplus shall be paid into the State Treasury.

Civ. '12, § 2613; Civ. '02, § 1738; G. S. 1666; R. S. 1446; 1887, XIX, 858; 1913, XXVIII, 140.

(3933) § 54. Sale of Property Repaired by Mechanic for Charges.—It shall be lawful for any mechanic or owner and operator of repair shops of whatever kind or repairmen who shall make repairs upon any article under contract for the same or furnish any material for such repairs, in this State, when property may be left at his shop for repairs, to sell the same at public outcry to the highest bidder after the expiration of sixty days from written notice to the owner of the property, that said repairs have been completed; and the same shall be sold by any Magistrate of the county in which the work was done: *Provided*, That the said Magistrate shall, before selling such property, advertise the same for at least fifteen days by posting a notice in three public places in his township. And he shall, after deducting all proper costs and commissions, pay to the claimant the money due to him, taking his receipt for the same, after which he shall deposit the said receipt, as well as the items of costs and commissions, with the remainder of the money or proceeds of the sale in the office of the Clerk of the Court, subject to the order of the owner thereof, or his legal representatives.

Civ. '12, § 2614; Civ. '02, § 1739; G. S. 1667; R. S. 1447; 1875, XV, 878; 1912, XXVII, 624.

(3934) § 55. **Commissions on Mechanics' Sales.**—The Magistrate who shall sell such property shall be entitled to receive the same commissions as are now allowed by law for the sale of personal property by constables.

Civ. '12, § 2615; Civ. '02, § 1740; G. S. 1668; R. S. 1740; 1875, XV, 878.

(3935) § 56. **Innkeeper's Liability Limited—Notice—Contributory Negligence of Proprietors.**—Whenever and so long as the proprietor or proprietors of any hotel, inn, or boarding house shall post and keep posted in a conspicuous manner, in the room occupied by any guest a notice requiring such guest to bolt the door of such room, or on leaving his room to lock the door and leave the keys at the office, and also to deposit such money and jewels as are not ordinarily carried upon the person, in the office safe, and such guest shall neglect to comply with the requirements of such notice, the proprietor or proprietors of such hotel, inn, or boarding house shall not be liable for the loss of the baggage of such guests which may be lost or stolen from said room, or for the loss of such money and jewels not deposited in such safe: *Provided*, That this Section shall not apply to cases in which the proprietor or proprietors of such hotel, inn, or boarding house have by their own negligence contributed to such loss.

Civ. '12, § 2616; Civ. '02, § 1741; 1888, XX, 9.

Liability for negligence. *Axon v. Newson*, 1 McC. 509.

(3936) § 57. **Rights of Innkeepers Extended to Keepers of Boarding Houses.**—Keepers of boarding houses shall have the same rights and remedies for enforcing and collecting claims for board as are allowed by law to innkeepers or hotel keepers.

Civ. '12, § 2617; 1902, XXIII, 1021.

MISDEMEANOR TO DEFRAUD HOTEL OR INNKEEPERS.—Any person who shall at any hotel, inn or boarding house order and receive, or caused to be furnished, any food or accommodation, with intent to defraud the owner or proprietor of such hotel, inn or boarding house out of the value or price of such food or accommodation; and any person who shall obtain credit at any hotel, inn or boarding house by the use of any false pretense or device, or by fraudulently depositing at such hotel, inn or boarding house any baggage or property of less value than the amount of such credit or of the bill by such person incurred, unless credit be given by express agreement; and any person who, after obtaining credit or accommodation at any hotel, inn or boarding house, shall surreptitiously remove his or her baggage or property therefrom, shall be deemed guilty of a misdemeanor.

1908, XXV, 1085.

FRAUDULENT REPRESENTATIONS PRIMA FACIE EVIDENCE OF GUILT.—Proof that lodging, food or other accommodation was obtained by false pretense, or by false or fictitious show or pretense of baggage, or that the party refused to pay for such food, lodging or accommodation on demand, or that he absconded without paying or offering to pay for such food, lodging or other accommodation, or that he surreptitiously removed or attempted to remove his or her baggage, shall be *prima facie* proof of the fraudulent intent mentioned in the second paragraph of this Section.

1908, XXV, 1085.

INNKEEPER MAY SELL AT PUBLIC AUCTION BAGGAGE IN CASE OF DEFAULT.

—At any time after the expiration of ten days after the person incurring the debt or obligation has left the hotel, inn or boarding house, and the debt or obligation being still due and unpaid, the owner or proprietor of said hotel, inn or boarding house may sell, at public auction, for cash, at hotel or boarding house office, any or all baggage or property left at said hotel, inn or boarding house, to satisfy said debt or obligation without any process at law or equity: *Provided*, That said sale shall be advertised by written or printed posters at three public places in the vicinity for at least ten days before said sale.

Civ. '12, § 2617; 1908, XXV, 1085.

CHAPTER XLIII.**Hawkers and Peddlers.**

(3937) § 1. License Required — From Whom Obtained.—No person shall, as hawker or peddler, expose for sale or sell any goods, wares and merchandise in any county in this State unless he has received and is ready to produce and exhibit a license from the Clerk of the Court of Common Pleas of such county so as to sell or expose for sale goods, wares and merchandise in said county.

Civ. '12, § 2618; Civ. '02, § 1742; G. S. 1338; R. S. 1451; 1876, XVI, 64; 1893, XXI, 407.

Hawkers and peddlers defined. *State v. Belcher*, 1 McM. 40.

State v. Moorehead, 42 S. C. 211, 20 S. E. 544; *Alexander v. Greenville*, 49 S. C. 527, 27 S. E. 469; *State v. Coop*, 52 S. C. 508, 30 S. E. 609.

(3938) § 2. Term of License—Fee for to Be Fixed by County Commissioners.—Said Clerk shall issue licenses to hawkers and peddlers, to be good in his county until the last day of December next after the date of its issue, upon receiving from the applicant such fee or fees therefor as the County Board of Commissioners shall at their first meeting in January after the passage of this Chapter, and thereafter at their first meeting in January of every year, establish and fix license fees for hawkers and peddlers in their county; and it shall be the duty of the County Board of Commissioners to fix and establish the said license fees in the several counties of this State, except as otherwise provided herein. And each license shall specify the sum paid therefor and the privileges granted thereby.

Civ. '12, § 2619; Civ. '02, § 1743; R. S. 1452; 1893, XXI, 408.

As to constitutionality of this section, see opinion of Mr. Justice Gary, in *State v. Moorehead*, 42 S. C. 211, 20 S. E. 544.

(3939) § 3. Inspection of Licenses—Arrest and Trial.—It shall be the duty of every Magistrate and every Constable and of the Sheriff and of his regular deputies to, and every citizen may, demand and inspect the license of any hawker or peddler in his or their county who shall come under the notice of any of said officers, and to arrest or cause to be arrested any hawker or peddler found without a good and valid license, and to bring such hawker or peddler before the nearest Magistrate to be dealt with according to law.

Civ. '12, § 2620; Civ. '02, § 1744; R. S. 1453.

(3940) § 4. **Articles Exempt and Articles Not Exempt.**—The provisions of this Chapter shall not extend to vendors of newspapers, magazines, vegetables, tobacco, provisions of any kind or agricultural products, or to sales by sample by persons traveling for established commercial houses, but shall extend and apply to vendors of every other class and kind of goods, wares and merchandise, and to sales by sample or otherwise by such hawkers and peddlers of stoves, ranges, clocks, lightning rods, sewing machines, pianos or organs.

Civ. '12, § 2621; Civ. '02, § 1745; R. S. 1454.

This section only extends to sale by "hawkers and peddlers" as heretofore defined; it does not include traveling salesmen of houses having established places of business in this State. *State v. Moorehead*, supra. Or such merchants sending out delivery wagons from which they occasionally take orders. *Alexander v. Greenville*, supra. Or one who delivers a picture already sold, with option to purchaser to buy frame, as set out in contract of sale. *State v. Coop*, 52 S. C. 508.

(3941) § 5. **Certain Soldiers and Sailors Exempt from Hawkers' and Peddlers' License.**—Any person who was a *bona fide* soldier or sailor in the service of the State of South Carolina or of the Confederate States in the War Between the States may expose for sale or sell, as hawker or peddler, any goods, wares or merchandise in any county, city or town in this State without taking out the license required by this Chapter: *Provided*, He make to the Clerk of the Court of Common Pleas of the county in which such goods are to be sold satisfactory proof that he was such soldier or sailor.

Civ. '12, § 2622; Civ. '02, § 1746; 1902, XXIII, 1036.

A similar statute (24 Stat. 441), held unconstitutional. *Laurens v. Anderson*, 75 S. C. 62, 55 S. E. 136, 117 Am. St. Rep. 885, 9 Am. & Eng. Ann. Cas. 1003.

(3942) § 6. **Unlawful to Sell Drugs from Place to Place Without License—Confederate Veterans.**—It shall be unlawful for any person to travel as hawkers and peddlers from place to place in this State, and to sell or to offer for sale any medicine, drug or compound to be used as a curative, without first paying to the Clerk of the Court of each county in which such person seeks to sell such medicine, drug or compound, a fee of one hundred dollars for the use of such county, and procuring from him a license permitting such person to sell such medicine, drug or compound within such county. Such license to be good for twelve months from the date thereof: *Provided*, That every package or bottle of such medicine, drug or compound shall have plainly written or printed on it, in the English language, the formula of the contents thereof, which formula shall be approved in writing by a regularly licensed practicing physician of this State, and a copy of said approval shall be lithographed or printed on each package or bottle of such medicine, drug or compound: *Provided, further*, That any person who holds a certificate under the hand and official seal of the Clerk of Court of any county in this State, that his name is on the Confederate pension roll of said county, shall be exempt from the payment of such license.

Civ. '12, § 2623; Civ. '02, § 1747; 1897, XXII, 532; 1902, XXIII, 1101.

One soliciting orders for medicines to be shipped into the State not liable. *State v. Ivey*, 73 S. O. 232, 53 S. E. 428.

(3943) § 7. **License Required for Erection of Lightning Rods—State License—County License—Proviso.**—That it shall be unlawful for any person, firm or corporation to erect or place upon any building within the

State any lightning rods, without first procuring from the Clerk of the Court of each county wherein business is proposed to be done, a license so to do, for which shall be paid the sum of fifty dollars per annum for each county: *Provided*, That in towns and cities collecting licenses for this class of work, persons, firms or corporations, residents of said towns and cities, paying said town and city license, shall be exempt from payment of such county license when such work is done in the town or city in which said person, firm or corporation resides.

1920, XXXI, 1022; 1921, XXXII, 154.

(3944) § 8 Violation a Misdemeanor—Penalty.—That any person violating the provisions of Section 7 shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand (\$1,000) dollars, or imprisonment for not more than one year, in the discretion of the presiding Judge.

1920, XXXI, 1022.

CHAPTER XLIV.

Regulation of Certain Trades and Businesses.

ARTICLE 1. Pawnbrokers, 1165.

ARTICLE 2. Dealers in Junk, 1167.

ARTICLE 3. Mercantile Licenses in Beaufort County, 1168.

ARTICLE I.

Pawnbrokers.

(3945) § 1. Unlawful to Carry on Business of Pawnbroker Without License.—No person, corporation, member of copartnership or firm shall hereafter carry on the business of pawnbroker, in any of the cities, towns or counties of this State, without having first obtained from the Mayor of the city or town, or Clerk of the Circuit Court of the county where the business is to be carried on, a license, for which he shall pay such license fee as may be fixed by the municipal authorities of the city or town of the State, or by the County Board of Commissioners of the counties authorizing such person to carry on the same, in the manner and upon the conditions stated in the succeeding Sections of this Chapter.

Civ. '12, § 2624; Civ. '02, § 1748; 1900, XXIII, 427.

(3946) § 2. How License Shall Be Granted — Pawnbroker Defined—Bond.—The Mayor of any city or town, the Clerk of the Circuit Court of the county, may from time to time grant, under his hand and the official seal of his office, to such citizens as he shall deem proper, and who shall produce to him satisfactory evidence of their good character, a license authorizing such citizen or citizens to carry on the business of a pawnbroker, which license shall designate the house in which such person shall carry on said business; and no person, corporation, member or members of a copartnership or firm shall carry on the business of a pawnbroker without being duly licensed, nor in any other house than the one designated in

said license, under penalty of five dollars for each day he or she or they shall exercise or carry on said business without such license, or at any other house than the one designated. Any person, corporation, member or members of a copartnership or firm who loans money on pledge of personal property or other valuable thing, other than securities or printed evidences of indebtedness, or who deals in the purchasing of personal property or other valuable thing, on condition of selling the same back again at a stipulated price, is hereby declared and defined to be a pawnbroker. Every person so licensed shall, at the time of receiving such license, file with the Mayor or Clerk of the Court granting the same, a bond to the local authorities of such city or town or county, to be executed by the person so licensed and by two responsible sureties, or a surety company licensed to do business in the penal sum of one thousand dollars, to be approved of by such Mayor or Clerk of the Circuit Court, and which bond shall be conditioned for the faithful performance of the duties and obligations pertaining to the business so licensed, and the Mayor or Clerk of the Circuit Court shall have full power and authority to revoke such license for cause.

Civ. '12, § 2625; Civ. '02, § 1749; 1900, XXIII, 427.

(3947) § 3. Actions Against Pawnbrokers.—If any person shall be aggrieved by the misconduct of any such licensed pawnbroker, and shall recover judgment against him thereafter, such person may, after the return unsatisfied, either in whole or in part, of any execution issued upon said judgment, maintain an action in his own name upon the bond of said pawnbroker in any Court having jurisdiction of the amount claimed: *Provided*, Such Court shall upon application, made for the purpose, grant such leave to prosecute such suit.

Civ. '12, § 2626; Civ. '02, § 1750; 1900, XXIII, 427.

(3948) § 4. Pawnbrokers to Keep Book for Description of Goods Pawned.—Every such pawnbroker shall keep a book in which shall be fairly written, at the time of such loan, an account and description of the goods, articles or things pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on such loan, and the name and residence of the person pawning or pledging the said goods, articles or things.

Civ. '12, § 2627; Civ. '02, § 1751; 1900, XXIII, 427.

(3949) § 5. To Issue Note Describing Goods Pawned.—Every such pawnbroker shall at the time of each loan deliver to the person pawning or pledging any goods, article or thing, a memorandum or note, signed by him, containing the substance of the entry required to be made in his book by the last preceding Section, and no charge shall be made or received by any pawnbroker for any such entry, memorandum or note.

Civ. '12, § 2628; Civ. '02, § 1752; 1900, XXIII, 427.

(3950) § 6. Books Open for Inspection—The said book shall at all reasonable times be open to the inspection of the Mayor and Clerk of the Circuit Court, all Judges of the Criminal Courts, the Superintendent of Police, Police Inspectors, Captains of Police, and Police Justices of such towns

or counties, or any or either of them, or of any person who shall be duly authorized in writing for that purpose by any or either of them, and who shall exhibit such written authority to such pawnbroker.

Civ. '12, § 2629; Civ. '02, § 1753; 1900, XXIII, 427.

(3951) § 7. Interest.—No pawnbroker shall ask, demand or receive any greater rate of interest than that now fixed by Statute.

Civ. '12, § 2630; Civ. '02, § 1754; 1900, XXIII, 427.

(3952) § 8. Pledge Not to Be Sold Before Sixty Days After Maturity.—No pawnbroker shall sell any pawn or pledge until the same shall have remained sixty days in his possession after the maturity of the debt for which the property was pledged.

Civ. '12, § 2631; Civ. '02, § 1755; 1900, XXIII, 427.

(3953) § 9. Penalties—How Imposed.—The Mayor or Clerk of the Circuit Court, so licensing such pawnbroker, shall have full power and authority to impose fines and penalties, of not less than twenty-five dollars nor more than one hundred dollars, upon persons offending against any or either of the foregoing provisions, for each and every offense, excepting Sections 1 and 2, and also to suspend his or her license until the same shall be paid to him.

Civ. '12, § 2632; Civ. '02, § 1756; 1900, XXIII, 427.

ARTICLE II.

Dealers in Junk.

(3954) § 1. Dealing in Junk Regulated.—That any person, firm or corporation buying junk shall keep a book, which he or they shall keep open to the inspection of any and all persons, wherein he or they shall set down the name and address, city and street, of every person selling junk and an itemized statement of all junk bought from such person or persons, and the date of purchase.

1913, XXVIII, 209.

(3955) § 2. Junk to Be Open to Inspection.—That such person, firm or corporation shall keep each article of junk so purchased for a period of seventy-two hours following such purchase and shall keep such junk open to the inspection of any and all persons: *Provided*, That the provisions of this Article shall not be construed to apply to junk bought outside of the county in which the place of business of such buyer of junk is located.

1913, XXVIII, 209.

(3956) § 3. Penalty.—That any person, firm or corporation violating the provisions of this Article shall be fined in a sum not exceeding one hundred (\$100) dollars or imprisoned not exceeding thirty days.

1913, XXVIII, 209.

ARTICLE III.

Mercantile Licenses in Beaufort County.

(3957) § 1. **Mercantile Firms in Beaufort County Required to Pay License.**—Every person, firm or corporation doing a mercantile business in Beaufort County, shall annually, on or before the first day of May, pay a license to engage in business for one year from date of said license.
1913, XXVIII, 343; 1915, XXIX, 576.

(3958) § 2. **License Fee.**—The said license shall be five (\$5) dollars per year where the capital invested in said business is over five thousand dollars, and three (\$3) dollars where the capital invested in said business is five thousand dollars or less.

1913, XXVIII, 343; 1915, XXIX, 576.

(3959) § 3. **Board of County Commissioners May Grant License.**—The said license shall be granted by the Board of County Commissioners of Beaufort County, and the funds arising from same shall be turned into the general county fund for Beaufort County.

1913, XXVIII, 343.

(3960) § 4. **When License Revoked—When County Commissioner Guilty of Misdemeanor.**—If, in the judgment of said Board of County Commissioners, any such person, firm or corporation shall sell any alcoholic liquors, in violation of law, if such violation shall be proved in any Court the said Board of County Commissioners shall revoke the license of said person, firm or corporation. Any member of said Board who shall refuse or fail to carry out the provisions of this Article, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined at the discretion of the trial Judge. No such person, firm or corporation whose license shall be revoked, as herein provided, shall be granted a new license, nor shall a license be granted to any representative thereof, or to any one whose license has been revoked.

1913, XXVIII, 343; 1914, XXVIII, 530; 1915, XXIX, 576.

(3961) § 5. **Liability If Without License**—Any person, firm or managing officer or officers of said corporation, doing business as aforesaid, without first taking out a license, shall be liable to a fine of one hundred dollars, or imprisonment for thirty days.

1913, XXVIII, 343.

CHAPTER XLV.

Board of Exports and Marketing.

(3962) § 1. **Board of Exports and Marketing—Personnel—Appropriation.**—That a Board of Exports and Marketing is hereby created, which shall consist of five members, including the State Cotton Warehouse Commissioner and the Commissioner of Agriculture, Commerce and Industries, who shall be members *ex officio*, and three other members to be appointed

by the Governor (by and with the advice and consent of the Senate). Of the three appointed members one shall be a person experienced in banking or finance, and one shall have been actively engaged in the mercantile business in the State of South Carolina for at least two years prior to his appointment. The Governor shall designate one of the five members as president of the Board. The president shall be the chief executive officer of the Board. Twenty-five hundred (\$2,500) dollars is hereby appropriated to defray the expenses of the organization of the Board of Exports.

1919, XXXI, 265.

(3963) § 2. Formation of Exporting Corporations—Powers.—That corporations to be organized for the purpose of engaging principally in the business of exporting commodities from the United States to foreign countries or to dependencies or insular possessions of the United States may be formed with the permission of the Board of Exports and Marketing by any number of natural persons, not less in any case than five. Such persons shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions not inconsistent with law which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Board of Exports and Marketing, to be filed and preserved with its records. The persons uniting to form such association shall under their hands make an organization certificate which shall specifically state:

(1) The name assumed by such association, which name shall be subject to the approval of the Board of Exports and Marketing.

(2) The place or places where its operations are to be carried on.

(3) The place in the United States where its main office shall be located.

(4) The amount of its capital stock, and the number and classes of shares into which the same shall be divided.

(5) The names and places of residence or business of the shareholders and the number of shares held by each.

(6) The fact that the certificate is made to enable such persons to avail themselves of the advantages of this Article.

The organization certificate shall be acknowledged before a Judge of a Court of record or a Notary Public, and shall be, together with the acknowledgment thereof, authenticated by the seal of such Court or Notary, transmitted to the Board of Exports and Marketing, which shall record and carefully preserve the same in its records.

Upon duly making and filing the articles of association and an organization certificate, as provided in this Section, the corporation shall become as from the date of its execution of the organization certificate a body corporate, and as such and in the name designated in the organization certificate it shall have power under such conditions and regulations as the Board of Exports and Marketing may prescribe:

(1) To adopt and use a corporate seal.

(2) To have succession for such period of time as may be specified in its organization certificate.

(3) To make contracts.

(4) To sue and to be sued, complain and defend, in any Court of law or equity.

(5) To prescribe, by its board of directors, by-laws not inconsistent with the law regulating the manner in which its general business may be conducted and the privileges granted to it by law may be exercised and enjoyed.

(6) To purchase for export or to lend on the security of cotton, tobacco or any other staple commodity.

(7) To purchase or own and to lease warehouses and to conduct a general warehouse business.

(8) To accept drafts or bills of exchange drawn in transactions which involve an exportation of goods or which involve the domestic shipment of goods or which are secured by warehouse receipt or other such document conveying or securing the title to readily marketable staples: *Provided, however,* That all such goods represented by shipping documents, warehouse receipts or other documents are intended for export.

(9) To extend credit or make loans to foreign purchasers of goods exported from the United States.

(10) To purchase and own or to lease and operate steamships or other vessels engaged in international trade.

(11) To own stock in other corporations which are engaged in business of exporting goods from the United States.

(12) To purchase and hold real estate necessary for the conduct of its business.

(13) To act as the broker or sales agent of any person in the United States engaged in exporting goods from the United States.

(14) To issue, in payment of cotton or other commodities purchased, negotiable certificates of beneficial interest in series, the net profits earned on the sale of all such commodities represented by certificates of any one series to be distributed *pro rata* among the holders of such certificates.

(15) To issue cargoes of goods exported from the United States.

(16) To exercise, by its board of directors or duly authorized officers or agents, all powers specifically granted by the provisions of this Section and such incidental powers as shall be necessary to carry on the business of exporting within the limitations prescribed by this Section.

Such corporation shall not engage in any business except such as is incidental and necessary preliminary to its organization until it has been authorized by the Board of Exports and Marketing to commence business.

1919, XXXI, 265.

(3964) § 3. Capital Stock.—The capital stock of such corporation may be divided into shares of such denomination and into such classes as are specified in its organization certificate, and under regulations to be prescribed by the Board of Exports and Marketing provisions may be made from time to time for the increase or reduction of the outstanding capital.

1919, XXXI, 265.

(3965) § 4. Selection of Directors of Exporting Corporations—Officers.—The affairs of the corporation shall be conducted under the general supervision and control of a board of directors consisting of seven members, three

of which shall be appointed by the Board of Exports and Marketing and four of which shall be elected by the stockholders. The directors first appointed or elected shall serve for term from one to seven years, respectively, and thereafter each member so appointed shall serve for a term of seven years, unless sooner removed for cause by the Board of Exports and Marketing.

The directors shall annually elect a president, vice president, secretary and treasurer, and such other officers as they may deem necessary, and to fix the salaries of officers so elected, prescribe their duties and terms of office.

1919, XXXI, 265.

(3966) § 5. Powers of Board of Exports and Marketing.—The Board of Exports and Marketing shall be authorized and empowered: (a) To examine, at its discretion, the accounts, books and affairs of each exports corporation and to require such statements and reports as it may deem necessary. (b) To require the writing off of doubtful or worthless assets upon the books and balance sheets of the exports corporation. (c) To prescribe regulations governing the issuance of negotiable warehouse receipts, certificates of beneficial interest and the acceptance of drafts or bills of exchange. (d) To exercise general supervision over the operations of such exports corporations. (e) To employ such attorneys, experts, assistants, clerks or other employees as may be necessary to conduct the business of the Board, all salaries and fees to be fixed in advance by said Board of Exports and Marketing.

1919, XXXI, 265.

(3967) § 6. Disposition of Net Earnings of Export Corporations.—After all necessary expenses of the corporation have been paid or provided for, ten per cent. of net earnings remaining shall be paid to the Board of Exports and Marketing for its expenses and fifteen per cent. to the State in lieu of a franchise tax and in lieu of all taxes on the capital stock and assets of the corporation. This fund shall be used, so far as is necessary, to reimburse the State for appropriations made for the expenses of the Board of Exports and Marketing. Of the remaining seventy-five per cent., twenty per cent. shall be paid into the surplus fund until that fund equals twenty-five per cent. of the outstanding capital stock. The balance may be distributed by the board of directors as dividends on the capital stock.

1919, XXXI, 265.

TITLE XII.**OF CORPORATIONS AND UNINCORPORATED ASSOCIATIONS.**

CHAPTER XLVI. Of Banks and Banking, 1172.

CHAPTER XLVII. Foreign Corporations, Generally, 1188.

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CHAPTER XLVI.**Of Banks and Banking.**

ARTICLE 1. Banks, 1172.

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ARTICLE I.**Banks.**

(3968) § 1. **Banks May Make Loans and Open Accounts With Other States.**—The president, directors and company of any incorporated bank in this State are authorized to make loans on negotiable paper for any period not exceeding twelve months, and also to open an account and give a credit to any other bank or banks in any of the sister States.

Civ. '12, § 2633; Civ. '02, § 1757; G. S. 1843; R. S. 1455; 1817, VIII, 36.

(3969) § 2. **May Invest in State or United States Stocks.**—Such corporations shall have power to vest, from time to time, such part of their capital, not exceeding (with the amount of stock any such bank may hold) one-half of the amount originally subscribed to such bank, in the stock of this State or of the United States.

Civ. '12, § 2634; Civ. '02, § 1758; G. S. 1844; R. S. 1456; 1817, VIII, 36.

(3970) § 3. **Penalty If Circulating Notes Exceed Three Times Amount of Gold, Etc.**—If the bank notes issued by any bank, and in circulation, shall at any time exceed, for more than four successive weeks, three times the amount of gold and silver coin and bullion in possession of the bank, or subject to its control, within the limits of this State, as its own property, such bank shall forfeit five hundred dollars for each and every successive week during which such excess shall continue, to be recovered by action at the suit of the State.

Civ. '12, § 2635; Civ. '02, § 1759; G. S. 1845; R. S. 1457; 1855, XII, 699.

(3971) § 4. **To Report Weekly to Comptroller General.**—In order that such excess, when it exists, may be apparent, it shall be the duty of the

president or cashier of every bank of issue, on Wednesday of every week, to transmit to the Comptroller General an account of the amount of bank notes of such bank in circulation; and also an account of the amount of gold and silver coin and bullion in the possession of the bank, or subject to its control, as its own property, on the next preceding Tuesday, which account shall be certified by the oath of the president or cashier, taken before and certified by any officer duly authorized to administer oaths; and any person swearing falsely to any account shall be deemed guilty of perjury, and shall be subject to the pains and penalties thereof.

Civ. '12, § 2636; Civ. '02, § 1760; G. S. 1346; R. S. 1458; 1855, XII, 699.

(3972) § 5. Penalty for Failure to Report.—Any bank, the officers whereof shall neglect to transmit to the Comptroller General any such account aforesaid shall forfeit one hundred dollars for each and every day during which the same shall be neglected, to be recovered by action at the suit of the State.

Civ. '12, § 2637; Civ. '02, § 1761; G. S. 1347; R. S. 1459; 1855, XII, 699.

(3973) § 6. Felony to Receive Deposits After Knowledge of Insolvency.—It shall be felony for any president, director, manager or cashier, or other officer, of any banking institution to receive any deposits or trusts, or to create any debts for such corporation, after he shall become aware that such corporation is insolvent; and every officer of such failing corporation shall become personally liable to the amount of such deposits or trusts received by him, or with his knowledge or assent, in any such case, to the person thereby damaged, whether criminal prosecution be made or not. And all persons convicted for felony, as herein provided, shall be punished by imprisonment for a term of not less than one year and by a fine of not less than one thousand dollars.

Civ. '12, § 2638; Civ. '02, § 1762; G. S. 1348; R. S. 1460; 1877, XVI, 232.

(3974) § 7. Banks Not to Pay Mutilated Notes Unless Security Given.—No bank now or hereafter to be incorporated in this State shall be compelled by law to pay any of their bills which have been, or may be hereafter, cut in half or divided, unless both halves of said bill or bills are presented, or unless the person producing one-half, and demanding payment as of the whole, shall first give bond and sufficient security to the said bank as an indemnity against any loss or damage that may be sustained by the said bank by paying the whole of said half bills to said person.

Civ. '12, § 2639; Civ. '02, § 1763; G. S. 1349; R. S. 1461; 1822, VI, 181.

(3975) § 8. Definition of "Bank Note" and "Bank of Issue."—The words "bank note" shall be understood to include all bills, notes, checks, and other obligations of any bank made payable to bearer on demand, or in any form of words whatsoever written, printed, or engraved, so as to be circulated and used as paper money or currency; and the words "bank of issue" shall be understood to include every bank having lawful authority to issue its own bank notes.

Civ. '12, § 2640; Civ. '02, § 1764; G. S. 1350; R. S. 1462; 1857, XII, 632.

(3976) § 9. Parts of Bank Charters Repugnant to Provisions Are Repealed—Proviso.—All parts of Acts of incorporation granted to banking corporations repugnant to the provisions of Sections 1 and 2 of this Article are repealed: *Provided*, That nothing contained herein shall be construed so as to prevent the Legislature of this State from prohibiting the purchase of stock, as provided by Section 2 of this Article, whenever it may be deemed expedient.

Civ. '12, § 2641; Civ. '02, § 1765; G. S. 1351; R. S. 1463; 1817, VIII, 36.

(3977) § 10. Governor to Appoint Bank Examiner.—The Governor of the State shall appoint a competent person to examine, from time to time as hereinafter provided, into the affairs and the condition of all banks and banking institutions conducted by corporations or persons in this State. In the selection of said Bank Examiner the Governor may advise with the executive committee of the South Carolina Bankers' Association.

Civ. '12, § 2643; 1906, XXV, 103; 1911, XXVII, 4.

(3978) § 11. Duty and Power of Bank Examiner—Report.—It shall be the duty of such Bank Examiner, and he shall have power, to make a thorough examination into all the books, papers and affairs of the aforesaid banks and banking institutions, and in making such examinations the Examiner shall have authority to administer oaths and to summon and examine any and all persons connected with the said banks and banking institutions, and if any person in such examination before the Bank Examiner shall testify falsely he shall be indictable as for perjury. The Bank Examiner shall make a full and detailed report of his findings and file the same in the office of the State Treasurer, and in this report shall be set forth all violations, if any, of the banking laws of this State, and also such a full summary of the affairs of the bank as shall be necessary for the protection of the rights of the stockholders, depositors and creditors of such bank. It shall also be the duty of said Bank Examiner to forthwith bring to the attention of the said banks all such violations of the banking laws of this State and that the same be remedied or discontinued. He shall furnish all banks so examined by him or his assistants with a copy of said report.

Civ. '12, § 2644; 1906, XXV, 103; 1911, XXVII, 4; 1920, XXXI, 831.

(3979) § 12. Bank Examiner Examine Financial Affairs State and County Officers—Request of Grand Jury.—That in addition to the duties now imposed upon the Bank Examiner he shall examine the books, accounts, receipts and disbursements of all State and county officers charged with the receipt and expenditure of public funds, also the books, accounts, vouchers and records of all State, educational, charitable and penal institutions for the support of which the State contributes by an appropriation or provisions of law; to this end he is clothed with all the powers conferred upon him in making examination into the condition of banks: *Provided*, That the county audits shall be made only in case the State Bank Examiner or his assistants are not otherwise engaged as required by law, and then only upon the written request of the Grand Jury of the county.

1915, XXIX, 162.

(3980) § 13. **Examination—When Made—Report.**—That he shall make examination of State officers and institutions at least twice each year and of offices once a year, at such time as he may be advised: *Provided*, That the last examination of State officers and institutions shall be made during the month of December in each year, and he shall file his report on or before the 31st of December of the condition of each county office, State institution and office, showing:

- (1) The amount received from all sources by each.
- (2) The amount expended.
- (3) The nature and kind of voucher therefor.
- (4) Note whether the expenditures were authorized by law.
- (5) Report any irregularity.

Which report may be referred by the Governor to the Legislature.
1915, XXIX, 162.

(3981) § 14. **Bank Examiner May Take Control of Bank for Thirty Days Upon Request of Directors.**—That the Bank Examiner shall have the right at any time, upon the request of a majority of the directors of any bank or trust company, which may be incorporated under the laws of this State, to take and retain sole possession and control of the property and business of such corporation for not exceeding thirty days: *Provided, however*, That during said time the said corporation shall have the right either to resume business or with the consent of the Examiner to obtain from the Judge of the Court of Common Pleas presiding in the Circuit where said corporation is located an order authorizing said corporation to liquidate its affairs under the sole supervision and control of the Examiner and subject to the order of the said Court: *And provided, further*, That during the periods when the Examiner is in control of said corporation no action or proceeding against said corporation or its stockholders shall be instituted except in the cause in which the order of liquidation was granted. Immediately on taking charge the Bank Examiner shall call a meeting of the stockholders.

1912, XXVII, 791.

(3982) § 15. **Term of Office and Compensation of Bank Examiner—Two Assistant Examiners**—The term of office of the said Bank Examiner shall be four years, and he shall receive as his compensation therefor four thousand five hundred dollars per annum, and also all actual expenses, whether traveling or otherwise, incurred by him in the discharge of his duties. He shall also be empowered to appoint two assistant examiners, who shall each receive a salary of three thousand dollars per annum, and to pay their traveling expenses while in the discharge of their duties. The Bank Examiner shall also have the right to incur such reasonable expenses as are necessary in the conduct and management of his office: *Provided, however*, That the total of all his expenses, as provided for in this Section, shall not exceed the sum to be derived by assessments from the various banks in this State as herein provided for.

Civ. '12, § 2645; 1906, XXV, 103; 1911, XXVII, 5; 1915, XXIX, 162; 1920, XXXI, 831.

(3983) § 16. **Fees for Examination—Disposition of Funds.**—The Bank Examiner shall make at least one examination every year of all the banks

and banking institutions in this State and for every examination he shall collect and pay over to the State Treasurer the following fees: From all banks having one hundred thousand dollars (\$100,000) or more capital, seventy-five dollars (\$75); from all banks having fifty thousand dollars (\$50,000) and under one hundred thousand dollars (\$100,000) capital, sixty dollars (\$60); from all banks having over twenty thousand dollars (\$20,000) and under fifty thousand dollars (\$50,000) capital, forty-five dollars (\$45), and from all banks having a capital less than twenty thousand dollars (\$20,000) he shall collect thirty dollars (\$30). No bank shall be compelled to pay for more than one examination each year, unless such additional examination shall be required by the stockholders, as hereinafter provided for: *Provided, however*, That if more than one examination be necessary through the mismanagement or negligence of a bank's officers, the actual expense of such additional examination shall be paid by the bank examined. The State Treasurer shall hold such funds in his hands for paying the expenses of the State Examiner and his office, and shall be payable upon the order of the said State Bank Examiner. The State Treasurer shall include in his annual report to the Legislature an abstract of the reports made to him by the State Bank Examiner, showing the financial condition of the banks examined by him as shown by said reports, and also a schedule of the receipts and disbursements connected with the said State Bank Examiner's office.

Civ. '12, § 2646; 1907, XXV, 490; 1920, XXXI, 739.

(3984) § 17. Bank Examiner to Examine Branch Banks.—The Bank Examiner shall make at least one examination each year of each branch bank in the State, and shall collect and pay over to the State Treasurer the following fees for such examination: Thirty dollars if the total assets do not exceed \$100,000; forty-five dollars if the total assets exceed \$100,000. All branch banks shall indicate on their stationery, checks, drafts, notes, signs, advertisements and publications that they are a branch bank, together with the name and place of business of the parent bank.

Civ. '12, § 2647; 1911, XXVII, 4; 1920, XXXI, 739.

(3985) § 18. Duty in Case of Unsound Banks.—If the State Bank Examiner shall find that any of the said banks or banking institutions are insolvent, or that their business is being so dishonestly and fraudulently conducted as to jeopardize the interests of the depositors, creditors or stockholders, he shall have full power, upon consultation with the State Treasurer, to take and retain possession of all the assets and property of every description belonging to such bank or banking institution: *Provided*, He shall first have applied for and obtained an order to this effect from a Circuit Judge, either residing or presiding at the time in the Circuit in which such bank or banking institution is located, two days' notice of such application being first given to the board of directors of said bank of the application for said order. And it shall be his duty, and he is hereby authorized and empowered, to make proper application to the Court for the appointment of himself or some other person as receiver to wind up and settle the affairs of such bank or banking institution.

Civ. '12, § 2648; 1906, XXV, 103; 1911, XXVII, 4.

Ex parte Faust et al in re Rhame v. Bank of Brunson, 96 S. C. 411, 81 S. E. 7.

(3986) § 19. **Special Examinations.**—It shall be the duty of said Bank Examiner, at any time, upon receiving the petition of stockholders representing one-fourth (1-4) of the capital stock of any bank which may be incorporated under the laws of this State, to make forthwith a special examination of such bank and to file a report of the same with the State Treasurer, and for such special examination the said bank shall pay to the State Bank Examiner for the State Treasurer the same fee as is provided for one annual examination under this Chapter.

Civ. '12, § 2649; 1906, XXV, 103; 1911, XXVII, 4.

(3987) § 20. **Qualifications of Bank Examiner.**—No person shall be appointed to the office of the State Bank Examiner unless he be an expert accountant and shall have had practical experience in the banking business; nor shall he qualify as such Examiner until he shall have taken the oath provided for in the Constitution, and shall have filed in the office of the State Treasurer a bond, in the sum of fifteen thousand dollars, with sufficient surety, to be approved by the State Treasurer, and conditioned for the faithful performance of his duties.

Civ. '12, § 2650; 1906, XXV, 103; 1911, XXVII, 4.

(3988) § 21. **Institutions Lending Money, Etc., to Publish Quarterly Statements Under Oath — Penalty for Failure.**—All institutions doing business in this State in lending money and receiving deposits, under acts of incorporation granted by the State, are hereby required, under penalty of a forfeiture of their charters, to publish in a newspaper in the city, town or village where they, or any branch thereof, may do business, when and as called for by the State Bank Examiner, without previous notice, a correct report of the condition and business of such institution, which report shall contain a statement, under oath, by the president or cashier of such institution, of the amount of the capital stock paid in, deposits, discounts, property and liabilities of said institution, verified by three of the directors thereof.

Upon failure of any such institution to publish the report required herein the Attorney General, on notice thereof, shall at once take the necessary steps to vacate the charter of said institution. This Section shall apply to all private institutions, whether chartered or not.

Civ. '12, § 2642; Civ. '02, § 1766; G. S. 1352; R. S. 1468; 1874, XV, 526; 1904, XXIV, 398; 1909, XXVI, 90.

(3989) § 22. **Statements from Branch Banks Required.**—That all banks or institutions engaged in the banking business in this State that maintain or operate a branch bank or an office for business other than its regular or home office shall cause to be published statements of the assets and liabilities of such branch bank or office in the county wherein such branch bank or office is located the same as other banks or banking institutions.

1914, XXVIII, 587.

(3990) § 23. **Publishing Statements by Banks.**—The statements now required by law to be published by the banking institutions in this State shall be published when and as called for, by the State Bank Examiner, without previous notice to said banking institutions, and such statements

shall be called for by said Bank Examiner at least four times each year, and published in some newspaper in the county wherein such banking institution is located: *Provided*, That in counties in which no newspaper is published the said statements shall be published in some newspaper having general circulation within the county in which the bank is located, and all of said statements shall be promptly published by any newspaper to which it is delivered and in the next succeeding issue after the delivery of the said statement, and should said bank statement not be promptly published in the next succeeding issue after the delivery of the said notice, no charge shall be made for the publication thereof: *Provided*, That a written copy of the advertisement shall be in the hands of the printer at least twenty-four hours before publication of paper. These statements shall be sent to the State Bank Examiner within ten days from the date they are received, and shall be in such form as may be required by said officer. Any bank which fails to make report within the time given, without excuse to the Bank Examiner, shall be subject to a fine of ten dollars per day for each day's delay, collectible by said officer in any Court of competent jurisdiction.

Civ. '12, §§ 2651, 2652; 1909, XXVI, 91; 1913, XXVIII, 65; 1919, XXXI, 48.

(3991) § 24. Provisions Not to Apply to National Banks.—Nothing contained in this Article shall apply to any national bank.

Civ. '12, § 2653; 1906, XXV, 103; 1911, XXVII, 4.

(3992) § 25. Banking and Other Powers of Corporation.—Every banking corporation may receive and pay out the lawful currency of the country, deal in exchange, gold and silver coin, bullion, uncurrent paper, public and other securities, and stocks of other corporations; but no more than an amount equal to one-half of the capital stock of said bank and one-half of its deposits shall be invested in mortgages of real estate at any one time; may purchase and hold such real estate and personal property as may be conveyed to it to secure debts to the corporation, or may be sold under execution to satisfy debts due in whole or in part to the corporation, and as may be deemed necessary or convenient for the transaction of its business, and may sell and dispose of the same at pleasure; may discount notes, bills of exchange, bonds and other evidences of debt, and lend money on such terms as may be agreed on, subject to the usury laws of the State. It may receive on deposit moneys on such terms as may be agreed on with depositors, and issue certificates therefor, negotiable or assignable in such way as may be inserted in the same. Said corporation may sue and be sued, plead and be impleaded, in any Court in this State; may adopt and use a corporate seal, and may alter the same at its pleasure; may adopt all such by-laws for the general management and direction of the business and affairs of said corporation, not inconsistent with the laws of the United States and of this State, as may be deemed proper, and may add to, alter or amend the same from time to time as may be desired, and shall have generally all the rights, powers and privileges in law incident or appertaining to such corporations: *Provided*, Every such banking corporation may accept drafts or bills of exchange drawn upon it having not more than six months sight to run, exclusive of grace, which grow out of transactions involving the

importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, provided shipping documents conveying or securing title are attached at the time of acceptance, or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. No such banking corporation shall accept, whether in a foreign or domestic transaction, for any one person, company, firm or corporation, to an amount equal at any one time in the aggregate to more than ten per centum of its paid-up and unimpaired capital stock and surplus, unless the banking corporation is secured either by attached documents or by some other actual security out of the same transaction as the acceptances; and no banking corporation shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus: *Provided, however*, That the Bank Examiner, under such general regulations as he may prescribe, which shall apply to all banking corporations alike regardless of the amount of capital stock and surplus, may authorize any banking corporation to accept such bills to an amount not exceeding at any time in the aggregate one hundred per centum of its paid-up and unimpaired capital stock and surplus: *Provided, further*, That the aggregate of acceptance growing out of domestic transactions shall in no event exceed fifty per centum of such capital stock and surplus.

Civ. '12, § 2654; Civ. '02, § 1774; R. S. 1538; 1887, XIX, 860; 1913, XXVIII, 37; 1919, XXXI, 41.

(3993) § 26. **Banks to Set Aside Funds for Surplus.**—Every bank or banking institution shall set aside to its surplus account not less than one-tenth of its annual net earnings each year, until its surplus shall be equal to twenty-five per centum of its capital stock; and it shall be the duty of the State Bank Examiner to enforce this and the preceding Section.

Civ. '12, § 2655; 1909, XXVI, 81.

(3994) § 27. **Banking Corporations Authorized to Act as Guardian, Administrator, Trustee, Etc**—Any banking corporation or trust company with a *bona fide* capital of at least twenty-five thousand dollars actually paid in may be appointed executor of a will, codicil or writing testamentary administrator with the will annexed, administrator of the estate of any person, receiver, assignee, guardian or trustee, under a will or instrument creating a trust for the care and management of property, under the same circumstances, in the same manner, and subject to the same control by the Court having jurisdiction of the same, as a legally qualified person. Any such appointment as guardian shall apply to the estate and not to the person of the ward. Such corporation shall not be required to receive or hold property or money, or assume or execute a trust under the provisions of this Section, without its assent.

Civ. '12, § 2656; 1911, XXVII, 8.

(3995) § 28. **Capital Stock to Be Security.**—The capital stock of such corporation, with the liabilities of the stockholders thereunder, shall be held as security for the faithful performance of the duties undertaken by virtue of the preceding Section, or of any similar provision of law; and, except as

provided in Section 30, no surety shall be required upon the bonds filed by such corporation.

Civ. '12, § 2657; 1903, XXIV, 70.

(3996) § 29. Papers to Be Signed and Sworn to by Any Authorized Officer.—In all proceedings in the Probate Court or elsewhere, connected with any authority exercised under the provisions of Sections 27, 28, 29 and 30, or under any similar provisions of law, all accounts, returns and other papers may be signed and sworn to, in behalf of the corporation, by any officer thereof duly authorized by it; and the answer and examinations under oath of said officer shall be received as the answers and examinations of the corporation. The Court may order and compel an officer of such corporation to answer and attend said examination in the same manner as if he, instead of the corporation, were a party to the proceeding.

Civ. '12, § 2658; 1903, XXIV, 70.

(3997) § 30. Additional Security to Be Furnished Upon Application.—The Court making an appointment under the provisions of Section 27, except of a trustee, may, upon application by an interested person, require the corporation so appointed to give such security in addition to that provided by Section 28 as the Court may consider proper; and upon failure of such corporation to give the security required, may revoke such appointment and remove such corporation from the trust.

Civ. '12, § 2659; 1903, XXIV, 70.

(3998) § 31. Liability of Stockholders of Insolvent Banks.—The stockholders of all insolvent banks and banking institutions, whether heretofore or hereafter incorporated under Act of Assembly of this State, either general or special, shall be individually liable to the creditors thereof, other than depositors, only to the extent of the amount remaining due to the corporation upon the stock owned by them: *Provided*, That stockholders in all such banks and banking institutions shall be liable to depositors therein in a sum equal in amount to their stock over and above the face value of the same.

Civ. '12, § 2660; 1905, XXIV, 839.

Stockholders not liable for ultra vires acts. *White v. Bank*, 66 S. C. 490, 45 S. E. 94, 97 Am. St. Rep. 803.

Parker v. Carolina Savings Bank, 53 S. C. 583, 31 S. E. 672, 674. The liability of stockholders in banks organized since the adoption of the Constitution of 1895 is prescribed in Article IX, Section 18, to be in a sum equal in amount to their stock over and above the face value of the same.

Arthur et al v. People's Bank of Union et al, 99 S. C. 352, 83 S. E. 778.

(3999) § 32. Limitation of Amount That May Be Borrowed by Any Person from a Bank.—The total liabilities to any such bank of any person other than a director or officer thereof, or of any company, corporation or firm, for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of any such bank actually paid in and its surplus, except by a two-thirds vote of the directors of the bank, but the discount of bills of exchange drawn in good faith against actual existing values and the discount of commercial or business papers shall not be considered as money borrowed.

Civ. '12, § 2661; Civ. '02, § 1776; R. S. 1539a; 1897, XXII, 468.

(4000) § 33. Limitations of Directors and Other Officers.—No director or other officers of any such bank shall borrow therefrom, except on good security, to be approved in writing by two-thirds of the whole board of directors of such bank, and no director or other officer of any such bank shall become an endorser or surety upon any loan or credit made or extended to any other director or officer of such bank: *Provided*, That the total liabilities to any such bank of any director, or of any firm of which such director is a member, or of any company or corporation of which such director is an officer, shall at no time exceed one-tenth part of the amount of the capital stock of any such bank, actually paid in, and its surplus: *Provided*, This shall not apply to loans on cotton in bale stored in warehouses and evidenced by receipts issued therefor by said bank to any of its directors, in which case loans shall be made as in other instances. But the discount of bills of exchange drawn in good faith against existing values and the discount of commercial business paper shall not be considered as money borrowed.

Civ. '12, § 2662; Civ. '02, § 1777; R. S. 1540; 1885, XIX, 212; 1897, XXII, 463; 1914, XXVIII, 487; 1918, XXX, 880.

Under Rev. Stat. § 1540, providing that officers shall not "borrow any money from said bank" it was held that directors making the loan were not liable for losses incurred, where the loan is made in good faith. *Wheeler v. Aiken County, etc., Bank*, 75 Fed. 781.

(4001) § 34. Powers of Directors, By-Laws and Other Provisions.—The directors of such bank may make and change by-laws, not inconsistent with law, regulating the manner in which the stock of said bank shall be transferred, its directors elected or appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed. The directors may appoint all necessary officers and employees of said corporation, fix their compensation, and take security for the faithful discharge of their respective duties, prescribe the manner of paying for the stock of the corporation and the transfer thereof; and may from time to time prescribe such penalties for the nonpayment of subscriptions to the capital stock of the corporation as they may deem proper; and the same, together with any unpaid installments on such subscriptions, may be recovered in any Court having jurisdiction of the aggregate amount so due, or the stock may be sold for cash after twenty days' notice, advertised in the nearest newspaper; and if at any such sales the sum bid should not be sufficient to satisfy and discharge the amount so due, together with the costs and charges incident to such sale, the subscriber in default shall be liable for any deficiency, and the same may be recovered in the name of the corporation in any Court having jurisdiction. The books, papers and accounts of said bank shall be open to inspection under such regulations as may be prescribed by law.

Civ. '12, § 2663; Civ. '02, § 1778; R. S. 1541; 1885, XIX, 214.

(4002) § 35. Banks Authorized to Associate With National Reserve Association.—That any bank, banking association or trust company chartered and engaged in the banking business under the laws of this State may associate itself with any national reserve association of the United States, or any branch thereof under any law now existing or hereafter enacted by the Congress of the United States; and may invest such part of

its capital or surplus therein as may be necessary to acquire and preserve its membership in such association.

1914, XXVIII, 588.

ARTICLE II.

Cooperative Credit Unions.

(4003) § 1. **Cooperative Credit Union—Meaning.**—In this Article the words “cooperative credit union” shall mean a cooperative association formed for the purpose of promoting thrift among its members and to enable them, when in need, to obtain for productive and provident purposes moderate loans of money for short periods and at reasonable rates of interest.

1915, XXIX, 240.

(4004) § 2. **May Receive Deposits—Lend—Invest—Other Powers.**—A cooperative credit union may receive the savings of its members in payment for shares or on deposit, may lend to its members at reasonable rates of interest, not to exceed seven per cent. per annum, or may invest, as hereinafter provided, the funds so accumulated, may receive deposits from non-members, paying the rates of interest usually allowed by savings banks of the community and making loans of same to its members, and may undertake such other activities relating to the purposes of the association as its by-laws may authorize.

1915, XXIX, 240.

(4005) § 3. **Certificate of Charter—Duties of Secretary of State.**—Ten or more citizens of this State who have associated themselves by an agreement in writing for the purpose of forming a cooperative credit union may receive from the Secretary of State a certificate of charter and may become a corporation upon complying with all the provisions hereof, when the said Secretary of State is satisfied that the proposed field of operation is favorable to the success of such cooperative credit union, and that the standing of the proposed members is such as to give assurance that its affairs will be administered in accordance with the spirit of this Article.

1915, XXIX, 240.

(4006) § 4. **Restricted Use of Words “Cooperative Credit Union”—Injunction.**—No person, partnership, association or corporation, except corporations formed under the provisions of this Article, shall hereafter transact business under any name or title which contains the three words “cooperative credit union,” or any combination of two or more of these words, cooperative credit union, except those expressly authorized herein to be formed; and any person, partnership, association or corporation which violates the provisions of this Section may be enjoined from doing business under such name or title at the instance of any stockholder of any cooperative credit union legally organized under this Section.

1915, XXIX, 240.

(4007) § 5. Bank Examiner — Duties — Report to — Prosecutions. —

Every cooperative credit union which may be organized under the provisions of this Article shall be subject to the supervision of the State Bank Examiner. The said State Bank Examiner shall require such cooperative credit unions to keep such books as he may deem necessary for the proper conduct of their business; shall make examination and demand sworn report by the officers of the transaction of such cooperative credit union's business, and may institute necessary proceedings for the prosecution of any officer or director misapplying the cooperative credit union's funds.

1915, XXIX, 240.

(4008) § 6. By-Laws.—The by-laws of each cooperative credit union shall prescribe:

- (a) The name of the corporation.
- (b) The purposes for which it is formed.
- (c) The conditions of residence or occupation which qualify persons for membership.
- (d) The par value of shares of capital stock.
- (e) The conditions on which shares may be paid in, transferred, and withdrawn.
- (f) The system for encouraging members to increase their holdings of shares.
- (g) The conditions on which deposits may be received and withdrawn.
- (h) The method of receipting for money paid on account of shares or deposits.
- (i) The number of directors and the number of members of the credit committee.
- (j) The duties of the several officers.
- (k) The fines, if any, which shall be charged for failure to meet obligations to the corporation punctually.
- (l) The date of the annual meeting of members.
- (m) The manner in which members shall be notified of meetings.
- (n) The number of members which shall constitute a quorum at meetings.
- (o) Such other regulations as may seem necessary.

1915, XXIX, 240.

(4009) § 7. By-Laws Must Be Approved by Bank Examiner.—No such cooperative credit union shall receive deposits or payments on account of shares, or make any loans, until its by-laws have been approved in writing by the State Bank Examiner, nor shall any amendments to its by-laws become operative until they have been so approved.

1915, XXIX, 240.

(4010) § 8. Fiscal Year—Meetings of Members—Voting Dividends—Appeals—Amend By-Laws.—The fiscal year of every such cooperative credit union shall end at the close of business on the thirty-first day of December. The annual meeting of the corporation shall be held at such time and place as the by-laws prescribe. Special meetings may be held by order of the directors or of the supervision committee, and the clerk shall

give notice of special meetings upon request, in writing, of ten members. Notice of all meetings of the corporation shall be given in the manner prescribed by the by-laws. No person shall be entitled to vote who has not been a member for more than three months, but this restriction shall not apply during the first twelve months of the existence of the corporation, nor shall any member vote by proxy or have more than one vote. At the annual meeting the members shall, upon recommendation of the board of directors, declare dividends and fix the amount of the entrance fee: *Provided*, That the maximum dividends upon shares in any year shall not exceed one per cent. over and above the average rate of interest received from borrowers during that year. At any meeting the members may decide upon any question of interest to the corporation, and upon appeal of two members may reverse decisions of the credit committee or board of directors, and by a three-fourths vote of those present, provided the notice of the meeting shall have specified the question to be considered, may amend the by-laws.

1915, XXIX, 240.

(4011) § 9. Board of Directors—Credit Committee—Supervision Committee—Special Committee.—At the annual meeting the members shall elect from their members a board of directors of not less than five members, a credit committee of not less than three members, a supervision committee of three members, and a special committee of two members. No member of the board of directors shall be a member of the credit committee, or of the supervision committee, or of the special committee, nor shall one person be a member of more than one of said committees. All directors and all members of said committees, as well as all officers whom they may elect, shall be sworn, and shall hold their several offices until others are elected and qualified in their stead, and a record of every such qualification shall be filed and preserved with the records of the corporation.

1915, XXIX, 240.

(4012) § 10. Board of Directors — President — Vice President — Other Officers—Duties—Powers.—At its first meeting the board of directors shall elect from their number a president, vice president, a clerk and a treasurer, who shall be the executive officers of the corporation. The board of directors shall have the general management of the affairs, the funds, and the records of the corporation, and shall meet as often as may be necessary. It shall be the special duty of the board of directors:

- (a) To act upon all applications for membership.
- (b) To act upon the expulsion of members.
- (c) To fix the amount of surety bond which shall be required of each officer having custody of funds.
- (d) To determine the rate of interest which shall be allowed on deposits.
- (e) To determine the rate of interest which shall be charged on loans.
- (f) To fill vacancies in the board of directors or in the credit committee of the corporation until the election and the qualification of officers to fill said vacancies.
- (g) To make recommendations to meetings of the members relative to the amount of entrance fee; the maximum number of shares which may be

held by, and the maximum amount which may be lent to, any one member; the dividend to be declared; amendments to the by-laws, and any other matters which, in their opinion, the members should decide.

1915, XXIX, 240.

(4013) § 11. Credit Committee—Duties—Regulation of Loans.—The credit committee shall approve every loan or advance made by the corporation, except as set forth in Section 13 of this Article. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired and the security offered. No loan shall be made unless the credit committee is satisfied that it promises to benefit the borrower, nor unless it has the unanimous approval of those members of said committee who were present when it was considered, nor if any member of said committee shall disapprove thereof; but the applicant for a loan may appeal from the decision of the credit committee to the board of directors. This Section is modified by Section 13.

1915, XXIX, 240.

(4014) § 12. Supervision Committee — Duties — Powers. — The supervision committee shall inspect the securities, the cash, and the accounts of the corporation, and supervise the acts of its board of directors, credit committee, and officers. At any time the supervision committee, by a unanimous vote, may suspend the credit committee or any officer elected by the board of directors, and by a majority vote may call a meeting of the shareholders to consider any violation of this Article or of the by-laws or any practice of the corporation which, in the opinion of said supervision committee, is unsafe and unauthorized. Within seven days after the suspension of the credit committee the supervision committee shall cause notice to be given of a special meeting to take such action relative to such suspension as may seem necessary. The supervision committee shall fill vacancies in their own number until the next annual meeting.

1915, XXIX, 240.

(4015) § 13. Special Committee—Duties — Powers.—The special committee shall act upon every loan or advance made by the corporation to any member of the board of directors, or to any member of the credit committee, or to any member of the supervision committee. Every application for a loan to such individual, or individuals, shall be made in writing, and shall state the purpose for which the loan is desired and the security offered. No such loan shall be made unless the special committee is satisfied that it promises to benefit the borrower, nor unless it has received the approval, in writing, of both members of the special committee.

1915, XXIX, 240.

(4016) § 14. Capital Stock—Shares, When Issued—Par Value—Initial Payment—Who May Be Shareholder—Holdings Limited. — The capital stock of the corporation shall be unlimited in amount; shares of capital stock may be subscribed for and paid in in such manner as the by-laws shall prescribe, but no certificate for shares shall be issued until said shares have been fully paid up. The par value of each share in the capital stock shall be five dollars, to be paid for in cash. As an initial payment for the

privilege of membership, each member shall pay an entrance fee of at least one dollar, besides subscribing for not less than one share of the capital stock. Only a natural person may be a shareholder and no person may hold more than two hundred shares which may be evidenced by pass book entry or by certificates as the by-laws may determine. The liabilities of stockholders in said union shall in all respects be the same as stockholders in banks and banking institutions chartered under the laws of this State.

1915, XXIX, 240.

(4017) § 15. Minors May Be Stockholders and Depositors—Trusts.—

Shares may be issued and deposits received in the name of a minor, and such shares and deposits may, in the discretion of the board of directors, be withdrawn by such minor or by his parent or guardian, and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in the trust, the name and the residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such minor. If no other notice of the existence and the terms of such trust has been given in writing to the corporation, such shares or deposits may, upon the death of the trustee, be withdrawn by the person for whom the amount of such shares was paid in or for whom such deposit was made, or by his legal representative.

1915, XXIX, 240.

(4018) § 16. Funds Lent or Deposited — Regulations. — The capital, the deposits, and the surplus funds of the corporation shall be either lent to the members for such purposes and upon such security and terms as the credit committee or the special committee shall approve, or deposited to the credit of the corporation in savings banks, or in trust companies, or in State banks incorporated under the laws of this State, or in national banks located in this State, such depositories to be approved by the State Bank Examiner.

1915, XXIX, 240.

(4019) § 17. Rights and Liabilities of Borrower.—A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business. For failure to pay the interest or any installment required by the terms of the loan, the borrower may be fined if the by-laws so prescribe.

1915, XXIX, 240.

(4020) § 18. Directors, Credit Committee, Supervision Committee, Special Committee Forbidden to Receive Compensation—May Not Borrow or Be Surety—Exception—Certain Officers' Compensation.—No member of the board of directors, or of the credit committee, or of the supervision committee, or of the special committee, shall receive any compensation for his services as a member of said board or of either of said committees, nor shall any member of the credit committee or of the supervision committee, either directly or indirectly, borrow from the corporation or become surety for any loan or advance made by the corporation, except upon the approval of two-thirds of the members of the corporation. But the officers elected by

the board of directors may receive such compensation as said board shall authorize.

1915, XXIX, 240.

(4021) § 19. Expulsion of Members—Notice—Hearing.—The Board of Directors may expel from the corporation any member who has not carried out his engagements with the corporation, or who has been convicted of a criminal offense, or who neglects or refuses to comply with the provisions of this Article or of the by-laws of the corporation, or whose private life is a source of scandal, or who habitually neglects to pay his debts, or who shall become insolvent or bankrupt, or who shall have deceived the corporation with regard to his property, resources, credit or use of borrowed money, but no member shall be so expelled until he has been informed in writing of the charges against him, and until an opportunity has been given him, after reasonable notice, to be heard thereon.

1915, XXIX, 240.

(4022) § 20. How Members Withdrawing or Expelled May Be Paid.—The amounts paid in on shares or deposited by members who have withdrawn or who have been expelled shall be paid to them, less all accrued interest and other gains or profits, but in the order of withdrawal or expulsion and only as funds therefor become available, and after deducting any amounts due by said members to the corporation, but such expulsion shall not operate to relieve a member from any remaining liability to the corporation.

1915, XXIX, 240.

(4023) § 21. Dividends — Supervision Committee — Audit — Report.—Immediately before a meeting of the board of directors called to recommend the declaration of a dividend, the supervision committee shall make a thorough audit of the repairs, the disbursements, the income, the assets, and the liabilities of the corporation for the fiscal year, and shall make a full report thereon to the directors. Said report shall be read at the annual meeting and shall be filed and preserved with the records of the corporation.

1915, XXIX, 240.

(4024) § 22. Regulation of Dividends—Payment.—At the annual meeting a dividend may be declared from income which has been actually collected during the fiscal year next preceding, or during the months which have elapsed since the corporation began business, and which remains after the deduction of all expenses, losses, interest on deposits, and the amount required to be set apart as a guaranty fund. Such dividend shall be paid on all fully-paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled only to a proportional part of said dividend, calculated from the first day of the month following such payment in full. Dividends due to a member shall be paid to him in cash or credited to the account of partly-paid shares for which he has subscribed.

1915, XXIX, 240.

(4025) § 23. **Guaranty Fund—Regulation.**—Immediately before the payment of each dividend there shall be set apart as a guaranty fund twenty per cent. of the net income which has accumulated during the fiscal year. Such fund and the investments shall belong to the corporation and shall be held to meet contingencies or losses in its business. All entrance fees shall be added at once to the guaranty fund. But upon recommendation of the board of directors the members at an annual meeting may increase, and whenever said fund equals or exceeds the amount of capital stock actually paid in, may decrease the proportion of profits which is required by this Section to be set apart as a guaranty fund.

1915, XXIX, 240.

(4026) § 24. **Dissolution of Corporation—Liquidation.**—At any meeting specially called to consider the subject, the members, upon the unanimous recommendation of the board of directors, may vote to dissolve the corporation, provided at least two-thirds of the members are present at such meetings, and provided not more than ten members, either in person or by written notice, object thereto. A committee of three members shall thereupon be elected to liquidate the assets of the corporation, and each share of the capital stock, according to the amount paid in thereon, shall be entitled to its proportion of the proceeds after all deposits and debts of the corporation have been paid.

1915, XXIX, 240.

(4027) § 25. **Reports to Bank Examiner—Penalty.**—Within seven days after the last business day of December in each year every such corporation shall make to the State Bank Examiner a report in such form as the said State Bank Examiner may prescribe, signed by the president, by the treasurer, and by a majority of the supervision committee, who shall certify and make oath that the report is correct according to their best knowledge and belief. Any such corporation which neglects to make said report within the time prescribed shall forfeit to the State five dollars for each day during which such neglect continues.

1915, XXIX, 240.

CHAPTER XLVII.

Foreign Corporations, Generally.

(4028) § 1. **Rights and Privileges Granted to Foreign Corporations.**—Foreign corporations duly incorporated under the laws of any State of the United States, or of any foreign country in treaty and amity with the said United States, are hereby permitted to locate and carry on business within the State of South Carolina in like manner and with like powers as corporations of like kind and class created under the laws of this State, subject, nevertheless, to the terms and conditions in this Chapter hereafter set forth.

Civ. '12, § 2664; Civ. '02, § 1779; R. S. 1465; 1893, XXI, 409; 1904, XXIV, 436.

British-American Mortgage Co. v. Jones, 76 S. C. 218, 219, 56 S. E. 983, 77 S. C. 449, 58 S. E. 417. Failure to comply with Statute does not avoid contract before conviction. Galletley, Receiver, v. Strickland, 74 S. C. 394, 54 S. E. 576.

This and succeeding sections are broad enough to subject foreign corporations to jurisdiction of magistrate where he otherwise has jurisdiction. Best v. Seaboard Air Line Railway, 72 S. C. 479, 481, 52 S. E. 223.

(4029) § 2. Stipulation to Be Filed—Location—Service of Legal Papers.—Any and every such foreign corporation owning property or doing business in this State on the 1st day of July, 1894, shall, within sixty days after the 1st day of July, 1894, and any and every such foreign corporation which shall acquire property or commence to do business in this State after the 1st day of July, 1894, shall, within sixty days after so acquiring any property or commencing to do business in this State, file in the Secretary of State's office in this State a written stipulation or declaration, in due form, designating some place within this State as the principal place of business or place of location of said corporation in this State at which all legal papers may be served on said corporation by the delivery of the same to any officer, agent or employee of said corporation found thereon; or if none such be found thereon, then by leaving copies of the same on the premises, and that such services shall have like force and effect in all respects as service upon citizens of this State found within the limits of the same.

Civ. '12, § 2665; Civ. '02, § 1780; R. S. 1466; 1893, XXI, 409.

Failure of foreign building and loan association to comply with the requirements of § (4030) and this section does not render a loan contract made in this State void, before conviction under statute. *Galletley v. Strickland*, 74 S. C. 394, 396, 54 S. E. 576.

An objection that the party served was not agent of defendant and appeal from ruling thereon, cause being remanded and decided on its merits, is a waiver of objection to validity of this section. *Western, etc., Supply Co. v. Abbeville, etc., Power Co.*, 197 U. S. 302, 49 L. Ed. 765.

(4030) § 3. Copy of Charter and By-Laws—Sworn Statement—Contents.—In addition to the same, said corporations are hereby required to file in the office of the Secretary of State, together with the written stipulation or declaration aforesaid, copies of their charter and by-laws, with all amendments of the same that may from time to time be made, within sixty days from the date of making the same. In addition thereto, the said corporations are required to file annually, in the office of the Secretary of State, on or before the thirty-first day of January, a statement, sworn to by some officer of the corporation, showing the residence and postoffice address of such corporation, the amount of capital stock of the same actually paid and the names of the president and secretary (if there be any such), and the board of directors, with their respective places of residence and postoffice addresses.

Civ. '12, § 2666; Civ. '02, § 1781; 1893, XXI, 409.

Galletley v. Strickland, 74 S. C. 394, 396, 54 S. E. 576.

(4031) § 4. Copies to Be Furnished and Received in Evidence.—Any person applying for the same shall be entitled to copies, duly certified, of all the foregoing papers required to be filed upon payment of the customary fees, and the same shall be admitted in the Courts as competent evidence of all matters appearing thereon.

Civ. '12, § 2667; Civ. '02, § 1782; R. S. 1468.

(4032) § 5. Corporation Failing to File Certain Papers—Penalty.—Any such foreign corporation failing to file any of the papers hereinbefore required to be filed, shall be liable to a forfeiture of five hundred dollars to the State, to be recovered at the suit of the State in the Court of Common Pleas, for any county in the State.

Civ. '12, § 2668; Civ. '02, § 1783; R. S. 1469; 1905, XXIV, 902.

Galletley v. Strickland, 74 S. C. 394, 54 S. E. 576.

(4033) § 6. **Foreign Corporations Doing Business in This State Subject to Jurisdiction of State Courts.**—In addition to all conditions now required by law, it shall be a further condition precedent to the right of any corporation created by or under the laws of any State of the American Union or of the District of Columbia, or of any foreign government, to do business in this State, that all actions or suits arising out of the business or dealings of such foreign corporation with any citizen or corporation of this State, or pertaining thereto, commenced in the Courts of this State, shall be tried therein, any usage or law to the contrary notwithstanding.

Civ. '12, § 2669; Civ. '02, § 1784; 1897, XXII, 484.

Best v. Ry., 72 S. C. 479, 480, 52 S. E. 223; *Galletley v. Strickland*, 74 S. C. 394, 396, 54 S. E. 576; *State ex rel. Sims v. McMaster, Insurance Com'r et al*, 95 S. C. 476, 79 S. E. 405.

(4034) § 7. **Submission to Jurisdiction of State Courts Condition Precedent to Doing Business.**—It shall be a further condition precedent to the right of any such foreign corporation to do business in this State, that it shall be taken and deemed to be a part and parcel of all contracts entered into between such foreign corporations and a citizen corporation of this State, and of the essence of such contracts, that all suits or actions of every kind whatsoever arising out of such contracts or pertaining to the same commenced in the Courts of this State shall be tried therein, any usage or law to the contrary notwithstanding.

Civ. '12, § 2670; Civ. '02, § 1785; 1897, XXII, 484.

(4035) § 8. **Conditions Declared to Be the Essence of All Contracts With Foreign Corporations.**—It shall be a further condition precedent to the right of any such corporation to do business in this State, that it shall be deemed and taken to be a part and parcel of all contracts entered into between such corporations and a citizen or corporation of this State, and of the essence of such contracts, that in all suits or actions arising out of such contracts, or pertaining thereto, the Courts of this State shall have exclusive jurisdiction thereof where such actions or suits are commenced in the Courts of this State, saving to any party to such action or suit the right to appeal to the Supreme Court of the United States as may be provided by law.

Civ. '12, § 2671; Civ. '02, § 1786; 1897, XXII, 484.

Mortgage Company held to do business in this State by lending money on land here. British-American Mortgage Co. v. Jones, 76 S. C. 218, 220, 56 S. E. 983.
State ex rel. Sims, v. McMaster, Insurance Com'r et al, 95 S. C. 476, 79 S. E. 405.

(4036) § 9. **Additional Condition Precedent of Foreign Corporations Doing Business in This State.**—It shall be a further condition precedent to the right of any such corporation to do business in this State, that it shall be taken and deemed to be the fact irrebuttable, and part and parcel of all contracts entered into between such corporation and a citizen or corporation of this State, that the taking or receiving, from any citizen or corporation of this State, of any charge, fee, payment, toll, impost, premium or other moneyed or valuable consideration, under or in performance of any such contract, or of any condition of the same, shall constitute the doing of its corporate business within this State, and that the place of the making and of performance of such contract shall be deemed and held to be within this

State, anything contained in such contract or any rules or by-laws of such corporation to the contrary notwithstanding.

Civ. '12, § 2672; Civ. '02, § 1787; 1897, XXII, 484.

Mortgage company whose business it is to loan money on real estate mortgages does business in this State when it pays in New York draft attached to note and mortgage on lands executed in this State upon application forwarded by resident borrower. *British-American Mortg. Co. v. Jones*, 77 S. C. 443, 446, 58 S. E. 417.

Notwithstanding provision in insurance contract that it shall be governed by laws of foreign State, reception of premiums in this State causes contract to be treated as domestic contract. *Owen v. Bankers' Life Ins. Co.*, 84 S. C. 253, 255, 66 S. E. 290, 137 Am. St. Rep. 845.

(4037) § 10. Corporations Doing Business in This State Deemed Doing Business Under This Chapter.—All such corporations hereafter doing business in this State, as defined in this Chapter, shall be deemed and held to be doing such business under and in pursuance of the terms and conditions of this Chapter, and that such terms and conditions shall be deemed and taken in all the Courts of this State to be a part and parcel of all contracts hereafter entered into between such corporations and a citizen or corporation of this State, anything contained in any such contract or in any rules or by-laws of such corporation to the contrary notwithstanding.

Civ. '12, § 2673; Civ. '02, § 1788; 1897, XXII, 484.

(4038) § 11. Administration of Assets of Foreign Corporation.—It shall and may be lawful for any Court of competent jurisdiction in this State to take possession of, wind up, administer and marshal the assets in this State of any such foreign corporation (in like manner and in like cases as by law may be done with respect to corporations chartered under the laws of the State) for the protection of any and all citizens of this State who may be stockholders or creditors of such foreign corporations, as in the case of legatees and creditors (citizens of this State) of deceased persons whose domicile was, at the time of their decease, outside this State, in respect to assets within this State.

Civ. '12, § 2674; Civ. '02, § 1789; 1893, XXI, 409.

Resident creditors cannot appropriate assets to the exclusion of other creditors. *Wilson v. Keels*, 54 S. C. 545, 32 S. E. 702.

(4039) § 12. Subject to Laws—Limitations.—All and every such foreign corporation carrying on business or owning property in this State shall be subject to the laws of the same in like manner as corporations chartered under the laws of this State, but nothing herein contained shall be construed to permit any such foreign corporation to exercise any franchise or enjoy any privilege or immunity other than the right to own property and carry on business in like manner as individuals, natural born citizens of such State of the United States or of foreign countries, might do, and subject to the terms and conditions of this Chapter.

Civ. '12, § 2675; Civ. '02, § 1790; 1893, XXI, 409.

British-American Mortg. Co. v. Jones, 77 S. C. 443, 449, 450, 58 S. E. 417; *Owen v. Bankers' Life Ins. Co.*, 84 S. C. 253, 255, 66 S. E. 290, 137 Am. St. Rep. 845.

Property of foreign corporations complying with this Act, still subject to attachment. *Williamson v. Eastern B. & L. Ass'n*, 54 S. C. 582, 32 S. E. 765, 766.

(4040) § 13. How Owners or Projectors of Foreign Railroad Corporations May Become Incorporated Under Provisions of Chapter L, Article III, of This Code.—The owners or stockholders of each and every railroad company created or organized or by virtue of the laws of any government or State, other than this State, desiring to own property or carry on

business or exercise any corporate franchise in this State whatsoever, shall, either in their names or by such persons as they shall designate, first apply for a charter and become incorporated, as a corporation of this State, in the manner provided by Article III of Chapter L of this Code. At least one of the petitioners for such charter of incorporation, and at least one of the incorporators of such railroad companies shall be a resident of this State.

Civ. '12, § 2676; Civ. '02, § 1791; 1896, XXII, 114; 1897, XXII, 514; 1902, XXIII, 1053.

This section amends Act 1909, XXVI, 56, declared unconstitutional in *Carolina, etc., Railway v. McCown*, 84 S. C. 318, 66 S. E. 418; *Lyles v. McCown*, 82 S. C. 127, 130, 63 S. E. 355, 17 Am. & Eng. Ann. Cas. 436.

Complying with requirement of Act 1896, 22 Stat. 114, does not make corporation citizen of this State within meaning of jurisdiction clause of U. S. Constitution. *Hollingsworth v. Southern R. Co.* (S. C.), 86 Fed. 353, 357; *Atlantic Coast Line v. Dunning*, 166 Fed. 854; *Calvert v. Southern R. Co.*, 64 S. C. 139, 36 S. E. 750, 41 S. E. 963.

Where two railroad corporations, having corporate residence in different States, merge into one corporation in this State and are doing business as such corporation in State, new incorporation is estopped from contending it is not domestic corporation. *Geraty v. Atlantic, etc., R. Co.*, 80 S. C. 355, 360, 60 S. E. 936.

(4041) § 14. How Foreign Railroad Companies May Do Business in This State Under Section 13 of This Chapter.—Each and every railroad company created or organized under and by the laws of any government or State, other than this State, and now operating any railroad in this State, either as the owners thereof or otherwise, or carrying on any business or exercising any corporate franchise in this State, shall, on or before the first day of June, 1902, apply for a charter of incorporation under the laws of this State, in the manner directed in Section 13, and no such railroad company shall carry on business or exercise any corporate franchise in this State after the said date, without having complied with the provisions of this Chapter.

Civ. '12, § 2677; 1902, XXIII, 1053.

This section amends Act 1909, XXVI, 56, declared unconstitutional in *Carolina, etc., Railway v. McCown*, 84 S. C. 318, 66 S. E. 418; *Atlantic, etc., R. Co. v. Dunning*, 166 Fed. 850, 854.

(4042) § 15. One of the Corporators Under Article III of Chapter L of This Code Must Be Resident.—No charter shall be granted to any such railroad company under the provisions of this Chapter, or of Article III of Chapter L, unless at least one of the corporators is a resident of this State, and all privileges heretofore acquired by any such railroad companies doing business in this State, are hereby revoked and repealed, on and after June 1, 1902, unless such companies have complied with the requirements of this Chapter.

Civ. '12, § 2678; 1902, XXIII, 1053.

This section amends Act 1909, XXVI, 56, declared unconstitutional in *Carolina, etc., Railway v. McCown*, 84 S. C. 318, 66 S. E. 418.

The corporation, on complying with this Chapter, remains a non-resident of the State, within the meaning of the Act of Congress authorizing removal of actions to the United States Courts. *Wilson v. So. Ry. Co.*, 64 S. C. 162, 36 S. E. 701; *Calvert v. Same*, 64 S. C. 139, 36 S. E. 750; *McCabe v. Same*, 36 S. E. 1024, overruling *Mathis v. Ry. Co.*, 53 S. C. 246, 31 S. E. 240.

Geraty v. A. C. L. Ry. Co., 80 S. C. 355, 357, 60 S. E. 936; *Best v. S. A. L. Ry.*, 72 S. C. 479, 52 S. E. 223.

Notwithstanding compliance by a foreign corporation with these provisions, it still has a distinct entity as a foreign corporation, and is liable to be sued and defend as such. *Elms v. Southern Power Co.*, 78 S. C. 323, 58 S. E. 809.

(4043) § 16. Charter in Conflict With Laws Void.—If any such charter or any part thereof filed as aforesaid in the office of the Secretary of State shall be in contravention or violation of the laws of this State, such charter, or such parts thereof so in conflict with the laws of this State, shall be without effect in this State.

Civ. '12, § 2679; Civ. '02, § 1792; 1896, XXII, 114; 1897, XXII, 514.

(4044) § 17. How Foreign Railroad Companies May Do Business in This State.—Each and every railroad company created or organized under and by the laws of any government or State, other than this State, and now operating any railroad in this State, either as the owners thereof or otherwise, or carrying on any business or exercising any corporate franchise in this State, shall have on or before the first day of June, 1902, applied for a charter of incorporation under the laws of this State, in the manner directed in Sections 13, 14, 15 and 16 of this Chapter, and no such railroad company shall carry on business or exercise any corporate franchise in this State after the said date, without having complied with the provisions of this Article.

Civ. '12, § 2680; 1902, XXIII, 1053.

(4045) § 18. Charter to Railroad Not Granted Unless One Stockholder Is Resident.—No charter shall be granted to any such railroad company under the provisions of this Chapter or under the provisions of Article III of Chapter L of this Code, unless at least one of the stockholders is a resident of this State, and all privileges heretofore acquired by any such railroad companies doing business in this State are hereby revoked and repealed on and after June 1, 1902, unless such companies have complied with the requirements of this Article.

Civ. '12, § 2681; 1902, XXIII, 1054.

(4046) § 19. Companies Complying With Civil Code Excused from Paying Other Fees.—All persons applying for the incorporation of any railroad company, under the provisions of this Chapter, shall pay the fees required by Article III referred to above, except such railroad companies as have complied with the provisions of an Act to provide for the incorporation of railroad companies, approved March 9, 1896, and paid the fees fixed by said Act as amended by an Act approved the 5th day of March, A. D. 1897.

Civ. '12, § 2682; 1902, XXIII, 1054.

Lyles v. McGown, 82 S. C. 130.

(4047) § 20. Penalty for Failure to Comply With Law.—It shall be unlawful for any such foreign railroad company to do business, or attempt to do business, in this State without first having complied with the requirements of this Chapter. Any violation of this Chapter shall be punished by the forfeiture to the State by the party offending of a penalty of five hundred dollars, to be recovered by suit in the Court of Common Pleas, for each and every county in which such offender does, or attempts to do, business, or in any other Court of competent jurisdiction. And it shall be the duty of the Attorney General to bring suit for recovery of such penalty for each and every offense.

Civ. '12, § 2683; 1902, XXIII, 1054.

(4048) § 21. Shall Not Apply to Consolidations.—The provisions of this Chapter shall in no way abrogate or repeal the right of railroad companies to consolidate according to law or effect consolidation already made according to law, when at least one of the corporations so consolidating is a corporation of this State, with corporators resident in this State.

Civ. '12, § 2684; 1902, XXIII, 1054.

(4049) § 22. Corporations Domesticated Under Laws in Accordance With Constitution of 1895 Excepted.—The foregoing provisions of this Chapter shall not be construed to extend to any corporation that may have heretofore become domesticated under the laws of this State passed in accordance with the terms of the Constitution of 1895.

Civ. '12, § 2685; 1902, XXIII, 1054.

(4050) § 23. Liability of Railroad Company to Actions for Damages.—Any railroad company referred to in Sections 21 and 22 of this Chapter, may for all causes of action for injury to the person or property of any citizen of this State, along the line of road, arising hereafter in the operation of any line of railroad which was originally chartered and operated under the laws of this State, and which is now owned or leased and operated by it, be sued jointly with the company originally incorporated in this State, and which owned and operated said line of railroad; and said railroad company originally chartered in this State, or said consolidation of railroads, shall be and remain liable upon all such causes of action, and may be made a party defendant in all actions for such injuries.

Civ. '12, § 2686; 1902, XXIII, 1054.

(4051) § 24. Railroads Complying With Previous Laws Excepted.—The provisions of this Chapter shall in no wise apply to such railroad or railway companies which have already complied with the prior laws of this State in force at the time.

Civ. '12, § 2687; 1902, XXIII, 1054.

Railway Co. v. Tompkins, 48 S. C. 49, 25 S. E. 982; *Wilson v. So. Ry. Co.*, 36 S. E. 701. A foreign corporation could not, prior to this statute, acquire the stock and management of a domestic competing line. *State v. P. R. & A. Ry. Co.*, 45 S. C. 470, 23 S. E. 383.

(4052) § 25. Foreign Companies Must Comply.—It shall be unlawful for any such foreign corporation to do business, or attempt to do business, in this State without first having complied with the requirements of this Chapter, and any violation of this Chapter shall be punished by the forfeiture to the State, by the party offending, of a penalty of five hundred dollars, to be recovered by suit in the Court of Common Pleas for any county in which such offender does, or attempts to do, business, or in any other Court of competent jurisdiction.

Civ. '12, § 2688; Civ. '02, § 1794; 1896, XXII, 114; 1897, XXII, 514.

Best v. Seaboard Air Line Railway, 72 S. C. 479, 487, 52 S. E. 223; *Atlantic, etc., R. Co. v. Dunning*, 166 Fed. 850, 854.

Only the State may question the alien's right. The assignee of an alien may enforce right to specific performance of contract to convey to the alien. *Tucker v. Atlantic Coast Lumber Co.*, 78 S. C. 134, 59 S. E. 859. See *Geraty v. A. C. L. R. Co.*, 80 S. C. 355, 357, 60 S. E. 936.

(4053) § 26. Aliens Can Hold Only 500 Acres Land—Exceptions—Vested Rights Unaffected.—No alien or corporation controlled by aliens either in his or its own right or as trustee, *cestui que trust* or agent, shall own or control, within the limits of this State, more than five hundred acres of land: *Provided*, This Section shall not apply to land purchased under proceedings, either by action or power of sale, to foreclose any mortgage hereafter acquired by any alien or corporation controlled by aliens, purchasing the same, but in such case such alien or corporation controlled by aliens, shall not be entitled to hold said excess of land more than five years, without sale of same, unless the Comptroller General shall certify that a sale during that time would be materially detrimental to the interest of

such alien or corporation controlled by aliens, in which case the said alien or corporation controlled by aliens, may hold the land for five years longer upon the same conditions.

Nothing in this Section shall apply to lands owned or controlled by the persons or corporations referred to in this Section nor to lands already mortgaged to such persons or corporations.

Civ. '12, § 2689; Civ. '02, § 1795; 1896, XXII, 114; 1897, XXII, 514.

See, also, post § (5209).

Const., Art. III, § 35, and this section cannot be held to mean anything more than that State may take from alien any land held by him in excess of five hundred acres, and that Courts will not aid alien to recover more than five hundred acres. *Tucker v. Atlantic Coast Lumber Co.*, 78 S. C. 134, 142, 59 S. E. 859.

CHAPTER XLVIII.

Insurance.

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ARTICLE I.

Insurance Department and Insurance Companies.

(4054) § 1. **Insurance Department Established.**—There is hereby established a separate and distinct department of the State Government, to be known as the Insurance Department, which shall be charged with the enforcement and execution of the laws now in existence, and which may hereafter be passed, relating to insurance and other subjects, which may be placed under the supervision of this department by the laws of this State.

Civ. '12, § 2690; 1908, XXV, 999.

(4055) § 2. **Insurance Commissioner.**—The chief officer of the said department shall be denominated the Insurance Commissioner. He shall be paid an annual salary of twenty-five hundred dollars, payable in monthly installments, in the same manner as other State officers are now paid: *Provided*, The Insurance Commissioner shall have no interest in any insurance company or in any insurance agency in this State or in any State while holding said office.

Civ. '12, § 2691; 1908, XXV, 999.

(4056) § 3. **Insurance Commissioner to Pay Taxes, Etc., to State Treasurer.**—Said Insurance Commissioner shall, between the first and tenth days of each month, pay to the State Treasurer, and take his receipt therefor, all taxes, fees, licenses and other moneys collected by him according to law in the discharge of his duties during the previous month.

Civ. '12, § 2692; 1908, XXV, 999.

(4057) § 4. Election of Insurance Commissioner—Term of Office.—Said Insurance Commissioner shall be elected by the General Assembly for a term of two years. In case a vacancy should occur, the Governor shall appoint for the unexpired term: *Provided*, That no member of the General Assembly shall be eligible to said election nor be elected to the office while a member of either branch of the General Assembly.

Civ. '12, § 2693; 1908, XXV, 999.

(4058) § 5. Bond of Insurance Commissioner.—Every person appointed as Insurance Commissioner shall, before entering upon or continuing to discharge the duties of his office, take the same oath of office as now required of other State officers, and give bond to the State, in the sum of twenty-five thousand dollars (\$25,000), with sufficient surety, to be approved by the State Treasurer, for the faithful performance of all the duties required of him under the law during the term of his office.

Civ. '12, § 2694; 1908, XXV, 999.

(4059) § 6. Duties of Insurance Commissioner.—There shall devolve upon said Insurance Commissioner all the duties formerly required or devolving upon the State Treasurer and Comptroller General touching or relating to matters pertaining to insurance of any and all kinds.

Civ. '12, § 2695; 1908, XXV, 999.

(4060) § 7. How Expenses of Insurance Department to Be Paid—Annual License Fees.—All expenses of the insurance department, including all salaries of the officers and employees, proper office furniture, printing, stationery, stamps and all other supplies and expenses, shall be paid out of the annual insurance department license fees, by the State Treasurer, upon warrants of the Comptroller General, approved by the Insurance Commissioner, who shall attach itemized statements of all expenditures, and shall publish the same in his annual report. The Insurance Commissioner, for this purpose, shall collect, in addition to all other license fees or taxes now or hereafter provided by law, from all companies which shall be licensed by him to do business in this State, the following annual department license fees, to wit: From each life insurance company doing business on a legal reserve basis, the sum of fifty dollars per annum; from each fire insurance company, the sum of forty dollars; from each accident or casualty or surety company, the sum of forty dollars; from each company doing exclusively a marine business, the sum of fifteen dollars; for each mutual company doing business in more than one county, twenty-five dollars; from each mutual company not doing business in more than one county, ten dollars; from each company not otherwise specified, fifty dollars. All of said insurance department license fees, collected by the Insurance Commissioner, shall be paid over to the State Treasurer at least once a month. A separate account shall be kept of all said fees and any balance unexpended on January 1st of each year shall be covered into the general treasury: *Provided*, That insurance companies doing a plate glass insurance business only and exclusively shall be charged a license fee of ten dollars.

Civ. '12, § 2696; 1909, XXVI, 7; 1918, XXX, 821.

(4061) § 8. **Annual Report of Insurance Commissioner — Duties and Powers.**—The Insurance Commissioner shall submit to the General Assembly, annually, a report of his official acts and doings, and of all companies, associations or orders under his department doing business in this State, with condensed statement of their report made to him, together with a statement of all licenses, taxes and fees received by him through such companies and paid by him to the State Treasurer, and he shall at each session of the General Assembly submit, through the Governor, such annual reports and statements. The Insurance Commissioner shall make, from time to time, recommendations as to any change in the law of this State which should, in his opinion, be made, relating to insurance and other subjects under his department. He shall keep on file in his office all reports and papers received by him in the discharge of his duty. His office shall be deemed a public office, and the records, books, and papers thereof, or on file therein, shall be deemed public records of the State. He shall have a seal, with a suitable inscription, an impression of which shall be filed with the Secretary of State. Every certificate or other paper executed by said Commissioner, in pursuance of any authority conferred upon him by law, and sealed with the seal of his office, and all copies of papers certified by said Commissioner, and authenticated by his seal, shall in all cases be evidence, equally and in like manner as the original thereof, and shall have the same force and effect as the originals would have in any suit or proceeding in any Court of this State.

Civ. '12, § 2697; 1908, XXV, 999; 1909, XXVI, 7.

(4062) § 9. **Clerical Aid of Insurance Commissioner.**—The Insurance Commissioner may employ in his department such clerical aid as may be necessary not to exceed two thousand dollars per annum; and from time to time he may employ an actuary, or a deputy, or an attorney to aid in the enforcement of the laws, as such services may be needed, payment for which shall be made out of the annual department license fees herein provided.

Civ. '12, § 2698; 1908, XXV, 999; 1909, XXVI, 7.

(4063) § 10. **Duties and Powers of Insurance Commissioner.**—Before granting a certificate of authority to do business in this State to any company, the Insurance Commissioner shall be satisfied by proper evidence that such applicant for license is duly qualified to do business under the laws of this State; that it is safe and solvent; that its dealings are fair and equitable and that it conducts its business in a manner not contrary to the public interests. He shall require every domestic company to keep its books, records, accounts and vouchers in such manner that he or his authorized representatives may readily verify them and ascertain whether the provisions of the law have been complied with. He shall have authority to examine into the conditions of any company doing business in this State, and shall have power to summon witnesses and take testimony as he may deem fit and proper for the protection of the public interest of the State. At least once in two years, and whenever he determines it to be prudent, he shall personally, or by a deputy, visit each domestic company and thoroughly inspect and examine its affairs, determine and fix the value of its assets and test and declare its ability to fulfill its obligations and maintain

its solvency according to proper standards. Whenever he determines it to be prudent for the protection of the policyholders in this State, he shall in like manner visit and examine or cause to be visited and examined by some competent person or persons whom he may appoint for that purpose, any foreign company applying for admission or already admitted to do business in this State, and such company shall pay the reasonable cost for such examination. Any person, body politic or corporate, partnership or association who or which shall make, negotiate or solicit within this State any contract of insurance or insurances or connect any person or persons with them in any policy they may at the time hold, or shall do any business of insurance of any kind, or make any guaranty, contract or pledge for the payment of annuities or endowments or anything of value, whether the amount thereof be fixed or contingent, to the families or representatives of any policyholder or certificate holder or the like, shall be subject to the provisions of this Section. All foreign building and loan associations, foreign land associations and such like companies shall be subject to the terms of this Article.

Civ. '12, § 2699; 1908, XXV, 999; 1909, XXVI, 7; 1910, XXVI, 773.

(4064) § 11. When Licenses May Be Revoked or Suspended.—If the Commissioner is of opinion upon examination or other evidence that a company is in an unsound condition, that it has failed to comply with the law or with the provisions of its charter, or that its condition is such as to render its proceedings hazardous to the public or to its policyholders, or that its funds, if it is a life insurance company, are less than its liabilities, exclusive of its capital, or if its officers or agents refuse to submit to examination or to perform any legal obligation relative, he shall revoke, or suspend all certificates of authority granted to said company, its officers or agents, and shall cause notices thereof to be published in a newspaper of general circulation in this State, and no new business shall thereafter be done by it or its agents in this State while such default or disability continues, nor until its authority to do business is restored by the Commissioner. Unless the ground for revocation relates only to the financial condition or soundness of the company, or to deficiency in its assets, he shall notify the company not less than thirty days before revoking its authority to do business in this State and he shall specify in the notice the particulars of the alleged violation of the law, or its charter or grounds for revocation, and the proper opportunity be afforded such company to be heard in answer thereto. During the time of suspension of certificate of authority no domestic company or officers thereof shall pay out any funds belonging to said company without first receiving the consent and approval of the Insurance Commissioner thereto.

Civ. '12, § 2700; 1908, XXX, 999; 1909, XXVI, 10.

See Criminal Code.

State ex rel. Sims v. McMaster, Insurance Com'r et al, 95 S. C. 476, 79 S. E. 405.

(4065) § 12. Order, Ruling or Decision of Insurance Commissioner Subject to Review.—That any order, ruling or decision of the Insurance Commissioner in all matters, either of law or discretion, within the jurisdiction of his department, shall be subject to review by *certiorari* or *mandamus* proceedings before any Circuit Judge or Justice of the Supreme

Court, which may be held at chambers or in open Court, upon thirty days' notice to the Insurance Commissioner.

1912, XXVII, 768.

(4066) § 13. Insurance Companies to Give Bond Before Being Licensed.

—Before licensing any insurance company to do business in this State, the Insurance Commissioner shall require each such company to deposit with him an approved bond or approved securities, in the discretion of the Commissioner, as follows: Each legal reserve life insurance company, twenty thousand dollars; each fire, accident, or casualty or surety insurance company, or any company not herein specified, ten thousand dollars: *Provided*, That domestic industrial insurance companies shall in no case be required to deposit more than the legal reserve on their policies, but not less than one thousand dollars, which may be made at the rate of five hundred dollars a year, on April 1 of each year; each domestic mutual life insurance company doing business on a recognized table of mortality with interest assumption not higher than four per centum per annum, not less than three thousand dollars. But each such domestic company shall keep on deposit with the Insurance Commissioner at all times, not less than the legal reserve on all of its outstanding policies: *Provided, further*, That the terms of this Section shall not apply to domestic mutual assessment companies not doing business in more than two adjoining counties. If a bond be given, it shall be conditioned to pay any judgment entered up against any such company in any Court of competent jurisdiction in this State, and such judgment shall be a lien upon the bond or securities. In case a bond is given, the judgment creditor shall have the right to bring suit on said bond for the satisfaction of the judgment in the county in which the judgment is received.

Civ. '12, § 2701; 1910, XXVI, 774.

Wise v. Carolina Hall Insurance Co. et al, 108 S. C. 504, 94 S. E. 535.

(4067) § 14. Semiannual License Fees to Be Paid—Returns of Premiums Collected.—In addition to the annual license fees now provided by law, the Commissioner shall require each foreign life insurance company of any class licensed by him not incorporated under the laws of the State of South Carolina, except fraternal benefit orders operating under the grand lodge system, to pay as an additional and graded license fee an amount equal to two per centum on the total premiums, *i. e.*, total premium income or total premium receipts from the State, less any dividend or bonuses paid in cash or applied in abatement of premiums of such company as collected from citizens of or residents of this State during the time the company has done business in this State since making last such return. Such returns shall be made under oath by an executive officer of the company: *Provided*, That if the executive officer of the company shall file with the Insurance Commissioner a sworn statement showing that at least one-fourth of the reserve on all policies issued in South Carolina is invested in any or all of the following securities or property, to wit: Notes or bonds of the State of South Carolina or of counties or municipalities of the State or of subdivisions thereof; or first mortgage bonds of real estate in this State; or first mortgage bonds of solvent domestic or domesticated corporations whose improved property is situate entirely within this State

and which are owned and controlled independently of foreign corporations and operated entirely within the State; or average daily balance on deposits in banks of this State maintained continuously for six months next preceding date of such return; or any property situate within the State and returned for taxes therein, at the value at which it is returned, then, and in that case, the additional license fee on premiums collected during the time such investments have been actually made and maintained shall be one and three-fourths per centum; under like conditions, if said investments be one-half of said reserves, the additional license fee shall be one and one-half per centum; under like conditions, if the investments shall be three-fourths of said reserve, the additional license fee shall be one and one-fourth per centum, and, if the entire reserve be so invested, under like conditions, the additional license fee on said premium receipts shall be one per cent. In addition to the annual license fee now provided by law, the Insurance Commissioner shall require each foreign fire insurance company, each foreign accident and health, each foreign casualty or surety company, and all other companies of any class licensed by him not incorporated under the laws of the State of South Carolina not hereinbefore specifically mentioned to pay as an additional and graded license fee an amount equal to two per cent. on the total premiums, *i. e.*, total income or total receipts from the State, less return premiums for cancellation on risks in this State during the time the company has done business in this State since last such return. Such returns shall be made under oath by an executive officer of the company: *Provided*, That if the executive officer of the company shall file with the Insurance Commissioner a sworn statement showing that at least one-fourth of the premium receipts on all risks in South Carolina is invested in the securities named in this Section, then, and in that case, the additional license fee on premiums collected during the time such investments have been actually made and sustained shall be one and three-fourths per centum; under like conditions, if said investments be one-half of said premium receipts, the additional license fee shall be one and one-half per centum; under like conditions, if the investments shall be three-fourths of said premium receipts, the additional license fee shall be one and one-fourth per centum; if the entire premium receipts be so invested, under like conditions, the additional license fee on said premium receipts shall be one per cent.: *Provided, further*, That the one-half of the said additional license fee collected under the terms of this Section is allotted to the several counties, respectively, in proportion to said premiums collected in said counties, and the same is hereby appropriated to ordinary county purposes, and no additional license fee or county tax shall be levied on such companies. At the close of the semiannual period, or as soon thereafter as possible, the Insurance Commissioner shall furnish the State Treasurer a statement showing the amount of said premiums collected by each company in each of the several counties of the State, and the amount of additional license fees collected thereon; and the State Treasurer, upon a warrant from the Comptroller General, shall pay unto the County Treasurer of each county one-half of the additional license fee collected as aforesaid on the said premiums collected by each insurance company in that county: *Provided*, That nothing in this Article or any other Article shall be con-

strued as preventing any municipality from levying and collecting license fees or taxes in accordance with its ordinances. The return of said premium collections shall be made within thirty days after the 30th day of June and the 31st day of December of each year, and, if the returns are not so made, the Insurance Commissioner may suspend the license of the company until such returns are made. The Attorney General shall bring suit in the name of the State to collect any unpaid portion of license fees provided herein.

Civ. '12, § 2702; 1909, XXVI, 12.

But see post, § (4106). See *New York Life Ins. Co. v. McMaster*, 84 S. C. 495, 498, 66 S. E. 877.

Sections 302, 1808 and 1809, of Code of 1902, are unconstitutional. *New York Life Ins. Co. v. Bradley*, 83 S. C. 418, 425, 65 S. E. 433; *New York Life Ins. Co. v. McMaster*, 84 S. C. 495, 498, 66 S. E. 877.

(4068) § 15. Affidavit to Be Filed.—Before issuing a license to any company to do business in this State, the Insurance Commissioner shall require in every case that each such company shall file with him the affidavit of its president or chief executive officer so as to bind the company, that it has not violated any of the laws of this State, and that it accepts the terms and obligations imposed by the laws of this State as part of the consideration for such license.

Civ. '12, § 2703; 1909, XXVI, 7.

(4069) § 16. Agents to Obtain License from Commissioner.—Before doing business in this State for any insurance company or association, each agent shall procure from the Insurance Commissioner a license for which he shall pay one-half dollar as an annual department license fee. Before issuing such license the Insurance Commissioner shall determine that the agent is a fit and proper person. Such license shall expire on March 31 of each year. The Insurance Commissioner shall have power to revoke said license after thirty days' notice and examination whenever it shall appear that said agent has violated the laws of this State, or has wilfully deceived or dealt unjustly with a citizen of this State: *Provided*, That agents under bond may commence work upon notice and application for license being mailed to the Insurance Commissioner. Copies of all forms of policy contracts issued by companies or associations licensed to do business in this State shall be filed with the Insurance Commissioner.

Civ. '12, § 2704; 1910, XXVI, 774.

New York Life Ins. Co. v. McMaster, 84 S. C. 495, 501, 66 S. E. 877.

(4070) § 17. Corporations May Pay Sick and Death Benefits.—Any corporation doing business in this State and desiring to provide sick, accident and death benefits for its employees may be licensed so to do upon the payment to the Insurance Commissioner of insurance department license fees as follows: Those doing business in one county only, \$10; in not more than two counties, \$25; in more than two counties, \$50: *Provided, further*, That purely mutual associations doing business in only one county, whose gross income does not exceed \$500.00, may be licensed upon payment of an annual fee of five dollars.

1912, XXVII, 534.

(4071) § 18. Companies Not Licensed May Collect Premiums.—For the convenience of policyholders in South Carolina of any insurance company

not licensed to do business in this State, and upon satisfactory assurance being given that no new business will be done by any person for such company, the Insurance Commissioner may license any person to receive and transmit premiums to such company and to adjust losses under policies of such company upon the payment of one per centum upon the net premiums collected in this State.

1912, XXVII, 534.

(4072) § 19. Insurance Companies to Do Business Only Through Authorized Agents—Commission—When License May Be Revoked.—That it shall be unlawful for any insurance company doing business through agents in the State of South Carolina to write, place or cause to be written, placed or renewed any fire, marine, accident, health, liability, plate glass, steam boiler, burglary, or theft, sprinkler leakage, fly wheel, automobile property damage, credit or workman's collective insurance, or fidelity and surety bond covering any risk or on property located in the State of South Carolina, except through or by duly authorized agent or agents of such insurance company or association residing and doing business in this State. The full premium shall be paid to such agents who are entitled to and shall receive the same commission on such business as the company allows them on other business of the same class. The payment of a fee or any other consideration than the full commission is held a violation of law. Agents who may sign or insurance companies who may cause to be signed any policy or indemnity contract as the resident agent of an insurance company and fails to collect the full premium for such insurance and retain the proper commission which is due such agent may have their license revoked as the penalty for aiding in an evasion of the law: *Provided, however,* That agents licensed under the insurance laws of this State may write insurance at the request of other agents or brokers and allow said agents or brokers not exceeding one-half of the commissions which they receive on the business written.

1915, XXIX, 219.

(4073) § 20. Insurance Broker Defined.—The term insurance broker as used in this Article, is declared to be such person as shall be licensed by the Insurance Commissioner to represent citizens of this State for the placing of insurance in insurers licensed in this State or in any other State or country.

1916, XXIX, 676.

(4074) § 21. Insurance Brokers to Be Licensed After Compliance With Certain Conditions—May Solicit Insurance Throughout State—Municipalities May Impose Tax Upon Brokers—Requirements as to Residence and Length of Agency.—Insurance brokers may be licensed by the Insurance Commissioner upon the following terms and conditions, to wit: (a) The payment of an annual insurance department license fee of twenty-five (\$25) dollars; (b) the filing of a bond approved by the Insurance Commissioner in the sum of five thousand (\$5,000) dollars for the faithful discharge of his duties; (c) the payment of an additional license fee of 4 per cent. upon the premiums paid or written in the policies of companies not licensed in this State. Such license shall entitle the holder to solicit

insurance in any county of this State, but nothing herein shall prevent municipalities from imposing license fees in accordance with their ordinances. Under the terms of this Article only such persons may be licensed as are residents of this State and have been licensed insurance agents of this State for at least two years.

1916, XXIX, 676.

(4075) § 22. Broker to Secure Certificate of Safety and Solvency of Insurance—To Furnish Insured With Statement of Condition of Insurer If Required—Shall Report to Insurance Commissioner—Books to Be Open for Inspection.—Such insurance broker shall exercise due care in the placing of insurance and shall procure from the supervising official in the State or county in which the home office of the insurer is located a certificate to the effect that the insurer is safe and solvent and is authorized to do business. He shall furnish the insured a statement showing the financial condition of the insurer and such other information as the insured may require. He shall report to the Insurance Commissioner in detail the amount of insurance placed and the premiums paid therefor, and shall pay to the Insurance Commissioner the additional license fee herein provided. He shall submit to the Insurance Commissioner within thirty days after December 31 of each year an annual report of his transactions, and his books, papers and accounts shall at all times be open to the inspection of the Insurance Commissioner or a deputy appointed by him.

1916, XXIX, 676.

(4076) § 23. May Divide Commissions.—Such insurance broker may divide commissions with agents or brokers in other States or counties or with any agent licensed in this State for any company doing the particular class of insurance desired to be placed through such broker.

1916, XXIX, 676.

(4077) § 24. Losses May Be Adjusted and Policies May Be Endorsed by Any Licensed Agent or Adjuster.—All losses occurring under policies placed through such insurance broker may be adjusted by any licensed agent or adjuster in this State, and all inspections broker licensed under the terms of this Article or any other licensed of property and endorsements on policies may be made by a fire insurance agent in this State authorized so to do.

1916, XXIX, 676.

(4078) § 25. License Fees to Be Paid Into State Treasury—Insurance Commissioner to Account to Comptroller General—Counties, Cities and Firemen's Insurance and Inspection Fund to Receive Part of License Fee.—The Insurance Commissioner shall pay over to the State Treasurer all license fees collected under the terms of this Article in accordance with the law now regulating like collections. Semiannually, as soon after June 30 and December 31 of each year as may be convenient, he shall render an accounting to the State Treasurer of the additional license fees collected under the terms of this Article, showing the counties and towns in which the property covered by such insurance is located, and shall furnish a duplicate of the same to the Comptroller General, in such manner as shall per-

mit the Comptroller General, who is hereby authorized and directed so to do, to draw his warrant on the State Treasurer for one-fourth of said additional license fee payable to the County Treasurer of the county in which the property is located, which amount shall be for general county purposes. He shall likewise draw his warrant on the State Treasurer for one-fourth of said additional license fee payable to the treasurer of the municipality in which the property is located, and he shall likewise draw his warrant for one-fourth of the additional license fee payable to the Trustees of the Firemen's Insurance and Inspection Fund of the municipality in which the property is located.

1916, XXIX, 676.

(4079) § 26. When Licenses Expire.—All licenses issued under the provisions of this Article shall expire on March 31 of each year, and the license fees may be prorated quarterly after October 1 of each year.

1916, XXIX, 676.

(4080) § 27. Insurance Commissioner to License Adjusters—Adjusters Agents for Insurance Companies—License Fee.—That every person (commonly called an adjuster) adjusting losses for any fire insurance company licensed to do business in this State shall be licensed by the Insurance Commissioner. Such person or persons shall apply for license on forms prescribed by the Insurance Commissioner. The Insurance Commissioner shall satisfy himself that such person applying for license as an adjuster is a person of good moral character, has sufficient knowledge of the fire insurance business and his duties as adjuster, that he has not violated any of the insurance laws of the State, and that he is a fit and proper person for such position: *Provided*, That agents licensed under Section 16 of this Article are not required to comply with the terms of this Section: *Provided*, That adjusters are hereby declared to be acting as the agents for the company or companies represented by them in the adjustment of any loss. The fee for an adjuster's license, as contemplated under this Section, shall be ten dollars (\$10.00), said license to expire on the 31st day of March annually.

1920, XXXI, 945.

(4081) § 28. Medical Examiners of Life Insurance Companies Exempt from License Fee.—That no license shall be charged any resident practicing physician in this State for making medical examination for life insurance companies or fraternal orders by the State, or any county, city or town: *Provided*, Such physician has been duly licensed to practice by the State Board of Medical Examiners.

1913, XXVIII, 145.

(4082) § 29. Insurance Commissioner to Accept Service for Process.—That every foreign insurance company shall, before being licensed, appoint in writing the Insurance Commissioner and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the company, and that the authority shall continue in force so long as any liability remains

outstanding in the State. Copies of such appointment, certified by the Insurance Commissioner, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be in duplicate and shall be deemed sufficient service upon such company. When legal process against such company is served upon said Insurance Commissioner, he shall forthwith forward by registered mail one of the duplicate copies prepaid directed to the company at its home office.

Civ. '12, § 2705; 1910, XXVI, 775; 1917, XXX, 38.

New York Life Ins. Co. v. McMaster, 84 S. C. 495, 501, 66 S. E. 877.

(4083) § 30. Admission of Foreign Mutual Fire Insurance Companies to Do Business.—Any foreign mutual fire insurance company maintaining no agents, writing no business except on the property of its members and doing business without profit, may be admitted to do business in this State on the following terms: It shall file with the Insurance Commissioner a satisfactory statement of its condition and such other information as he shall require; a copy of its charter and amendments thereto; certificate of compliance with the laws of its home State, and the appointment of the Insurance Commissioner of South Carolina as its attorney to accept service. It shall pay an annual department license fee of twenty-five dollars and the additional license fee now provided by law on the actual cost of insurance.

Civ. '12, § 2706; 1910, XXVI, 775.

(4084) § 31. Commissioner to Have Free Access to Books in Case of a Receivership.—The Insurance Commissioner in every case in which any Court in this State has appointed a receiver for any company under the supervision of the Insurance Commissioner, upon his filing a petition for intervention, shall have free access to the official books and papers of such receiver as to all matters connected therewith, during the progress of said cause, and if, in his opinion, the receiver has failed in his duty in any way the Insurance Commissioner shall have the right to certify the same to the Court.

Civ. '12, § 2707; 1910, XXVI, 775.

(4085) § 32. Terms on Which Insurance Companies May Do Business in This State.—It shall be unlawful hereafter for any insurance company or association to transact any business in this State unless possessed of at least one hundred thousand dollars of surplus or capital, or in lieu thereof, shall file with the Insurance Commissioner the certificate of the official of some State of the United States, under his hand and official seal, that he holds on deposit or in trust, for the benefit of all policyholders, or members of such company or association, securities worth at least one hundred thousand dollars, or in the absence of such capital or deposit, then to deposit with the Insurance Commissioner of South Carolina valid securities aggregating ten thousand dollars, or a bond for said amount, made by a solvent security company, said Insurance Commissioner to be the judge of the validity of such securities and bond, which bond shall be conditioned to pay any judgment entered up in any Court of competent jurisdiction in this State upon a policy of insurance issued to any citizen of this State

by any such company, and said judgment shall be a lien upon such securities.

Civ. '12, § 2708; 1905, XXV, 841.

Wise v. Carolina Hail Insurance Co. et al, 108 S. C. 504, 94 S. E. 535.

(4086) § 33. Penalty for Violation of Provisions.—Should any such insurance company or association violate the provisions of this Chapter, such company shall be fined in a sum not to exceed one thousand dollars and not less than five hundred dollars, to be recovered in any Court of competent jurisdiction in this State, to be recovered by any citizen of this State having a policy of insurance in said company: *Provided*, That nothing in this Chapter shall release any such company, companies or association violating the provisions hereof upon any policy issued by it or them.

Civ. '12, § 2709; Civ. '02, § 1798; 1897, XXII, 461.

(4087) § 34. Foreign Insurance and Other Companies Must Obtain License.—Every foreign insurance company of any class—fire, life, marine, surety, security, guarantee, hailstorm, live stock, accident, plate glass, and other like insurance companies—foreign land associations, foreign building and loan associations, foreign banking associations, and all other like classes of like business not incorporated under the laws of South Carolina, except national banks and except benevolent institutions organized under the grand lodge system, shall each, before transacting any business in this State, pay an annual license fee of one hundred dollars to the Insurance Commissioner on or before the thirty-first day of March in each year, to be deposited by him in the treasury of the State.

The license issued by the Insurance Commissioner shall give to the company obtaining the same power and authority to appoint any number of agents to take such risks or transact any business of insurance in each and every county of the State, and the same shall be so granted as to expire on the 31st of March of each year. But the Insurance Commissioner must be notified of such appointment before such agent takes any risks or transacts any business, giving the postoffice address and residence of such agent.

Civ. '12, § 2710; Civ. '02, § 1800; G. S. 1353; R. S. 1472; 1892, XXI, 89.

British-American Mortg. Co. v. Jones, 77 S. C. 443, 448, 58 S. E. 417; S. C., 76 S. C. 218, 222, 56 S. E. 983.

Curnow v. Phoenix Insurance Co., 37 S. C. 406, 16 S. E. 132, 133. Indemnity insurance contracts. Picketts v. F. & C. Co. of N. Y., 60 S. C. 477, 38 S. E. 160.

(4088) § 35. What Persons Are Deemed Agents.—A person who acts for another than himself in negotiating a contract of insurance by an insurance company or association, for the purpose of receiving remuneration therefor, shall be held to be the company's or association's agent, whatever conditions or stipulations may be contained in the policy contract.

Civ. '12, § 2711; 1910, XXVI, 554.

(4089) § 36. Who to Be Considered Agents of Foreign Insurance Companies.—Any person who solicits insurance in behalf of any insurance company not organized under or incorporated by the laws of this State, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who

shall examine or inspect any risk, or receive, collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or the consummating of any contract of insurance for or with any such company, other than for himself, or who shall examine into and adjust, or aid in adjusting, any loss for or in behalf of any such insurance company, whether any such acts shall be done at the instance or request or by the employment of such insurance company, or not, shall be held to be acting as the agent of the company for which this act is done or the risk is taken.

Civ. '12, § 2712; Civ. '02, § 1810; R. S. 1481; 1883, XVIII, 460.

Norris v. Hartford Fire Ins. Co., 57 S. C. 358, 35 S. E. 572; Madden & Co. v. Phoenix Ins. Co., 70 S. C. 295, 300, 49 S. E. 855.
Maryland Casualty Co. v. Gaffney Mfg. Co., 93 S. C. 406, 76 S. E. 1089; Rabb v. New York Life Ins. Co., 108 S. C. 137, 98 S. E. 711.

(4090) § 37. All Policies to Be Issued Through Resident Agents—Exceptions.—No fire insurance company or association not incorporated under the laws of this State, authorized to transact business here, shall make, write, place, or cause to be made, written or placed, any policy, duplicate policy, or contract of insurance of any kind or character, or any general or floating policy, upon property situated or located in this State, except after the said risk has been approved, in writing, by an agent who is a resident of this State, regularly commissioned by the company doing business in this State, who shall countersign all policies so issued, and receive the commission therein when the premium is paid, and the State shall receive the license fees required by law to be paid on the premiums collected for insurance on all property located in this State. Nothing in this Chapter shall be construed to prevent any insurance company or association, authorized to transact business in this State, from issuing policies at its principal or department offices, covering property in this State: *Provided*, That such policies are issued upon application procured and submitted to such company by agents who are residents of this State, regularly commissioned to transact the business of insurance herein, and who shall countersign all policies so issued and receive the commission thereon when paid. No provision of this Section is intended to or shall apply to direct insurance covering the rolling stock of railroad corporations or property in transit while in the possession and custody of railroad corporations or other common carriers.

Civ. '12, § 2713; Civ. '02, § 1811; 1900, XXIII, 394.

(4091) § 38. Returns as to Reinsurance by Companies.—Every fire insurance company or association shall annually, and at such other times as the Insurance Commissioner may require, in addition to all returns now by law required of it or its agents or managers, make a return to the Insurance Commissioner, in such form and detail as may be prescribed by him, of all reinsurance or cessions of risk or liability contracted for or effected by it, whether by issue of policy, entry or bordereau, or general participation agreement, or by excess loss reinsurance, or in any manner whatsoever, upon property located in this State, or covering, whether specified or otherwise, any risk or liability upon property so located, such return to be certified by the oath of its president and secretary, if a company or association of the United States, and, if a company or association of a foreign country,

by the oath of its managers in the United States, as to such reinsurance or cessions effected through its branch office in the United States, and by the oath of its president and secretary, or by officers corresponding thereto, at its home office, wherever located, as to reinsurance or cessions as aforesaid contracted for or effected through the foreign office. The refusal of any such company or association to make the returns herein required shall be presumptive evidence that it is guilty of violating the provisions of Section 37 of this Article, and shall subject it to the penalties prescribed and imposed by this Chapter.

Civ. '12, § 2714; Civ. '02, § 1813; 1900, XXIII, 394.

(4092) § 39. Penalty for Violation of Provisions.—Any insurance company or association wilfully violating or failing to observe and comply with any of the provisions of Sections 36, 37 and 38 applicable thereto, shall be subject to and liable to pay a penalty of five hundred dollars for each violation thereof; and for each failure to observe and comply with any provisions of the said Sections, such penalty may be collected and recovered in an action brought in the name of the State, in any Court having jurisdiction thereof. Any insurance company or association which shall neglect and refuse for thirty days after judgment in any such action to pay and discharge the amount of such judgment, shall have its authority to transact business in this State revoked by the Insurance Commissioner, and such revocation shall continue for at least one year from the date thereof; nor shall any insurance company or association, whose authority to transact business in this State shall have been so revoked, be again authorized or permitted to transact business herein, until it shall have paid the amount of such judgment, and shall have filed in the office of the Insurance Commissioner a certificate, signed by its president or other chief officer, to the effect that the terms and obligations of the provisions of this Article are accepted by it as a part of the conditions of its right and authority to transact business in this State.

Civ. '12, § 2715; Civ. '02, § 1814; 1900, XXIII, 394; 1903, XXIV, 71.

(4093) § 40. Fire Insurance Company Claiming Lien Must Establish Solvency.—Any fire insurance company doing business in this State, claiming a lien upon the property insured for the premium for such insurance, shall upon an action being brought upon such lien, or to collect such premium, establish that protection had been had by the insured and that such company during the period of insurance was solvent.

Civ. '12, § 2716; 1910, XXVI, 695.

(4094) § 41. Disposition of Fines, Etc.—All penalties and fines and forfeitures whatsoever collected under this Chapter shall be turned into the general fund for school purposes: *Provided, however,* That the provisions of this Article shall not be construed so as to prevent any policy, duplicate policy, or contract for reinsurance, from being written or placed in any fire insurance company or association which has no agent resident in this State, or prevent any mutual association or companies from issuing any policy or contract of insurance making inspections and adjustments, where the insured is paid cash dividends or return premiums: *Provided, further,*

That any person, if other than the Insurance Commissioner or his deputy, upon whose complaint a conviction is had in Court of competent jurisdiction for violation of the law prohibiting insurance by unlicensed companies or for soliciting, examining, or inspecting any risk, or receiving, collecting, or transmitting any premium, or adjusting or aiding in adjusting any loss under any contract not made in accordance with the law of this State, shall be entitled to one-half of the penalty recovered thereunder.

Civ. '12, § 2717; Civ. '02, § 1815; 1900, XXIII, 394; 1920, XXXI, 224.

(4095) § 42. Value Stated in Policy—Total and Partial Loss—Contributive Insurance—Liability.—No fire insurance company or individuals writing fire insurance policies, doing business in this State, shall issue policies for more than the value to be stated in the policy, the amount of the value of the property to be insured, and the amount of insurance to be fixed by insurer and insured at or before the time of issuing said policies, and in case of total loss by fire, the insured shall be entitled to recover the full amount of insurance and a proportionate amount in case of partial loss: *Provided*, Two or more policies written upon the same property shall be deemed and held contributive insurance; and if the aggregate sum of all such insurance exceed the insurable value of the property, as agreed by the insurer and the insured, in the event of a total or partial loss, each company shall be liable for its *pro rata* share of said insurance.

Civ. '12, § 2718; Civ. '02, § 1816; 1896, XXII, 113.

McCarty v. Piedmont Mut. Ins. Co., 81 S. C. 152, 160, 62 S. E. 1, 18 L. R. A., N. S. 729; *Home Ins. Co. v. Virginia-Carolina Chem. Co.*, 109 Fed. 681, 688.

This section has no application in suit to enjoin prosecution of suits at law where bill avers that value of property was not fixed at time of issuance of policy and averment admitted demurrer. *Rochester German Ins. Co. v. Schmidt*, 126 Fed 998, 1002.

This section does not prohibit open policies on Builders' Risks. *Ulmer v. Phoenix Fire Ins. Co.*, 61 S. C. 459, 39 S. E. 712; the distinction between open and valued policies stated in *Riggs v. Ass'n*, 61 S. C. 458, 39 S. E. 614. Contributive insurance. *Cave v. Ins. Co.*, 57 S. C. 347, 35 S. E. 577. *Wynn v. Caledonian Ins. Co.*, 100 S. C. 47, 84 S. E. 306.

(4096) § 43. Insurance Policies Invalidating Same If Insured Property Is Encumbered, Declared Void.—That hereafter any clause in any policy of insurance purporting or undertaking to limit or invalidate the force of such policy in case of encumbrance by real estate mortgage of the property insured by such policy, shall be, and the same is hereby, declared to be null and void.

1913, XXVIII, 146.

(4097) § 44. Limits as to Time Within Which Statements in Applications May Be Disputed.—No statement in the application for insurance shall be held to prevent a recovery before a jury on said policy in case of partial or total loss: *Provided*, After the expiration of sixty days, the insurer shall be estopped to deny the truth of the statement in the application for insurance which was accepted except for fraud in making the application for insurance.

Civ. '12, § 2719; Civ. '02, § 1817; 1896, XXII, 113.

This does not estop insurer from proving fraudulent misrepresentation and concealment. *Home Ins. Co. v. Virginia-Carolina Chem. Co.*, 109 Fed. 681, 688.

In absence of fraud in valued policy form of insurance, in case of total loss, and after sixty days from issuance of, is entitled to recover policy amount for which property was insured. *McCarty v. Piedmont Mut. Ins. Co.*, 81 S. C. 152, 160, 62 S. E. 1, 18 L. R. A., N. S. 729.

Camden Wholesale Grocery v. National Fire Ins. Co. of Hartford, Conn. et al, 106 S. C. 467, 91 S. E. 732.

(4098) § 45. **Exceptions as to Personalty.**—Nothing in Sections 42 and 44 shall be held to apply to insurance on chattel or personal property.

Civ. '12, § 2720; Civ. '02, § 1818; 1896, XXII, 113.

(4099) § 46. **Life Insurance Policy for Benefit of Married Women and Children.**—A policy of insurance upon the life of any person which has already been or may hereafter be taken out in which it is expressed to be for the benefit of any married woman, or of herself and her children, or of herself and children of her husband, whether procured by herself or her husband, shall enure to the use and benefit of the person or persons for whose use and benefit it is expressed to be taken out; and the sum or net amount of the insurance becoming due and payable by the terms of the policy shall be payable to the person or persons aforesaid, free and discharged from the claims of the representatives of the husband, or of any of his creditors, or any party or parties claiming by, through or under him or them or either of them: *Provided, however,* That if the premium paid in any one year out of the property or funds of the husband shall exceed the sum of five hundred dollars, the exemption from the claims of the creditors of the husband shall not apply to so much of said premium so paid as shall be in excess of five hundred dollars, but such excess, with the interest thereon, or so much thereof as may be necessary, shall enure to the benefit of such creditors if the same be necessary for their payment.

Civ. '12, § 2721; Civ. '02, § 1824; G. S. 1358; R. S. 1482; 1875, XV, 865.

(4100) § 47. **When Right to Dispute Truth of Application is Waived.**—All life insurance companies that shall receive the premium on any policy for the space of two years shall be deemed and taken to have waived any right they may have had to dispute the truth of the application for insurance, or to claim that the assured person had made false representations, and the said application and representations shall be deemed and taken to be true.

Civ. '12, § 2722; Civ. '02, § 1825; G. S. 1359; R. S. 1483; 1878, XVI, 530.

It is doubtful if this section applies to a case where right of action has accrued to beneficiary after death of insured, but if it does, and the right to cancel on ground of fraudulent misrepresentations in application is set up in answer, defendant is not entitled to have this issue tried in equity. *Fludd v. Equitable Life Assur. Co.*, 75 S. C. 315, 55 S. E. 762.

Immaterial whether statements were representations or warranties. *Owen v. Bankers Life Ins. Co.*, 84 S. C. 253, 254, 66 S. E. 290, 137 Am. St. Rep. 845.

By § (4183), fraternal insurance societies are exempt from general insurance laws and hence, may contest truth of statements in application after receiving dues for two years. *Robertson v. Fraternal Union*, 85 S. C. 221, 224, 67 S. E. 247.

Beard v. North State Life Ins. Co., 104 S. C. 45, 88 S. E. 285.

(4101) § 48. **Suit to Vacate Policy for False Representations—Two Year Limitation.**—Life insurance companies are hereby authorized to institute proceedings to vacate policies on the ground of the falsity of the representations contained in the application for said policy: *Provided,* The same be commenced within two years from the date of said policy.

Civ. '12, § 2723; Civ. '02, § 1826; G. S. 1360; R. S. 1484; 1878, XVI, 531.

Owen v. Bankers Life Ins. Co., 84 S. C. 253, 254, 66 S. E. 290, 137 Am. St. Rep. 845.

(4102) § 49. **Issuance of Policies by Foreign Surety Companies.**—Any foreign company empowered by its home charter to issue bonds or policies of suretyship may, by the consent and approval of the Governor, Insurance Commissioner and Secretary of State, issue said bonds in this State: *Pro-*

vided, That they comply with the law now of force in this State regulating foreign insurance companies; all of which law which is now of force is hereby made applicable to companies issuing bonds or policies of suretyship.

Civ. '12, § 2724; Civ. '02, § 1827; 1892, XXI, 76; 1894, XXI, 757.

Equitable Surety Co. v. Illinois Surety Co. et al, 108 S. C. 364, 94 S. E. 882.

(4103) § 50. Recognizances, Etc., With Guarantee Companies as Surety—Approved—Conditions.—Whenever any recognizance, stipulation, or bond, or undertaking conditioned for the faithful performance of any duty, or for doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, is, by the laws of the State of South Carolina, required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by a corporation empowered by its charter to issue bonds or policies of suretyship, and having power to guarantee the fidelity of persons holding positions of public or private trust, and to execute and guarantee bonds and undertakings in judicial proceedings: *Provided*, That said company shall first obtain the consent and approval of the Governor, Insurance Commissioner and Secretary of State as now provided by law: *Provided, further*, That such recognizance, stipulation, bond or undertaking be approved by the head of department, Court, Judge, officer, board or body, executive, legislative or judicial, required to approve or accept the same. But no officer or person having the approval of any bond shall exact that it shall be furnished by a guaranty company or by any particular guaranty company: *Provided, further*, That said company, unless it be incorporated under the laws of the State of South Carolina, comply with the law now of force in this State regulating foreign insurance companies.

Civ. '12, § 2725; Civ. '02, § 1828; 1896, XXII, 28.

(4104) § 51. Company Executing Bond as Surety Estopped to Deny Corporate Power.—Any company which shall execute any bond as surety under the preceding Sections shall be estopped in any proceeding to enforce the liability which it shall have assumed to incur to deny its corporate powers to execute such instrument or assume such liability.

Civ. '12, § 2726; Civ. '02, § 1829; 1884, XVIII, 889.

(4105) § 52. How Insurance Companies May Make Deposits in This State to Secure Policyholders.—The Insurance Commissioner in his official capacity shall take and hold, in trust, deposits made by any domestic insurance company for the purpose of complying with the laws of any other State to enable such company to do business in such State. The company making such deposit shall be entitled to the income thereof, and may, from time to time, with the consent of the Insurance Commissioner, and when not forbidden by the law under which the deposit is made, change, in whole or in part, the securities which compose the deposit for other solvent securities of equal par value; said securities to be approved by the Insurance Commissioner. Upon request of any domestic insurance company such officer may return to such company the whole or any portion of the securities of such company held by him on deposit, when he shall be satisfied that

the securities so asked to be returned are subject to no liability and not required to be longer held by any provision of law or purpose of the original deposit; and he may return to the trustees or other representatives authorized for that purpose, of a foreign insurance company, any deposit made by such company, when it shall appear that such company has ceased to do business in the State and is under no obligation to policyholders or other persons in the State for whose benefit such deposit was made. An insurance company which has made a deposit in this State, pursuant to this Chapter, or its trustees or resident managers in the United States, or the State Insurance Commissioner, or any creditor of such company, may, at any time, bring, in the Circuit Court for the County of Richland, an action against the State and other parties properly joined therein, to enforce, administer or terminate the trust created by such deposit. The process in such action shall be served on the officer of the State having the deposit, who shall appear and answer in behalf of the State and perform such orders and judgments as the Court may make in such action.

Civ. '12, § 2727; 1908, XXV, 1108.

(4106) § 53. Payment of Taxes by Insurance Companies Condition Precedent to Doing Business.—Every foreign insurance company of any class—fire, life, marine, surety, security, guarantee, hailstorm, live stock, accident, plate glass, and other like insurance companies—and all other like classes of like business not incorporated under the laws of the State of South Carolina, except benevolent institutions operating under the grand lodge system, shall, as a condition for the privilege of entering into and doing business in this State, pay all taxes and perform all duties now or hereafter prescribed by law, or having paid and recovered such taxes by suit or otherwise, shall in addition to the payment of all State and county taxes now or hereafter required by law, and the payment of all State and county taxes and the performance of all duties of any kind whatsoever imposed upon such foreign companies, shall be a condition and part of the terms upon which they are allowed to enter this State and to do business herein: *Provided*, That nothing herein contained shall be construed to affect the right of the corporate authorities of the cities and towns of the State to levy, assess or collect taxes or licenses from said insurance companies for municipal purposes: *Provided*, That nothing contained in this Section shall deprive such foreign companies of any right they may have to test, in any Court established under the laws of this State which may have jurisdiction, the constitutionality of any Act of the Legislature imposing duties or burdens upon them.

Civ. '12, § 2728; 1909, XXVI, 118.

State having right to discriminate against foreign corporations, it may impose on certain foreign insurance companies as condition precedent to doing business in State the payment of amount of taxes levied under statute held unconstitutional, and not imposed on other like corporations. *New York Life Ins. Co. v. McMaster*, 84 S. C. 495, 66 S. E. 877.

(4107) § 54. Insurance Companies or Agents Not to Circulate False Information.—No life insurance company doing business in this State, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it, or the benefits or advantages promised thereby, or the dividends or shares of

surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof.

Civ. '12, § 2729; 1908, XXV, 1110.

(4108) § 55. No Distinction to Be Made Between Individuals—Not to Give Rebates.—No insurance company doing business in this State shall make or permit any distinction in favor of individuals between insureds (the insured) of the same class, in the amount of the payment of premiums or rates charged for policies of insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes. Nor shall any such company, or agent thereof, make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon; nor shall any such company, or any officer or agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly, as inducement to insurance, any rebate or premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind, any valuable consideration or inducement whatever not specified in the policy contract of insurance; nor give, sell or purchase, or offer to give, sell or purchase, as inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatever not specified in the policy.

Civ. '12, § 2730; 1908, XXV, 1110; 1920, XXXI, 1103.

(4109) § 56. Making Loans on Real Estate Mortgages Not Unlawful.—That it shall not be considered in violation of Section 55 of this Article and the Criminal Laws of South Carolina to offer to make or the making of loans to citizens of this State to be secured by mortgage of real estate or other collateral security.

1915, XXIX, 176.

(4110) § 57. Certain Inducements Which Must Not Be Offered—Penalty.—No insurance company shall issue in this State, nor permit its agents, officers or employees to issue in this State, agency company stock, or other stock or securities, or any special or advisory board or other contract of any kind; promising returns and profits, as an inducement to insurance; and on and after March 15, 1908, no insurance company shall be authorized to do business in this State which issues, or permits its agents, officers or employees to issue, in the State of South Carolina, or any other State or Territory, agency company stock, or other stock or securities, or any special or advisory board or other contract of any kind, promising returns and profits as an inducement to insurance; and no corporation or stock company, acting as agent of an insurance company, nor any of its agents, officers or employees, shall be permitted to agree, sell, offer to sell or give, or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds or agreement of any form or nature, promising returns and profits as an inducement to insurance or in connection therewith: *Provided*, That nothing herein contained shall impair or affect in any

manner any such contracts issued or made as an inducement prior to the enactment thereof, or prevent the payment of the dividends or returns therein stipulated to be paid. It shall be the duty of the Insurance Commissioner, upon being satisfied that any such insurance company, or any agent thereof, has violated any of the provisions of this Section, to revoke the certificate of authority of the company or agent so offending; and that nothing herein contained shall apply to marine insurance companies, or agents of such companies, when such agents write only marine insurance.

Civ. '12, § 2731; 1908, XXV, 1110; 1920, XXXI, 1103.

(4111) § 58. Suit Against Insurance Companies in County Where Loss Occurs—Changing Place of Trial.—All suits brought against any and all fire, life, or other insurance companies doing business in this State, may be brought in the county where the loss occurs: *Provided, however,* That nothing herein contained shall be so construed as to prevent the Court from changing the place of trial for any of the causes provided for in the Code of Civil Procedure.

Civ. '12, § 2732; 1906, XXV, 111.

(4112) § 59. Examinations to Be Made.—It shall be the duty of said Insurance Commissioner to examine, or cause examinations to be made, either personally or by his deputy, into the cause, circumstances and origin of all fires occurring within the State, to which his attention has been called, by which property is accidentally or unlawfully burned, destroyed or damaged, whenever in his judgment the evidence warrants, and he shall specially examine and decide whether the fire was the result of carelessness or the act of an incendiary. The said Insurance Commissioner or his deputy shall, when in his opinion said proceedings are necessary, take or cause to be taken the testimony, on oath, of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter as to which an examination is herein required to be made, and shall cause the same to be reduced to writing, and if he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, he shall cause such person to be arrested and charged with such offense, and shall furnish to the Solicitor of the district all such evidence, together with the names of witnesses and all the information obtained by him, including a copy of all pertinent and material testimony in the case.

Civ. '12, § 2733; 1904, XXIV, 472.

(4113) § 60. Insurance Commissioner Has Powers of Magistrate.—The Insurance Commissioner, or his deputy appointed to conduct such examination, shall have the power of a Magistrate for the purpose of summoning and compelling the attendance of witnesses to testify in relation to any matter which is by the provisions of this Article a subject of inquiry and investigation. Said Insurance Commissioner or deputy may also administer oaths and affirmations to persons appearing as witnesses before them; and false swearing in any matter of proceeding aforesaid shall be deemed perjury, and shall be punished as such. Said Insurance Commissioner or deputy shall have authority at all times in performance of the duties imposed by the provisions of this Article to enter upon and examine buildings or premises where any fire has occurred, and other buildings and prem-

ises adjoining or near the same, in all investigations to be held by or under the direction of the Insurance Commissioner or his deputy.

Civ. '12, § 2734; 1904, XXIV, 472.

(4114) § 61. Insurance Commissioner Has Power to Enter Premises.—The Insurance Commissioner or his deputy, or the Chief of Fire Department or Chief of Police or Intendant (where there is no Chief of Fire Department), or County Sheriff, shall have the right, at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises within their jurisdiction, and whenever any of said officers shall find in any building or upon any premises combustible material or conditions dangerous to the safety of such building or premises they shall order the same to be removed, or remedied, and such order shall be forthwith complied with by the owner or occupant of said building or premises: *Provided, however,* That if the said owner or occupant shall deem himself aggrieved by such order, he may, within twenty-four hours, appeal to the Insurance Commissioner, and the cause of the complaint shall be at once investigated by the direction of the latter, and unless by his authority the order of the Fire Chief or Chief of Police above named is revoked, such order shall remain in force, and be forthwith complied with by said owner or occupant. The Insurance Commissioner or his deputy, Fire Chief or Chief of Police or County Sheriff shall, as aforesaid, make an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building, or upon any premises under their jurisdiction, upon complaint of any person having an interest in said building or premises or property adjacent thereto.

Civ. '12, § 2735; 1904, XXIV, 472.

(4115) § 62. Expenses to Be Paid by Insurance Companies.—Any expenses, including counsel, expenses of deputy, detectives and officers, incurred by the Insurance Commissioner or his deputy in the performance of the duties imposed upon him in the investigation into the causes of fires, the inspection of buildings and premises, the investigation of charges of discrimination of rates, shall be defrayed by the fire insurance companies doing business in this State, and a tax of one-tenth of one per cent. on the gross premium receipts of all fire insurance companies is hereby levied for this purpose, to be collected by said Insurance Commissioner as other taxes on fire insurance companies are collected. The Insurance Commissioner shall keep a separate account of all moneys received and disbursed under the provisions of this Section, and shall include same in his annual report.

Civ. '12, § 2736; 1904, XXIV, 472.

(4116) § 63. Report of Commissioner.—The Insurance Commissioner shall submit annually, as early as consistent with full and accurate preparations, and not later than the first of December, a detailed report of his special action under Sections 61 and 62 of this Article, and it shall be embodied in his annual report to the Legislature.

Civ. '12, § 2737; 1904, XXIV, 472.

(4117) § 64. Insurance Commissioner May Inquire as to Fire Insurance Rates and Require Filing of Schedules, Etc. — Proviso. — That the

Insurance Commissioner may address inquiries to any individual, association, or bureau which is or has been engaged in making rates or estimates for rates, for fire insurance upon property in this State, in relation to the organization, maintenance or operation, or any other matter connected with its transactions; and may require the filing of schedules, rates, forms, rules, regulations, and such other information as may be required; and it shall be the duty of every such individual, association, or bureau, or some officer thereof, to promptly make such filing or reply to such inquiries in writing: *Provided, however,* Surveys and completed schedules may be required only upon specific complaint being registered with the Insurance Commissioner on specified risks.

1916, XXIX, 673; 1917, XXX, 353.

(4118) § 65. Commissioner May Examine Rating Bureau—Report—Waiver of Examination.—The Insurance Commissioner shall have power to examine any such rating bureau as often as he deems it expedient to do so, and shall do so not less than once every three years. A report thereof shall be filed in his office. The Insurance Commissioner may waive such examination upon the filing with him of a report of such examination made by some other insurance department or proper supervising officers within such three years. A statement with regard to such examination shall be made in the annual report of the Insurance Commissioner.

1916, XXIX, 673; 1917, XXX, 353.

(4119) § 66. No Insurer to Fix Discriminatory Rates—Proviso.—No fire insurance company or other insurer against the risks of fire or lightning, nor any rating bureau, shall fix or charge any rate for fire insurance upon property in this State which discriminates unfairly between risks in the application of like charges and credits, or which discriminates unfairly between risks of essentially the same hazards, territorial classification, and having substantially the same degree of protection against fire: *Provided, however,* That upon the filing with the Insurance Commissioner and bureau of an affidavit setting forth the facts as to the completion he (the Insurance Commissioner) shall grant permission to any licensed or authorized company to make a rate competing with any nonlicensed or unauthorized company on that specific risk.

Civ. '12, § 2738; 1904, XXIV, 472; 1916, XXIX, 673; 1917, XXX, 353.

(4120) § 67. Insurer to Inform Commissioner in Advance of Variation—Uniform Variations Permitted.—Every such company or other insurer shall ten days in advance of any variation by it from the bureau rate file with the Insurance Commissioner and bureau the variation from the bureau rate which shall be uniform throughout the territorial classification, and every company or insurer shall be permitted to make uniform variations from the bureau rate.

1916, XXIX, 673; 1917, XXX, 353.

(4121) § 68. Insurer Cannot Contract for Writing of Insurance by Any Particular Company, Etc.—No insurance company or other insurer or rating bureau shall make any contract or agreement with any other person insured or to be insured that the whole or any part of any insurance

shall be written or placed with any particular company, insurer, agent, or any group of companies, insurers or agents.

1916, XXIX, 673; 1917, XXX, 353.

(4122) § 69. Fire Insurers May Maintain Rating Bureau.—Every fire insurance company or other insurer authorized to effect insurance against the risk of loss or damage by fire or lightning, covering property in this State, may individually or in cooperation with other companies maintain or be members of a rating bureau.

1916, XXIX, 673; 1917, XXX, 353.

(4123) § 70. Of What Rating Bureau to Consist—To Admit Any Fire Insurer to Membership—Expenses—Annual Fee.—A rating bureau may consist of one or more insurers, and when consisting of two or more insurers shall admit to membership any fire insurer authorized to do business within this State applying therefor. The expenses of the bureau shall be shared in proportion to the gross premiums received in this State by each member during the current year; to which may be added a reasonable annual fee, which shall not exceed twenty-five (\$25.00) dollars.

1916, XXIX, 673; 1917, XXX, 353.

(4124) § 71. Insurer in Application for License to Specify to What Bureau It Belongs.—Every fire insurance company, or other insurer aforesaid, shall in its annual application for license specify each rating bureau making rates upon property located within this State of which it is a member; and during the year file written notice of any other rating bureaus of which it shall become a member.

1916, XXIX, 673; 1917, XXX, 353.

(4125) § 72. Risks to Be Inspected—Written Survey to Be Filed—Proviso.—Every rating bureau or other insurer engaged in making rates, or estimates for rates, for fire insurance on property in this State shall inspect every risk specifically rated by it upon schedule, and make a written survey of such risk, which shall be filed as a permanent record in the office of such bureau or insurer. A copy of such survey shall be furnished to the owner or his authorized agent upon request: *Provided*, That a written survey furnished by a rating special agent shall be deemed a sufficient compliance with this Section.

1916, XXIX, 673; 1917, XXX, 353.

(4126) § 73. No Rate Agreements Except as Herein Provided.—No fire insurance company or any other insurer, and no rating bureau, or any representative of any fire insurance company or other insurer or rating bureau, shall enter into or act upon any agreement with regard to the making, fixing or collecting of any rate for fire insurance upon property within this State except in compliance with this Article.

1916, XXIX, 673; 1917, XXX, 353.

(4127) § 74. How Agreement to Be Made.—Any such agreement may be made and enforced, provided the same be in writing, and prior to its taking effect a copy thereof be filed with the Insurance Commissioner and with

each rating bureau of which any of the parties thereto shall be a member or subscriber.

1916, XXIX, 673; 1917, XXX, 353.

(4128) § 75. Commissioner May Disapprove Agreement—Effect of Disapproval—Service—Review by Court.—The Insurance Commissioner may, after due notice and hearing, upon complaint or upon his own motion, make an order disapproving any such agreement or any part of such agreement. No such agreement shall be in force, nor shall any rights be based thereon, after service of a copy of such order upon each of the parties to such agreement and upon each bureau with which such agreement is required to be filed. Service may be made by mail, and shall be completed upon the expiration of a reasonable time for transmission fixed in such order. The action of the Insurance Commissioner in making or refusing to make any such order shall be subject to summary review before a Court of competent jurisdiction of this State.

1916, XXIX, 673; 1917, XXX, 353.

(4129) § 76. To What Companies Article Does Not Apply—Property Exempted.—The terms of this Article shall not apply to mutual fire insurance companies chartered under the laws of this State and operating on the assessment plan, nor to property protected in whole or in part by automatic sprinklers and insured in connection with any inspection service, nor to rolling stock of railroad corporations, or property in transit while in the possession of railroad companies or other common carriers, nor to the property of such common carriers used or employed by them in their business of carrying freight, merchandise or passengers.

1916, XXIX, 673; 1917, XXX, 353.

(4130) § 77. Commissioner May Refer Rate to Commission to Determine Whether Discriminatory—Procedure If Discriminatory—Refund of Overcharge—Procedure Where Rates Deemed Excessive.—The Insurance Commissioner, upon his own motion, or upon written complaint, shall have the power in the first instance to determine whether or not any rate fixed by any individual, bureau or insurer is discriminatory. If he shall conclude, after careful and diligent inquiry, and a full hearing and investigation, that there is discrimination, he shall order the discrimination removed and require the individual ratemaker, bureau or insurer to promulgate a rate which is not discriminatory. His ruling in this behalf may be reviewed by the Commission upon application in writing of any person or corporation aggrieved thereby. If, at any time, it shall appear to the Insurance Commissioner that rates charged for fire insurance in this State are excessive, or unreasonable, in that the results of the business of stock fire insurance companies in this State during the five years next preceding the year in which the investigation is made, as indicated by the official annual statements of the insurance companies made under oath to the Insurance Commissioner, show an aggregate underwriting profit in excess of a reasonable amount, then the said Commissioner shall have the power to order a general reduction in rates, which will reduce the underwriting profit to a reasonable amount. Any reduction ordered by said Commissioner shall be

applied to such class or classes of risks as the companies or rating bureau or bureaus may elect, and they shall not be compelled to reduce rates on classes which have not produced a reasonable underwriting profit for the five-year period. His ruling in this behalf may be reviewed by the Commission upon application in writing of any person or corporation aggrieved. In determining the question of a reasonable underwriting profit under this Section the Commission, as a protection to policyholders, shall give proper and reasonable consideration to conflagration liabilities, both within and without this State. Any action of the said Commission shall be subject to summary review before a Court of competent jurisdiction, without prejudice to either party involved.

1917, XXX, 353; 1920, XXXI, 820.

(4131) § 78. Insurance Commission—How Composed—Terms—Duties—Compensation—Organization—Meetings.—The Governor shall appoint three (3) citizens of this State to be known as the South Carolina Insurance Commission. One of the members of said Commission to be recommended by the Insurance Commissioner and one to be recommended by the rating bureau having the largest membership among the companies authorized to transact business in this State at the time the appointment is made. The members first appointed shall serve for terms of one, two and three years, respectively. Their successors shall be appointed in the same manner as the original appointees and shall serve for terms of three years each, so that one member shall be appointed each year for a term of three years. They shall be required to perform the services provided in this Act and shall be paid their actual expenses while performing the duties required under this Article, and a per diem of five (\$5.00) dollars per day, for not more than twenty (20) days in any calendar year, out of the annual department license fees, upon vouchers to which itemized statements shall be attached, rendered to the Comptroller General, who shall thereupon draw his warrant upon the State Treasurer, who shall pay the same out of the annual department license fees of the Insurance Department. A chairman and a secretary shall be designated by the Governor, each of whom shall serve as such during his term as a member of the Commission. The Commission shall meet at the call of the chairman, but shall not hold more than six meetings in any calendar year, except when called into extraordinary session by the Governor, who is authorized to call the Commission to meet whenever in his judgment the public good demands such meeting.

1916, XXIX, 673; 1917, XXX, 353.

(4132) § 79. Agreements With Agents and Companies to Confine Insurance to Members of Rating Bureau Forbidden.—No fire insurance company or other insurer and no rating bureau shall require any agent or make any agreement with such agent whereby the said agent shall not write insurance in any company not a member of any rating bureau in this State, nor shall any company or companies enter into an agreement to refuse to write insurance through any agent or agents or broker who represents any companies not members of any rating bureaus now or hereafter to be established in the State.

1916, XXIX, 673; 1917, XXX, 353.

(4133) § 80. **Noncompliance With Article by Insurer to Effect Suspension or Revocation of License.**—Any company or insurer failing to comply with the terms of this Article shall have its license suspended or revoked by the Insurance Commissioner.

1916, XXIX, 673; 1917, XXX, 353.

ARTICLE II.

Foreign Fire Insurance Companies.

(4134) § 1. **Foreign Fire Insurance Companies Not to Do Business Except as Herein Prescribed.**—No foreign corporation carrying on a fire insurance business shall hereafter engage in, carry on or do any fire insurance business in this State save and except upon compliance with the conditions in this Article hereafter imposed, as well as all other conditions now or hereafter imposed by law.

Civ. '12, § 2740; 1910, XXVI, 776.

(4135) § 2. **Statement to Be Made to Insurance Commissioner.**—Every fire insurance company, corporation or association incorporated under the laws of any other State, or of any foreign government or country now or hereafter desiring to engage in or carry on business in this State, shall return to the Insurance Commissioner a just and true account, verified by oath that the same is a true account of all premiums received from fire insurance business done during the year ending December 31st in any incorporated city or town of this State having, or that may have, a regularly organized fire department under the control of the Mayor and Council or Intendant and Council of said city or town, and having in serviceable condition for fire duty fire apparatus and necessary equipments belonging thereto to the value of one thousand (\$1,000) dollars and upwards. Such returns must be made by said companies, corporations or associations within sixty days after the 31st day of December of each year.

Civ. '12, § 2741; 1910, XXVI, 776.

(4136) § 3. **Payments to Be Made to State Treasurer.**—Every fire insurance company aforesaid shall, within sixty days after the 31st day of December of each year, deliver and pay to the Insurance Commissioner the sum of \$1.00 upon the \$100, and at that rate upon the amount of all premiums written on fire insurance within the limits of such incorporated cities or towns during the year ending December 31st in each preceding year, or for such portion of such period as said company, corporation or association shall have done business in this State.

Civ. '12, § 2742; 1910, XXVI, 776.

(4137) § 4. **Books of Account to Be Kept.**—Every such company, corporation or association shall keep accurate books of account of all business done by them on fire insurance within the limits of such incorporated cities and towns, and in case fraud or dishonesty in said returns made by such company, corporation or association as provided for in Section 2 be appar-

ent, it shall be the duty of the Insurance Commissioner to investigate such returns and collect the amount he shall find to be due.

Civ. '12, § 2743; 1910, XXVI, 776.

(4138) § 5. Penalty for Failure to Keep Books.—Every foreign fire insurance company which shall neglect to keep such books of account as aforesaid, or shall fail or neglect to report or pay over any of the money due on premiums aforesaid, at the times and in the manner specified in this Article, or shall be found upon examination to have made a false return of business done by them, shall for each such offense forfeit \$300, to be applied to the same purposes hereinafter prescribed in Section 8.

Civ. '12, § 2744; 1910, XXVI, 776.

(4139) § 6. Insurance Commissioner May Revoke Licenses.—In case of making a default in payment or in case of failure to pay and satisfy any forfeiture adjudged to be due by the provisions of this Article, the Insurance Commissioner shall forthwith revoke the license of such company or corporation or association to do business in this State, and after such revocation it shall be unlawful for such company, corporation or association to do business in this State: *Provided*, That the Insurance Commissioner may, upon compliance by such company, corporation or association with the requirements of this Article, permit it to do business in this State.

Civ. '12, § 2745; 1910, XXVI, 776.

(4140) § 7. State Treasurer to Turn Over Proper Proportion to Cities and Towns.—The State Treasurer shall pay over the amount collected upon the premiums on business done in each city or town from the foreign insurance companies, corporations or associations doing business within the cities or towns having or that may hereafter have a regular organized fire department as aforesaid in Section 2 to the Treasurer of such city or town: *Provided*, That all money so collected from the foreign insurance companies, corporations or associations doing business within the said cities or towns shall be set apart and used by such cities and towns solely and entirely for the objects and purposes of this Article.

Civ. '12, § 2746; 1910, XXVI, 776.

(4141) § 8. Money to Be Held in Trust.—All money collected and received under the provisions of this Article by the Treasurer of any city or town shall be under the control, and shall be disbursed by, the Trustees of the Firemen's Insurance and Inspection Fund, under such rules and regulations as may be adopted by them: *Provided*, That no part of said fund shall be used except for the benefit of the Fire Department of said city or town of the members thereof. In each city and town complying with, and deriving benefits from, the provisions of this Article there shall be appointed a local Board of Trustees, to be known as the Trustees of the Firemen's Insurance and Inspection Fund, to be composed of three or five members, as the said respective cities or towns may hereafter determine. The said Board, if composed of three, shall consist of the Mayor, the Councilman in charge of the Fire Department, or the chairman of the Fire Committee, and the Chief of the Fire Department. The said Board of Trustees, when composed of five, shall be appointed as follows: That is to say, the

said Board of Trustees shall consist of the chairman of the Board of Fire Masters, or the chairman of the Fire Committee, of the said several respective cities or towns; the Chief of the Fire Department, the Treasurer of the said respective cities or towns, and two citizens, one to be appointed by the Mayor and one to be appointed by the Chief of the Fire Department, both to be confirmed by the City Council or Board of Aldermen. The term of office of the last two named members of the Board to be four (4) years, and they shall continue to serve until their successors are nominated and confirmed. All members of the said Board of Trustees shall serve without compensation, and the said Board shall elect from their number a chairman and secretary, who shall likewise serve without compensation, and the Treasurer of the city or town shall act as the treasurer of the said Board and be custodian of all funds.

For the purpose of supervision and inspection, and a guarantee that the provisions of this Article shall be administered as hereinbefore set forth, every fire department enjoying the benefits of this Article shall be a member of the South Carolina State Firemen's Association, which association is hereby vested with full power and authority to supervise and inspect the operation of the ordinances hereinafter provided to be passed in each of the several towns and cities enjoying the benefits of this Article. For this purpose, and to defray the expenses thereof, the said Board of Trustees of the Firemen's Insurance and Inspection Fund shall pay over to the treasurer of the South Carolina State Firemen's Association the sum of five (5%) per cent. of the gross proceeds received annually by each city or town from the one (1%) per cent. tax on fire insurance previously collected in said city or town. The said sum to be expended for the sole purpose of the betterment and maintenance of skillful and efficient fire departments in the said several respective cities and towns complying with the provisions of this Article. Every city and town enjoying the benefits of this Article shall, within two (2) years from the date of the approval of the original Act, pass suitable ordinances, to be approved by the Insurance Commissioner of the State of South Carolina, providing a building and inspection code for the proper erection and inspection of all buildings in the said respective towns or cities, so as to eliminate, as far as may be, the danger of fires arising from defective construction or the presence and existence of inflammable and combustible material and conditions.

Civ. '12, § 2747; 1910, XXVI, 776; 1914, XXVIII, 503.

(4142) § 9. Certificate to Be Filed by Cities Accepting Provisions of Article.—The Clerk of any incorporated city or town accepting the benefits of this Article by ordinance as required herein shall, on or before the 31st day of October of each year, make and file with the Insurance Commissioner his certificate stating the existence of such department, the number of steam, hand or other engines, hook and ladder trucks and hose carts in actual use, the number of organized companies, and the system of water supply in use for such department, together with such other facts as the Insurance Commissioner may require, on a blank to be furnished by him. If the certificate required by this Section is not filed with the Insurance Commissioner on or before October 31st in any year, the town or vil-

lage so failing to file such certificate shall be deemed to have waived and relinquished its rights for such year to the appropriation provided for.

Civ. '12, § 2748; 1910, XXVI, 776.

ARTICLE III.

Fraternal Benefit Associations.

(4143) § 1. **Fraternal Benefit Associations Defined.**—Any corporation, society, order or voluntary association without a capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, by a lodge system with ritualistic form of work and a representative form of government, and which may make provision for the payment of benefits, in accordance with Section 5 hereof, is hereby declared to be a fraternal benefit association.

Civ. '12, § 2749; 1910, XXVI, 554.

(4144) § 2. **What Organizations Deemed Operating Under Lodge System.**—Any association having a supreme governing or legislative body, and subordinate lodges or branches, by whatever name known, into which members of one race only shall be elected and initiated in accordance with its constitution, rules, regulations and prescribed ritualistic ceremonies, which supreme or governing body shall meet at least every fourth year, and the subordinate lodges or branches shall be required by the laws of such association to hold regular or stated meetings at least once each month, shall be deemed to be operating on the lodge system. Any such association shall be deemed to have a representative form of government when it shall require in its constitution and laws that there be a supreme legislative or governing body composed of representatives elected either by the members or delegates elected directly or indirectly by the members, together with such members as may be prescribed by its constitution and laws: *Provided*, That the elective members shall constitute a majority in number, and have not less than a majority of the votes nor less than the votes required to amend its constitution and laws: *Provided, further*, That provision shall be made for the election of at least one representative to the supreme governing body from the membership in this State.

Civ. '12, § 2750; 1910, XXVI, 554.

(4145) § 3. **Mode of Incorporation.**—Seven or more persons, citizens of the United States, and a majority of whom are citizens of this State, who desire to form a fraternal benefit association as defined by this Article, may make and sign (giving their address), and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated: (1) The proposed corporate name of the association, which shall not so closely resemble the name of any association or insurance company already transacting business in this State as to mislead the public or to lead to confusion. (2) The purpose for which it is formed, which shall not include more liberal powers than are granted by this Article: *Provided*, That any lawful social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of

the society, and the mode in which its corporate powers are to be exercised. (3) The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the association for the first year or until the ensuing election, at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate. Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such association, and a bond in the sum of five thousand dollars, with sureties approved by the Insurance Commissioner, conditioned upon the return of the advance payments, as provided in this Section, to applicants, if the organization is not completed within one year, shall be filed with the Insurance Commissioner, who may require such further information as he deems necessary, and if the purposes of the association conform to the requirements of this Article, and all provisions of law have been complied with, the Insurance Commissioner shall so certify and retain and record (or file) the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said association to solicit members as hereinafter provided. Upon receipt of said certificate from the Insurance Commissioner said association may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. But no such association shall incur any liability other than for such advanced payments, not issue any benefit certificate, nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual *bona fide* applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such association; nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated; nor until there has been submitted to the Insurance Commissioner, under oath of the president and secretary, or corresponding officers of such association, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation contracted when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress August 23, 1899, or any higher standard at the option of the association, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent. per annum; nor

until it shall be shown to the Insurance Commissioner by the sworn statement of the treasurer or corresponding officer of such society that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars; all of which shall be credited to the mortuary or disability fund on account of such applicants, and no part of which may be used for expenses. Said advanced payments shall, during the period of organization, be held in trust, and, if the organization is not completed within one year as hereinafter provided, returned to said applicants. The Insurance Commissioner may make such examination and require such further information as he deems advisable, and upon presentation of satisfactory evidence that the association has complied with all the provisions of law, he shall issue to each association a certificate to that effect. Such certificate shall be *prima facie* evidence of the existence of such association at the date of such certificate. The Insurance Commissioner shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate. No preliminary certificate granted under the provisions of this Section shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the Insurance Commissioner, upon cause shown; unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided; and the article of incorporation and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commercial business as herein provided. When any domestic association shall have discounted business for the period of one year, or has less than four hundred members, its charter shall become null and void. Every such association shall have the power to make a constitution and by-laws for the government of the association, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to or amend such constitution and by-laws and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the association.

Civ. '12, § 2758; 1910, XXVI, 554; 1919, XXXI, 171.

(4146) 4. Existing Associations.—Any association now engaged in transacting business in this State may exercise, after the passage of this Article, all of the rights conferred thereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this Article, if incorporated; or, if it be a voluntary association, it may incorporate hereunder. But no association already organized shall be required to reincorporate thereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its constitution and laws, and all such amendments shall be filed with the Insurance Commissioner and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, constitution or laws.

1919, XXXI, 171.

(4147) § 5. **Powers of Such Associations.**—Every association transacting business under this Article may provide for the payment of natural or accidental death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease or accident. Such association shall have the power to grant surrender values, not to exceed the net value of the certificates, less any surrender charges specified by the laws of the association, and may provide for the placing of and payment for monuments to the memory of its deceased members. And each such association shall keep a separate fund for expenses, and no part of any other fund shall be used for expenses or in collecting, disbursing or investing the reserve or disability funds, but all such expenses shall be paid out of the expense fund of such association.

Civ. '12, § 2751; 1910, XXVI, 554.

(4148) § 6. **Benefits Payable by Fraternal Benefit Associations—Premium Loans—Paid-Up Insurance.**—Every association transacting business under this Article shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age: *Provided*, The period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years, and may provide for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits. Such association shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificate as the laws of the association may provide: *Provided*, That nothing in this Article contained shall be so construed as to prevent the issuing of benefit certificates for the term of years less than the whole of life which are payable upon the death or disability of the member occurring within the term for which the benefit certificate may be issued. Such association shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate with interest payable or compounded annually at a rate not lower than four per cent. per annum: *Provided*, That this privilege shall not be granted except to associations which have readjusted or may hereafter readjust their rates of contributions to an adequate basis, based on a standard mortuary table, and to contracts affected by such readjustments. Any association which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve not lower than the usual reserve computed by the American Experience Table and four per cent. interest may grant to its members on extended and paid-up protection, or such withdrawal equities as its constitution and laws may provide: *Provided*, That such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made.

1919, XXXI, 171.

(4149) § 7. **Separation of Funds—Basis of Valuation.**—Any association may create, maintain, invest, disburse and apply an emergency, sur-

plus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the association, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof except as provided in Section 6 of this Article. The funds from which benefits shall be paid and the funds from which the expenses of the association shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds: *Provided*, That no association shall hereafter be incorporated which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress August 23, 1899, or any higher standard with interest assumption not more than four per cent. per annum, nor shall any such association be admitted to transact business in this State which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted when valued upon one of the bases named in Section 31 of this Article and applicable thereunder to such association. No association, domestic or foreign, shall hereafter be incorporated or admitted to write or accept members for permanent disability benefits except upon tables based upon reliable experience with an interest assumption not higher than four per cent.

1919, XXXI, 171.

(4150) § 8. Reserve to Meet Liabilities.—Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the association for valuation, and every association shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

1919, XXXI, 171.

(4151) § 9. To Whom Death Benefits May Be Paid.—The payment of death benefits shall be confined to wife, husband, relative by blood to the the fourth degree, ascending or descending, stepfather, stepmother, stepchildren, children by legal adoption, or to a person or persons dependent upon the member: *Provided*, That if, after the issuance of the original certificate the member shall become dependent upon the charity of an individual or of an institution, he shall have the privilege, with the consent of the association, to make such individual or institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and from time to time have the same changed in accordance with the laws, rules or regulations of the association, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of said member: *Provided*,

That any association may, by its laws, limit the scope of beneficiaries within the above classes.

Civ. '12, § 2752; 1910, XXVI, 554.

Hunter v. Hunter, 100 S. C. 517, 84 S. E. 180; *Gregory v. Sovereign Camp of Woodmen of the World*; *Thompson v. Same*, 104 S. C. 471, 89 S. E. 391.

(4152) § 10. Fraternal Benefit Societies May Insure Children Dependent on Members.—Any fraternal benefit society authorized to do business in this State and operating on the lodge plan may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of two and eighteen years at next birthday for whose support and maintenance a member of such society is responsible. Any such society may at its option organize and operate branches for such children, and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively, as follows: Two, thirty-four dollars; three, forty dollars; four, forty-eight dollars; five, fifty-eight dollars; six, one hundred and forty dollars; seven, one hundred and sixty-eight dollars; eight, two hundred dollars; nine, two hundred and forty dollars; ten, three hundred dollars; eleven, three hundred and eighty dollars; twelve, four hundred and sixty dollars; thirteen to fifteen, five hundred and twenty dollars, and sixteen to eighteen years, where not otherwise authorized by law, six hundred dollars, 1919, XXXI, 124.

(4153) § 11. Conditions of Insurance.—No benefit certificate as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner in accordance with the laws of the society, nor shall any such benefit certificate be issued unless the society shall simultaneously put in force at least five hundred such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by such certificate fall below five hundred. The death benefit contributions to be made upon such certificate, shall be based upon the "Standard Industrial Mortality Table" or the "English Life Table Number Six," at a rate of interest not greater than four per cent. per annum, or upon a higher standard: *Provided*, That contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws: *And provided, further*, That extra contributions shall be made if the reserves hereafter provided for become impaired.

1919, XXXI, 124.

(4154) § 12. Reserve.—Any society entering into such insurance agreement shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions, as provided in Section 11, and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obliga-

tions of the society other than the benefits herein authorized: *Provided*, That a society may provide that when a child reaches the minimum age for initiation into membership in such society any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the society: *Provided*, That such surrender will not reduce the number of lives insured in the branch below five hundred, and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. Neither the person who originally made application for benefits on account of such child nor the beneficiary named in such original certificate, nor the person who paid the contributions, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership.

1919, XXXI, 124.

(4155) § 13. Reports — Separation of Assets.—An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the Insurance Commissioner by any society availing itself of the provisions hereof. The separation of assets, funds and liabilities required hereby shall not be terminated, rescinded or modified, nor shall the funds be diverted for any use other than as specified in Section 12, as long as any certificates issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger or other change in the condition of the status of the society.

1919, XXXI, 124.

(4156) § 14. Payments for Expense Fund.—Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide.

1919, XXXI, 124.

(4157) § 15. Continuance of Insurance of Child.—In the event of the termination of membership in the society by the person responsible for the support of any child on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child, provided the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child who shall assume the payment of the required contributions.

1919, XXXI, 124.

(4158) § 16. Who May Be Admitted to Membership—Medical Examinations.—An association may admit to beneficial membership any person not less than sixteen nor more than sixty years of age, who has been examined by a competent physician, and whose examination has been supervised and approved as provided by the laws of the association: *Provided*, That when a death benefit is less than one hundred dollars a medical inspection only may be required: *And provided, further*, That any association

which does not promise natural death benefits shall not be required to make any such examination, and any beneficiary member of such association who shall apply for a certificate providing for disability benefits, need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such association from accepting general or social members.

Civ. '12, § 2753; 1910, XXVI, 554.

(4159) § 17. What Shall Be Specified in Certificates.—Every certificate issued by any such association shall specify the maximum amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of the association, the constitution and laws of the association and the application for membership and medical examination, signed by the applicant, shall constitute the agreement between the association and the member: *Provided*, That any changes, additions or amendments to said charter or articles of association, the constitution and laws, duly made or enacted subsequent to the issuance of the benefit certificate shall bind the member and his beneficiaries and shall govern and control the contract in all respects the same as though such changes, additions or amendments had been made prior thereto and were in force at the time of the application for membership.

Civ. '12, § 2754; 1910, XXVI, 554.

(4160) § 18. Subordinate Bodies to Have No Power to Waive Provisions of Laws of Association.—No subordinate body or any of its officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the association, and the same shall be binding upon the association, and each and every member thereof and their beneficiaries.

Civ. '12, § 2755; 1910, XXVI, 554.

Vant v. Grand Lodge, Knights of Pythias, of South Carolina, 102 S. C. 413, 86 S. E. 677; *Crumley et al v. Sovereign Camp of Woodmen of the World*, 102 S. C. 386, 86 S. E. 954; *Sternheimer v. Order of United Commercial Travelers of America*, 107 S. C. 291, 93 S. E. 8; *Dillingham et al v. National Council, Junior Order of United American Mechanics*, 113 S. C. 430, 102 S. E. 721.

(4161) § 19. Investment of Funds.—Any domestic association may invest its funds in accordance with the status regulating investments of life insurance companies.

Civ. '12, § 2756; 1910, XXVI, 554.

(4162) § 20. Division of Payments.—Every provision for payment by members of such an association, in whatever form made, shall distinctly state the purpose of the same, and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes, and no part of the reserve, emergency or surplus funds or the net accretions of either or of any of said funds shall be used for expenses.

Civ. '12, § 2757; 1910, XXVI, 554.

(4163) § 21. Merger, Etc., of Fraternal Benefit Societies.—No fraternal benefit society organized under the laws of this State to do the business of life, accident or health insurance shall consolidate or merge with any other fraternal benefit society, or reinsure its insurance risks, or any part

thereof, with any other fraternal benefit society, or assume or reinsure the whole or any portion of the risks of any other fraternal benefit society, except as herein provided. No fraternal benefit society or subordinate body thereof shall merge, consolidate with or be reinsured by any company or association not licensed to transact business as a fraternal beneficiary society.

Civ. '12, § 2759; 1910, XXVI, 554; 1919, XXXI, 83, 176.

(4164) § 22. Proposed Contract for Merger, Etc., to Be Submitted to Insurance Commissioner.—When any such fraternal benefit society shall propose to consolidate or merge its business or to enter into any contract of reinsurance, or to assume or reinsure the whole or any portion of the risks of any other fraternal benefit society, the proposed contract, in writing, setting forth the terms and conditions of such proposed consolidation, merger or reinsurance shall be submitted to the legislative or governing bodies of each of said parties to said contract after due notice, and if approved, such contract, as so approved, shall be submitted to the Commissioner of Insurance of this State for his approval, and the parties to said contract shall at the same time submit a sworn statement showing the financial condition of each of such fraternal benefit societies as of the 31st day of December preceding the date of such contract, provided that such Insurance Commissioner may within his discretion require such financial statement to be submitted as of the last day of the month preceding the date of such contract. The Commissioner of Insurance shall thereupon consider such contract of consolidation, merger or reinsurance, and if satisfied that the interests of the certificate holders of such fraternal societies are properly protected, and that such contract is just and equitable to the members of each of such societies, and that no reasonable objection exists thereto, shall approve said contract as submitted. In case the parties corporate to such contract shall have been incorporated in separate States or Territories, such contract shall be submitted as herein provided to the Commissioner of Insurance of each of such incorporating States or Territories, to be considered and approved separately by each of such Commissioners of Insurance. When said contract or consolidation, merger or reinsurance shall have been approved as hereinabove provided, such Commissioner or Commissioners of Insurance shall issue a certificate to that effect, and thereupon the said contract of consolidation, merger or reinsurance shall be in full force and effect. In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by the Commissioner of Insurance.

1919, XXXI, 83.

(4165) § 23. Expenses of Merger, Etc.—All necessary and actual expenses and compensation incident to the proceedings provided hereby shall be paid as provided by such contract of consolidation, merger or reinsurance: *Provided, however,* That no brokerage or commission shall be included in such expenses and compensation or shall be paid to any person by either of the parties to any such contract in connection with the negotiation therefor or execution thereof, nor shall any compensation be paid to an officer or employee of either of the parties to such contract for directly

or indirectly aiding in effecting such contract or consolidation, merger or reinsurance. An itemized statement of all such expenses shall be filed with the Insurance Commissioner or Commissioners, as the case may be, subject to approval, and when approved the same shall be binding on the parties thereto. Except as fully expressed in the contract of consolidation, merger or reinsurance, or itemized statement of expenses, as approved by the Commissioner or Commissioners of Insurance, as the case may be, no compensation shall be paid to any person or persons, and no officer or employee of the State shall receive any compensation, directly or indirectly, for in any manner aiding, promoting or assisting any such consolidation, merger or reinsurance.

1919, XXXI, 83.

(4166) § 24. Penalty.—Any person violating the provisions of Sections 21 to 23 inclusive, or either, shall be guilty of a felony, and, upon conviction, shall be liable to a fine of not more than five thousand dollars, or to imprisonment for not more than five years, or to both fine and imprisonment.

1919, XXXI, 83.

(4167) § 25. Associations Now Licensed to Do Business in This State.—Associations which are now authorized to transact business in this State may continue such business until the first day of April, 1919, and the authority of such associations may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding April: *Provided, however,* The license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the association shall pay the Insurance Commissioner twenty-five dollars. A duly certified copy or duplicate of such license shall be *prima facie* evidence that the license is a fraternal benefit association within the meaning of this Article.

1919, XXXI, 171.

(4168) § 26. Foreign Associations to Be Licensed—Requirements for Admission—Insurance Commissioner's Reviewable Decision.—No foreign association shall transact any business in this State without a license from the Insurance Commissioner. On seeking admission to do business in this State, such association shall file with the Insurance Commissioner a duly certified copy of its charter or article of incorporation; a copy of its constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the said Insurance Commissioner as hereinafter provided; a statement under oath by its president and secretary or corresponding officers in the form herein prescribed, of its business for the preceding year; a certificate from the proper official in its home State, territory, district, province or country, that the association is legally organized, and that it is authorized to transact business therein; a copy of its application form, certificate of membership and of all circulars in use by it; and that it has the further qualifications required of domestic associations organized under this Article, and has its assets invested as required by the laws of the State, territory, district, province or country where it is

organized, and such other information as the Insurance Commissioner shall require. Each association shall pay to the said Insurance Commissioner an annual department license fee of twenty-five dollars. When the said Commissioner shall refuse to license any association, or revokes its license to do business in this State, he shall reduce his ruling, order or decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the association, and the action of the said Commissioner shall be reviewable by proper proceedings in any Court of competent jurisdiction within this State: *Provided, however,* That nothing contained in this or the preceding Section shall be taken or construed as preventing any such association from continuing in good faith all contracts made in this State during the time such association was legally authorized to transact business therein. No association not now licensed to do business in this State shall be admitted hereafter to do business in this State unless its methods and plans are in accord with the standards recognized as applying to fraternal associations, and the Insurance Commissioner shall be satisfied that reasonable provision has been made to fulfill its contracts; or that he is satisfied otherwise that such association should be granted a license.

Civ. '12, § 2760; 1910, XXVI, 554.

(4169) § 27. Associations Shall Appoint Insurance Commissioner Attorney for Purpose of Process.—Every association, whether domestic or foreign, hereafter applying for admission, shall, before being licensed, appoint in writing the Insurance Commissioner and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this State. Copies of such appointment, certified by the Insurance Commissioner, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate and shall be deemed sufficient service upon such association. When legal process against any such association is served upon said Insurance Commissioner, he shall forthwith forward by registered mail one of the duplicate copies prepaid and directed to its secretary or corresponding officer at the head office of the association.

Civ. '12, § 2761; 1910, XXVI, 554.

(4170) § 28. Meetings.—Any domestic association may provide that the meetings of its legislative or governing body may be held in any State, district, province or territory wherein such association has subordinate branches, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State; but its principal office shall be located in this State.

1919, XXXI, 171.

(4171) § 29. Benefits in Associations Not to Be Subject to Attachment Etc.—No money or other benefit, charity or relief or aid to be paid, pro-

vided or rendered by any such association, shall be liable to attachment, garnishment or other process, or be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or of any person who may have a right thereunder, either before or after payment.

Civ. '12, § 2762; 1910, XXVI, 554.

(4172) § 30. Amendments to Constitutions to Be Filed.—Every association transacting business under this Article shall file with the Insurance Commissioner a duly certified copy of all amendments of or additions to its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws and of additions or amendments thereto, certified by the secretary or corresponding officer of the association, shall be *prima facie* evidence of the legal adoption thereof.

Civ. '12, § 2763; 1910, XXVI, 554.

(4173) § 31. Reports—Valuations.—Every society transacting business in this State shall annually, on or before the first day of March, file with the Insurance Commissioner, in such form as he may require, a statement, under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for the year ending on that date, and also shall furnish such other information as the Insurance Commissioner may deem necessary to a proper exhibit of its business and plan of working. The Insurance Commissioner may at other times require any further statement he may deem necessary to be made relating to such society. In addition to the annual report herein required, each association shall annually report to the Insurance Commissioner a valuation of its certificates in force on December 31, last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses. Such report of valuation shall show, as contingent liabilities, the present mid-year value of the promised benefits provided in the constitution and laws of such association under certificates then subject to valuation; and, as contingent assets, the present mid-year value of the future net contributions provided in the constitution and laws as the same are in practice actually collected. At the option of any association, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation shall be certified by a competent accountant or actuary, or, at the request and the expense of the association, verified by the actuary of the department of insurance of the home State of the association, and shall be filed with the Insurance Commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard valuation for all certificates for disability benefits shall be the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress August 23, 1899, or, at the option of the association, in a higher table; or, at its option, it may use a table based upon the association's own

experience of at least twenty years and covering not less than one hundred thousand lives with interest assumption not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any association providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the association: *Provided*, That where a combined contribution table is used by an association for both death and permanent total disability benefits the valuation shall be according to tables of reliable experience, and in such case a separation of the funds shall not be required. The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the association, but each association shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities. A report of such valuation and explanation of the fact concerning the condition of the association thereby disclosed shall be printed and mailed to each beneficiary member of the association not later than June 1 of each year; or, in lieu thereof, such report of valuation and showing of the association's condition as thereby disclosed may be published in the association's official paper and the issue containing the same mailed to each beneficiary member of the association. The laws of such association shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws, additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum. If the valuation of the certificates, as hereinbefore provided, on December 31, 1918, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such association shall thereafter maintain said financial condition at each succeeding triennial valuation in respect of the degree of deficiency as shown in the valuation as of December 31, 1918. If at any succeeding triennial valuation such association does not show at least the same condition, the Insurance Commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the association has failed to maintain the condition required herein, the Insurance Commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such association, in accordance with the provisions of Section 32 of this Article, or in the case of a foreign association, its license may be cancelled in the manner provided in this Article. Any such association shown by any triennial valuation subsequent to December 31, 1918, not to have maintained the condition herein required shall, within two years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December 31, 1918, or thereafter, as to all new

members admitted, be subject, so far as stated rates of contributions are concerned, to the provisions of Section 3 of this Article, applicable in the organization of new association: *Provided*, That the net mortuary or beneficiary contributions and funds of such new members shall be kept separate and apart from the other funds of the association. If such required improvement is not shown by the succeeding triennial valuation, then the said new members may be placed in a separate class and their certificates valued as an independent association in respect of contributions and funds. In lieu of the requirements contained in this section any association accepting in its laws the provisions of this Section may value its certificates on a basis, herein designated "accumulation basis," by crediting each member with the net amount contributed for each year and with interest at approximately the net rate earned and by charging him with the share of the losses of each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this State and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member. Except as specifically provided in its articles or laws or contracts, no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit, including the contribution for the year, the contribution shall be increased to cover his share of the losses, and if the credit at the time any benefit becomes payable during the lifetime of the member, including any available funds, does not equal such benefit, the contributions to be made by him or on his behalf shall be increased by the difference. Any such excess share of losses chargeable to any member may be paid out of a fund or contributions especially created or required for such purpose. Any member may transfer to any plan adopted by the association with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the association. Certificates issued, rerated or readjusted on a basis providing for adequate rates with adequate reserves to mature such certificates upon assumptions for mortality and interest recognized by the law of this State shall be valued on such basis, herein designated the "tabular basis:" *Provided*, That if on the first valuation under this Section a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis. Whenever in any society having members upon the tabular basis and upon the accumulation basis the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve; or from increased contributions or by an increase in the number of assessments applied to the society as a whole or to classes of members as may be specified in its laws. Saving from a lower amount of death losses may be returned in like manner as may be specified in its laws. If the laws of the association so provide,

the assets representing the reserves of any separate class of members may be carried separately for such class as if in an independent society, and the required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the association. A table showing the rates paid by and the credits to individual members and each age and year of entry, and showing opposite each credit the tabular rates and the tabular reserve required, or at the option of the association the required reserve on a level rate equivalent to that be paid according to assumptions for mortality and interest recognized by the laws of this State and adopted by the association, and, in either case, including any benefit payable at a specified age or on account of old age disability shall be filed by the association with each annual report and also be furnished to each member before July 1 of each year. In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the date aforesaid for such member. No table or statement need be made or furnished when the reserves are maintained on the tabular basis. For this purpose, individual bookkeeping accounts for each member shall not be required and all calculations may be made by actuarial methods. Nothing herein contained shall prevent the maintenance of such surplus over and above the credits on the accumulation basis and the reserves on the tabular basis as the association may provide by or pursuant to its laws; nor be construed as giving the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the association.

Civ. '12, § 2764; 1910, XXVI, 554; 1919, XXXI, 171.

(4174) § 32. Examination of Records by the Insurance Commissioner.

—The Insurance Commissioner, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic association. He may employ assistance for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the association and may summon and qualify as witness under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the association. The expense of such examination shall be paid by the association examined upon statement furnished by the Insurance Commissioner, and the examination shall be made at least once in three years. Whenever after examination the Insurance Commissioner is satisfied that any domestic association has failed to comply with any provisions of this Article, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently, or whenever any domestic association, after the existence of one year or more, shall have a membership of less than 400 (or shall determine to discontinue business), the Insurance Commissioner may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in *quo warranto* in a Court of competent jurisdiction, and such Court shall thereupon notify the officers of such association of a hearing, and if it shall then appear that such association should be closed, said association shall be enjoined

from carrying on any further business, and some person shall be appointed receiver of such association, and shall proceed at once to take possession of the books, papers, moneys and other assets of the association, and shall forthwith, under the direction of the Court, proceed to close the affairs of the association and to distribute its funds to those entitled thereto. No such proceedings shall be commenced by the Attorney General against any such association until after notice has been duly served on the chief executive officers of the association and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings shall not be commenced.

Civ. '12, § 2765; 1910, XXVI, 554; 1919, XXXI, 171.

See Criminal Code.

(4175) § 33. Dissolution of Domestic Association Only Upon Application of Attorney General.—No application for injunction against, or proceedings for the dissolution of, or the appointment of a receiver for any such domestic association or branch thereof shall be entertained by any Court in this State unless the same is made by the Attorney General.

1919, XXXI, 171.

(4176) § 34. Associations to Have Reply to Findings of Insurance Commissioner Before They Are Made Public.—Pending, during or after an examination or investigation of any such association, either domestic or foreign, the Insurance Commissioner shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society, until a copy thereof shall have been served upon such association, at its home office, nor until such association shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

1919, XXXI, 171.

(4177) § 35. Powers of Insurance Commissioner as to Foreign Societies.—When the Insurance Commissioner, on investigation, is satisfied that any foreign society transacting business under this Article has exceeded its powers or has failed to comply with any provisions of this Article, or is conducting business fraudulently or is not carrying out its contracts in good faith, he shall notify the association of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If on the date named in said notice such objections have not been removed to the satisfaction of the said Insurance Commissioner, or the association does not present good and sufficient reasons why its authority to transact business in this State should not at that time be revoked, he may revoke the authority of the association to continue business in this State. All decisions and findings of the Insurance Commissioner made under the provisions of this Section may be reviewed by proper proceedings in any Court of competent jurisdiction, as provided in Section 26 of this Article.

1919, XXXI, 171.

(4178) § 36. **Article Not to Apply to Certain Associations.**—Nothing contained in this Article shall be construed to affect or apply to associations which limit their membership to any one hazardous occupation, nor to similar societies which do not issue insurance certificates, nor to an association of local lodges of an association now doing business in this State which provides death benefits not exceeding five hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts or reinsurance business on such plan in this State, nor to domestic associations which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year. The Insurance Commissioner may require from any association such information as will enable him to determine whether such society is exempt from the provisions of this Article. Any fraternal benefit association heretofore organized and incorporated and operating within the definition set forth in Sections 1 and 2 of this Article, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this Article, and shall have all the privileges and shall be subject to all the provisions and regulations of this Article, except that the provisions of this Article requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits, shall not apply to such society.

Civ. '12, § 2766; 1910, XXVI, 554; 1919, XXXI, 171.

(4179) § 37. **Funds of Licensed Associations Exempt from Taxation.**—Every fraternal benefit association organized or licensed under this Article is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every State, county, district, municipal and school tax, other than taxes on real estate and office equipment.

1919, XXXI, 171.

(4180) § 38. **False Statements Punishable—Penalty—Soliciting Members for Unlicensed Association—Penalty for Violation of Other Provisions of Article.**—Any person, officer, member or examining physician of any association authorized to do business under this Article who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any association transacting business under this Article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the Court, and any person who shall wilfully make a false statement of any material fact or thing in a sworn state-

ment as to the death or disability of a certificate holder in any such association for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or declaration under oath required or authorized by this Article, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this State in relation to the crime of perjury. Any person who shall solicit membership for, or in any manner assist in procuring membership in, any fraternal benefit association not licensed to do business in this State, or who shall solicit membership for, or in any manner assist in procuring membership in, any such association not authorized as herein provided to do business as herein defined in this State, shall be punished by a fine of not less than fifty nor more than two hundred dollars. Any association, or any officer, agent or employee thereof, neglecting or refusing to comply with, or violating any of the provisions of, this Article, the penalty for which neglect, refusal or violation is not specified in this Section, shall be fined not exceeding two hundred dollars upon conviction thereof.

1919, XXXI, 171.

(4181) § 39. No Personal Liability of Officers or Members.—Officers and members of the supreme, grand or any subordinate body of any such incorporated association shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such association; but the same shall be payable only out of the funds of such association and in the manner provided by its laws.

1919, XXXI, 171.

(4182) § 40. License Prima Facie Evidence.—The Insurance Commissioner, as of April 1 of each year, shall license such associations as comply with the provisions of this Article. A duly certified copy of such license shall be *prima facie* evidence in any Court or proceedings in this State that the license is a fraternal benefit association within the meaning of this Article.

Civ. '12, § 2767; 1910, XXVI, 781.

(4183) § 41. General Insurance Laws.—Fraternal benefit associations as defined in this Article, shall be governed by the provisions hereof, and the general insurance laws of this State in force or hereafter enacted shall not apply to such associations unless provision therefor has been made or shall be made

Civ. '12, § 2768; 1910, XXVI, 554.

Robertson v. Fraternal Union, 85 S. C. 221, 67 S. E. 247.

(4184) § 42. Organization of Subordinate Branches.—Before any person shall be authorized to organize a subordinate branch or solicit membership or insurance for any such association, the Insurance Commissioner shall be notified of the appointment of such person by the president or corresponding officer of such association. If proof satisfactory to the Insurance Commissioner that any representative of any such association in this State is an unfit person, or has been guilty of defrauding any person or persons by reason of being the representative of such association, he

shall notify the president or corresponding officer of such association who shall revoke the authority of such person to represent such association: *Provided*, That nothing in this Article shall be construed to prevent a member from soliciting applications for membership in his own lodge unless he shall do so for the purpose of gaining a livelihood.

Civ. '12, § 2769; 1910, XXVI, 554.

(4185) § 43. Who Are Agents of Fraternal, Etc., Associations.—When any fraternal insurance or beneficiary society, order or association of this or any other State, province, or territory, now or hereafter operating within this State, and having lodges, councils, chapters, branches or subordinate or branch offices duly established and organized in this State, and when under the laws, rules or regulations of such said society, order or association, members of the same are required to pay or customarily and with the knowledge and consent of such said society, order or association, do pay premiums, dues, assessments, fines, or other payments to any other member or person for the purpose of transmitting or delivering the same to the general office, or to any division, subordinate or branch office of such said society, order or association, then such said member or person by whatever name or title known and called, so collecting such premiums, dues, assessments, fines and other payments, shall be deemed and considered the agents of such said fraternal insurance, or beneficiary society, order or association.

Civ. '12, § 2770; 1910, XXVI, 781.

Crumley et al v. Sovereign Camp of Woodmen of the World, 102 S. C. 386, 86 S. E. 954; *Dillingham et al v. National Council, Junior Order of United American Mechanics*, 113 S. C. 430, 102 S. E. 721.

ARTICLE IV.

Mutual Protective Associations.

(4186) § 1. How Mutual Protective Associations May Be Formed.—Any number of persons of lawful age, citizens of this State, not less than ten (10) in number, may associate themselves together as a mutual protection association for the indemnifying of each other for loss on the assessment plan, and not for profit, for any one or more of the following purposes: (1) To insure the lives or health of its members against death or disability by accident or disease; (2) to insure the property of its members against loss or damage by fire, lightning or tempests on land or hazards incidental thereto or proceeding therefrom; (3) to insure the crops of its members against damage by hail or tempests on land; (4) to insure the live stock of its members against loss or damage by accident or disease.

Civ. '12, § 2771; 1910, XXVI, 548; 1917, XXX, 55.

Such associations can only insure property of members. *Jacobs v. Ins. Co.*, 52 S. C. 110, 29 S. E. 533; *Pearson v. Ins. Co.*, 61 S. C. 321, 39 S. E. 512.

Action against Mutual Insurance Company for breach of contract in refusing to make assessments. *Thompson v. Piedmont Mutual Insurance Co.*, 77 S. C. 486, 58 S. E. 341; *Batson & Walsh v. S. C. Mutual Insurance Co.*, 78 S. C. 309, 58 S. E. 936.

Liability of member for pro rata share of loss, assessment. *McTindall v. Piedmont Mutual Ins. Co.*, 81 S. C. 240, 62 S. E. 213.

(4187) § 2. Form of Petition for License.—Ten or more persons wishing to form themselves into a company for any one of the purposes stated in Section 1 shall file with the Secretary of State a written declaration and

petition, signed by themselves and setting forth: (1) The names and residences of the declarants; (2) the name of the proposed company, which shall be different from the name of any association previously chartered, and the name shall indicate for which the association is formed; (3) the principal place of business of the proposed company, and the purpose for which it is to be organized, which purpose shall be to enable its members, and all who may hereafter become members, to indemnify each other against the loss specified, and to enforce any contract which may be by them entered into, whereby they agree to be assessed equitably for the payment of losses of its members and the expenses of the company: *Provided*, That in case the by-laws or policy of insurance of the mutual company provides for the suspension of the policy for any cause and permits a policyholder to renew his insurance by paying such assessments as may have accrued during the suspension of his policy for nonpayment of previous assessments or other causes, that unless the member shall notify the company in writing and return his policy for cancellation, he shall be subject to such assessments during the period of suspension: *Provided, however*, That a company organized and doing business in one county, may cede to or reinsure a part of its insurance on risk or risks to any other company organized and doing business in any other county insuring the same class of risks. For the purpose of instituting an action against any such company processes may be served upon the Insurance Commissioner, who shall forthwith send the same to the defendant company: *Provided*, That no association shall accept any application for membership for life or health insurance until such applicant has been examined and approved by a reputable, regularly licensed physician, practicing in said county. Each county branch of a company shall have an interest in the accumulated funds of the company in proportion to its contributions thereto, and an account of the same shall be made when necessary. An annual license fee of ten (\$10) dollars for the home county, and one (\$1.00) dollar for each additional county shall be paid to the Insurance Commissioner as an insurance department license fee.

Civ. '12, § 2772; 1910, XXVI, 548; 1913, XXVIII, 54; 1917, XXX, 55; 1918, XXX, 784; 1920, XXXI, 848.

It is not essential that agent of mutual insurance company organized under § 1912, et seq., Code 1902, have in County established office maintained at expense of corporation, but Court of County has jurisdiction in which there is agent authorized to solicit applications for insurance and membership, to collect premiums, give receipts and collect information. *McGrath v. Piedmont Mut. Ins. Co.*, 74 S. C. 69, 54 S. E. 218.

(4188) § 3. Assignment of Policies.—When any policy of insurance is issued by any mutual insurance company or association organized under the laws of this State and such policy is assigned as collateral security for the payment of a debt, such company or association, by its president and secretary or other managing officers, may insert in such policy so assigned, or attach thereto as a rider thereon, a provision or provisions to be approved by the Insurance Commissioner, whereby any or all conditions of the policy which work a suspension or forfeiture, and especially the provision of the Statute which limits such corporation to insure only property of its members, may be waived in such case for the benefit of the assignee. In case any such company or association shall consent to such assignment of any policy or policies, or the proceeds thereof, it may never-

theless at any time thereafter, by its president and secretary, or such other officer as may be authorized by the board of directors, cancel such policy, upon giving the assignee not less than ten (10) days' notice in writing: *Provided, however,* A longer period may be agreed upon by the company or association and such assignee. And the president and secretary of such company or association, with the approval of the Insurance Commissioner, may agree with the assignee upon an assessment or premium to be paid to the insurer in case the insured shall not pay the same, which shall not be less than such a rate or sum of money as may be produced by the average assessments or premiums made or charged by the company or association during a period of five years next preceding the year of such agreement and assignment. When an assignment is made as herein provided the policy or policies so assigned, subject to the conditions herein, shall remain in full force and effect for the benefit of the assignee, notwithstanding the title or ownership of the assured to the property insured, or to any interest therein, shall be in any manner changed, transferred or encumbered.

1920, XXXI, 848.

(4189) § 4. Approval and Filing of Petition.—The declaration and petition shall be approved by the Insurance Commissioner, and upon the production of such approval, and of the receipt for ten dollars, certificate fee, from the State Treasurer, and the payment of the usual costs for recording, the declaration and petition shall be filed in the office of the Secretary of State. A copy of the declaration and petition, duly certified by the Secretary of State, shall be evidence of the existence and incorporation of the association for the purposes named therein.

Civ. '12, § 2773; 1910, XXVI, 548.

(4190) § 5. Organization of Association.—When such declaration and petition are so filed, and a copy thereof so certified, forwarded to the association, the persons named therein shall elect their directors and a president, secretary and treasurer, and such other officers as may be necessary for the complete performance of all the business and objects of the association herein provided, to serve for one year and until their successors are elected and have qualified. Before such association shall be licensed to do business and before any policy shall be issued by it, the president and secretary shall certify, under oath, that not less than twenty-five adult residents shall have subscribed for not less than twenty-five thousand dollars insurance and agreed to take policies of insurance within thirty days after issuance of license. Such list of subscribers shall be filed with the Insurance Commissioner, and the president and secretary of the association shall certify that each subscription is genuine.

Civ. '12, § 2774; 1910, XXVI, 548.

(4191) § 6. Rights of Members.—Each policyholder of any such association shall be a member thereof and entitled to vote at all meetings and elections, and the proper officer of the association shall notify each member of every meeting and election to be held, by mailing a notice thereof, addressed to him at his last known residence, at least thirty days prior

thereto, or by publishing a notice of the meeting once a week, for four weeks, in a newspaper in each county in which such association does business. Any member of said association may execute a proxy to any other member, authorizing such other to vote and act as his proxy at any meeting of the association; but no person shall vote or act as proxy for more than twenty members, or shall act or vote under the direction of one who holds or controls the proxies of more than twenty members. All proxies shall be filed with the association at least one day prior to the day of election, and shall expire within six months from their date.

Civ. '12, § 2775; 1910, XXVI, 548.

(4192) § 7. Constitution—By-Laws — Directors — Meetings — General Regulations of Associations.—Each such company shall have such officers as its constitution or by-laws may provide, and shall have at least nine directors. There shall be at least one annual, general meeting of the policyholders. The directors shall meet at such times as shall be required, at least once a year. The directors shall be elected at the annual meeting of the policyholders. The other officers shall be elected for not longer terms than two years, at such times and in such manner as the by-laws may direct. The compensation of each officer may be either definite and certain or may be contingent upon losses, but shall be fixed before the duties of office are entered upon or the service performed. In each case in which a policy of insurance is written, it shall be approved in writing by at least one officer, whose compensation shall not be contingent upon such approval, but the absence of such written approval shall not invalidate any policy. An accurate account of all receipts and disbursements, together with the exact amount paid to each officer, shall be made by the treasurer to the annual meeting of policyholders, and shall be certified to the Insurance Commissioner. No officer of a mutual company shall give, either officially or privately, a guarantee or estimate to a policyholder against an assessment to which he may be liable. If the officers of any such company neglect or omit to levy and collect with all practicable diligence any assessment the Insurance Commissioner, upon his ascertainment of such neglect or omission, may apply to any Court of competent jurisdiction for a mandamus to compel the performance of such neglect or omission. It shall be the duty of the Attorney General or any of the several Solicitors, upon application of the Insurance Commissioner, to institute such proceedings in the name of the State. But any such company may defer such assessment for not longer than one year, provided it pays its losses within sixty days, after due notice and satisfactory proof of loss, by borrowing money on its own note, or by other means, in accordance with its constitution or by-laws. Any public or private corporation, board or association, executor, administrator or guardian, or any person holding property in trust in this State or elsewhere, may insure the same in such companies, assume the liabilities, and be entitled to the rights of a member, may make application for, enter into agreements for, and hold policies in any mutual insurance company. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such

representative capacity. Any number of mutual insurance companies, not less than three in number, may form a mutual reinsurance company, for mutual reinsurance of their risks. Any mutual insurance company may effect reinsurance in some other fire insurance company of this State, or of any other State licensed in this State, doing business in this State, and in like manner to reinsure similar risks of any other such company. Any mutual insurance company may by resolution of its board of directors authorize the company to become a member of a reinsurance company already organized or to be organized under the laws of this State. A representative of such mutual insurance company shall thereupon be authorized by the board of directors to represent such company in forming and organizing such reinsurance company or to take such action as may be necessary to become a part of a reinsurance company already organized. Such mutual reinsurance companies may be organized in the following manner: The representative selected by each mutual insurance company shall file a declaration with the Secretary of State setting forth the names of the member companies, the counties in which they do business, the post-office address thereof, the resolution or resolutions of each of said companies authorizing it to become a member of such mutual reinsurance company, the name of the person selected to represent each mutual company, the name of the proposed reinsurance company, the purpose for which the reinsurance company is to be organized, which purpose shall be to enable the member companies or such other like companies as may thereafter become members thereof to reinsure their risks, to permit and require the reinsurance company to levy *pro rata* assessments upon all member companies and their individual members to pay losses and expenses thereof.

Civ. '12, § 2776; 1910, XXVI, 548; 1917, XXX, 55; 1918, XXX, 784.

As to by-laws and rights under, see *Joyce v. S. C. Mutual Ins. Co.*, 54 S. C. 371, 32 S. E. 446; *Dickart v. Farmers Mutual Fire Association*, 52 S. C. 412, 29 S. E. 786.

(4193) § 8. Charter of Reinsurance Companies.—Such reinsurance company shall be chartered in accordance with the provisions of Section 4 of this Article applying to mutual protection associations.

1917, XXX, 55.

(4194) § 9. Board of Directors of Reinsurance Companies—Duties and Powers.—The representatives selected under the provisions hereof shall constitute the board of directors of such reinsurance company and shall hold their office for a period of two years and until their successors are elected by the board or boards of directors of the member companies, and in case of vacancy in said board by death, resignation or otherwise, a successor may be chosen in the manner hereinabove provided. Said board shall elect a president, secretary and treasurer and such other officers as may be necessary, and may authorize the employment of such other persons as may be desirable and necessary for the complete performance of all of the business and objects of the company herein provided, to fix the salaries and compensation of officers and employees, to adopt by-laws and such rules and regulations as may be desirable and not inconsistent with law, to possess such powers and privileges and be subject to such duties, so far as they are consistent herewith and practicable, as are conferred upon or

imposed upon member companies by the provisions of this Article. And all property insured by a member company shall be subject to the lawful obligations of said reinsurance company to the extent and in the manner and mode as is provided for in favor of member companies in Section 13 of this Article. Such reinsurance company shall pay an annual Insurance Department license fee of five (\$5.00) dollars.

1917, XXX, 55.

(4195) § 10. Assessments for Reinsurance.—Member companies shall be notified of the gross amount of each assessment levied against it by a reinsurance company and said member company shall assess and collect the same in the same manner as its other assessments are levied and collected and transmit the proceeds thereof to the reinsurance company of which it is a member.

1917, XXX, 55.

(4196) § 11. Continuation of Existing Charters.—This Article shall not repeal the charter of any mutual insurance company now organized and doing business in this State. All such charters heretofore granted or that may hereafter be granted under the laws of this State shall be perpetual and subject only to alteration, amendment or repeal by the General Assembly, and such companies shall not be limited in the number of policies or the aggregate amount of insurance that may be written.

1917, XXX, 55.

(4197) § 12. Reserve Fund.—Such an association may accumulate in its treasury a reserve fund, in such an amount and by such means as its constitution and by-laws permit. Such funds shall be invested in such manner as its directors may direct, in accordance with the laws governing investments by insurance companies in this State. Such association may make and enforce such constitution and by-laws as may be necessary for the proper conduct of its business, and which are not in conflict with the laws of this State. But only such portions of the constitution and by-laws shall be a part of a policy contract as shall be printed in the policy certificate, or as shall be mailed to the policyholder at his last known postoffice address.

Civ. '12, § 2777; 1910, XXVI, 548.

Roach v. Farmers Mut. Ins. Ass'n of Oconee County, 102 S. C. 478, 86 S. E. 950.

(4198) § 13. Lien for Insurance.—All property insured by any mutual association shall be pledged to such association, together with the right and title of the assured in the lands upon which it is situate, to the amount of the premium note or contingent liability, and the association shall have a lien thereon to the amount of such note or contingent liability, but the lien of the association shall not take effect as against third parties without notice until the association files with the Register of Mesne Conveyance or Clerk of the Court of the county in which the property insured is situate a certificate stating the date, number and amount of premium note or contingent liability, and such description of the property insured, as will enable any person readily to identify the same. The Clerk of Court or Register of Mesne Conveyance shall record and index the certificate in a

book kept for such purpose, for which he shall receive the sum of fifteen cents; and all liens heretofore acquired by any such association shall continue in force under this Article.

Civ. '12, § 2778; 1910, XXVI, 548.

(4199) § 14. **Associations May Become Joint Stock Companies.**—Any mutual protection association, after having given notice once a week for six weeks of its intention to do so, and of the meeting hereinafter provided for, in a newspaper published in each county in which such association does business, may, with the consent in writing of two-thirds of the members of such association, and the consent of three-fourths of its directors, become a joint stock corporation, subject to the existing laws of this State applicable to such corporations. The policyholders of said association shall have the first right to subscribe to said stock, subject to such equitable regulations as the directors may prescribe; but all such subscriptions must be made in cash and at not less than par. The assets, if any, and the liabilities of the mutual association, shall thereupon be and become the assets of the stock company, except so far as herein otherwise provided. But it is hereby made the duty of the Insurance Commissioner to ascertain the interest in said assets of all the members of the mutual association who have not given their consent as aforesaid to the change of said association into a stock company. The interest so ascertained shall be paid over to such nonassenting members, and upon payment or tender to them of said interest so ascertained their membership shall cease and be determined. The balance of such assets, less the provision made above for the protection of outstanding policyholders, shall be deposited with the Insurance Commissioner as a guarantee fund for the payment of the policies of insurance issued by said association. The mutual policies, and the rights and liabilities attached thereto, and all the powers and obligations of the association, shall remain in force, except that such policies shall be thereafter considered as policies for the largest amount which, according to their terms, might be payable thereunder in case the assessment provided for should yield a sufficient amount to pay the same. If any certain number of assessments be specified upon said policies as payable by the holders thereof, the association shall not be entitled to levy any further assessments, even although such rights have been expressly reserved in the policy: *Provided, however,* That before any such association shall be entitled to do business as a stock company, as aforesaid, the Insurance Commissioner shall, upon request, value the assets of the said association and its outstanding policies, and shall find and give his certificate that the admitted assets of the said association including its capital stock, are sufficient to provide reserve upon all outstanding policies, as required by the laws of this State in relation to insurance companies.

Civ. '12, § 2779; 1910, XXVI, 548.

(4200) § 15. **Previous Charters Not Repealed.**—This Article shall not repeal the charter or affect the organization of any mutual protection association organized under Sections 1912 to 1916 of the Code of Laws of 1902; and as to such associations, it shall affect them only in so far as it may regulate the management thereof.

Civ. '12, § 2780; 1910, XXVI, 548.

The Regulation and Taxation of Incorporated Mutual Insurance Companies Other Than Life, and Providing a Penalty for Any Violation Hereof.

(4201) § 1. Incorporation of Mutual Insurance Associations.—That any number of persons, not less than twenty, a majority of whom shall be *bona fide* residents of this State, by complying with the provisions of this Article, may become, together with others who may hereafter be associated with them or their successors, a body corporate for the purpose of carrying on the business of mutual insurance as herein provided.

1915, XXIX, 96; 1920, XXXI, 910.

(4202) § 2. Articles of Incorporation.—Any persons proposing to form any such company shall subscribe and acknowledge articles of incorporation specifying:

(a) The name, the purpose for which formed, and the location of its principal or home office, which shall be within this State.

(b) The names and addresses of those composing the board of directors in which the management shall be vested until the first meeting of the members.

(c) The names and places of residence of the incorporators.

1915, XXIX, 96; 1920, XXXI, 910.

(4203) § 3. Names.—No name shall be adopted by such company which does not contain the word “mutual,” or which is so similar to any name already in use by any such existing corporation, company or association, organized or doing business in the United States, as to be confusing or misleading.

1920, XXXI, 910.

(4204) § 4. Approval of Insurance Commissioner—Issue of Charter—Amendment.—These articles of incorporation, executed in duplicate, shall be submitted to the Insurance Commissioner, and if found by him to comply with this Article, he shall endorse his approval thereon, and shall file one in his office and shall cause the other to be filed in the office of the Secretary of State. If the Secretary of State shall find that said articles of incorporation conform to the law, he shall forthwith issue a certificate to said company, to be known as a charter, which shall set forth the fact of incorporation and organization according to the laws of South Carolina. A copy of said charter shall be recorded in the office of the Register of Mesne Conveyance or Clerk for the county in which the principal office of said corporation is to be located. Such charter or articles of incorporation may be amended in the manner provided for other corporations or as may be provided in such articles.

1915, XXIX, 96; 1920, XXXI, 910.

(4205) § 5. Completion of Organization—By-Laws.—The corporation shall have legal existence as soon as the charter shall have been issued by the Secretary of State. The board of directors named in such articles may thereupon adopt by-laws, accept applications for insurance, and proceed to

transact the business of such company: *Provided*, That no insurance shall be put into force until the company has been licensed to transact insurance as provided by this Article. Such by-laws and any amendments thereto shall within thirty days after adoption be filed with said Commissioner.

1920, XXXI, 910.

(4206) § 6. **Kind of Insurance.**—Any company organized under the provisions of this Article is empowered and authorized to make contracts of insurance, or to reinsure or accept reinsurance on any portion thereof, to the extent specified in its articles of incorporation, for the kinds of insurance following: (1) Against loss or damage to property and loss of use and occupancy by fire, lightning, windstorm, tornado, cyclone, hail, tempest, flood, earthquake, frost or snow, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, explosion, fire ensuing and explosion, no fire ensuing, except explosion by steam boilers or fly wheels; against loss or damage by water caused by the breakage or leakage of sprinklers, pumps, or other apparatus, water pipes, plumbing, or their fixtures, erected for extinguishing fires, and against accidental injury to such sprinklers, pumps or other apparatus, water pipes, plumbing or fixtures; against loss or damage to any goods or premises of the assured and loss or damage to the property of another for which the assured is liable, caused by the leakage of roofs, leaders and spouting, or by rain and snow driven through broken and open windows and skylights, or caused by the contents of any tank, or impact of any falling tank, tank platform or supports erected in or upon any building; against the risks of inland transportation and navigation; upon automobiles, airplanes, seaplanes, dirigibles or other aircraft, whether or not operated under their own power, against loss or damage by any of the causes or risks specified in this Subsection, including also explosion, transportation, collision, liability for damage to property resulting from owning, maintaining or using automobiles and including burglary and theft, but not including loss or damage by reason of bodily injury to the person.

(2) Against loss, expense or liability, by reason of bodily injury or death by accident, disability, sickness or disease suffered by others for which the insured may be liable or have assumed liability, including workman's compensation.

(3) Against bodily injury or death by accident and disability by sickness.

(4) Against any or all loss, expense and liability resulting from the ownership, maintenance or use of any automobile or other vehicle.

(5) Against loss or liability to persons or property resulting from explosions or accidents to boilers, containers, pipes, engines, fly wheels, elevators and machinery in connection with and against loss of use and occupancy caused thereby, and make inspections and issue certificates of inspection thereon.

(6) To guarantee the fidelity of persons in position of trust, private or public, and to act as surety of official bonds and for the performance of their obligations.

(7) To insure against the breakage of plate glass, local or in transit.

(8) To insure against property loss or damage by burglary, robbery, any larceny, any breakage and entry, or entry without breaking, of any house, building, ship, vessel, or railroad car, and loss or damage by forgery.

(9) Against loss from interruption of trade or business which may be the result of any accident or casualty.

(10) Against loss or damage by any hazard upon any risk not provided for in this Section, which is not prohibited by statute or at common law from being the subject of insurance, excepting life insurance.

1915, XXIX, 96; 1920, XXXI, 910.

(4207) § 7. Requisites for Transaction of Business of Insurance.—No corporation organized under this Article shall issue policies or transact any business of insurance unless it shall comply with the conditions following, nor until the Insurance Commissioner has, by formal license, authorized it to do so, which license shall not issue until the corporation has complied with the following conditions:

(a) It shall hold *bona fide* applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least twenty policies to at least twenty members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk described herein.

(b) The "maximum single risk" shall not exceed twenty per cent. of the admitted assets or three times the average risk or one per cent. of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

(c) It shall have collected a premium upon each application, which premiums shall be held in cash or securities in which insurance companies are authorized to invest, and shall be equal, in case of fire or steam boiler insurance, to not less than twice the maximum single risk assumed, subject to one fire or one loss, nor less than ten thousand dollars, and in any other kind of insurance to not less than five times the maximum single risk assumed, and in case of workman's compensation insurance to not less than fifty thousand dollars.

(d) For the purpose of transacting employers' liability and workmen's compensation insurance, the applications shall cover not less than one thousand five hundred employees, each such employee being considered a separate risk for determining the maximum single risk.

1920, XXXI, 910.

(4208) § 8. Political Subdivisions of State and Corporations May Become Members.—Any political subdivision of this State or other public or private corporation, board, estate or person, association in this State or elsewhere, may make applications to enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or legal representative of any such political subdivision, corporation, board, association, estate or person may be recognized as acting for or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any such political subdivision or other

corporations, organized under the laws of this State, to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which political subdivision or other corporation is organized and as such granted as the rights and powers expressly conferred.

1915, XXIX, 96; 1920, XXXI, 910.

(4209) § 9. Voting Power to Be Regulated by By-Laws.—Every member of the company shall be entitled to one vote, or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premiums paid, as may be provided in the by-laws.

1920, XXXI, 910.

(4210) § 10. Maximum Premiums.—The maximum premium payable by any member shall be expressed in the policy or in the application for the insurance. Such maximum premium may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium with no contingent premium or liability to assessment in any event. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock required of domestic stock insurance companies transacting the same kind of insurance.

1920, XXXI, 910.

(4211) § 11. Investments of Assets.—No such company shall invest any of its assets except in accordance with the laws of this State relating to the investment of the assets of domestic stock insurance companies transacting the same kinds of insurance.

1920, XXXI, 910.

(4212) § 12. Reserves.—Such company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic stock insurance companies transacting the same kind of insurance: *Provided*, That any reserve for losses or claims based upon the premium income shall be computed upon the net premium income after deducting any so-called dividend or premium returned or credited to the member.

1920, XXXI, 910.

(4213) § 13. Assessments.—Such company not possessed of assets at least equal to the unearned premium reserve and other liabilities shall make an assessment to provide for such deficiency upon only such members as are liable in proportion to their several liabilities as expressed in their policies. Each such member shall be liable only on account of losses and expenses incurred while his policy was in force and shall not be liable in any event unless he is notified of such assessment within one year after the termination of such policy: *Provided*, The Insurance Commissioner may, by written order, relieve the company from assessment or other proceeding to restore such assets during the time fixed in such order: *And provided*, That any domestic company shall be deficient in providing the unearned premium reserve required hereby, may, notwithstanding such deficiency,

come under this Article on the condition that it shall each year thereafter reduce such deficiency at least fifteen per cent. of the original amount thereof, and in such case it may increase its assessments accordingly.

1920, XXXI, 910.

(4214) § 14. Advances.—Any director, officer or member of any such company, or any other person, may advance to such company any sum or sums of money necessary for the purpose of its business or to enable it to comply with any of the requirements of the law, and such moneys and such interest thereon as may have been agreed upon, not exceeding ten per cent. per annum, shall be payable only out of the surplus remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advance shall be reported in each annual statement.

1920, XXXI, 910.

(4215) § 15. Policies — Execution — Form.—Any law requiring that policies be countersigned and delivered through a resident agent shall not apply to any policy of such mutual company on which no commission shall be paid to any local agent. Such mutual company may insert in any form of policy prescribed by the law of this State any provisions or conditions required by its plan of insurance which are not inconsistent or in conflict with any law of this State. Such policy, in lieu of conforming to the language and form prescribed by such law, may conform thereto in substance if such policy includes a provision or endorsement reciting that the policy shall be construed as if in the language and form prescribed by such law, and a copy of such policy and endorsement, if any, shall have been first filed with and shall not have been disapproved by the Insurance Commissioner.

1920, XXXI, 910.

(4216) § 16. Admission of Foreign Mutual Companies.—(1) Any mutual company organized outside of this State and authorized to transact the business of insurance on mutual plan in any State, district or territory shall be admitted and licensed subject to the approval of the Insurance Commissioner as aforesaid, to transact the kinds of insurance authorized by its charter or articles to the extent and with the powers and privileges specified in this Act and when it shall be solvent under this Article and shall have complied with the following requirements:

(a) Filed with the Insurance Commissioner a certified copy of its charter or articles and a certificate of the supervising insurance official of the State, district or territory in which it is incorporated that it is there organized and authorized to do such business as it desires to transact in this State.

(b) Filed with the Insurance Commissioner a copy of its by-laws certified to by its secretary.

(c) Appointed the Insurance Commissioner its agent for the service of process in any action, suit or proceeding in any Court of this State, which authority shall continue as long as any liability shall remain outstanding in this State.

(d) Filed a financial statement under oath, in such form as the Insurance Commissioner may require, and have complied with other provisions of the law applicable to the filing of papers and furnishing information by stock companies on application for authority to transact the same kinds of insurance.

(e) If organized without the United States, make and maintain the deposit, if any, required of a like mutual insurance company formed in this State for transacting the same kinds of insurance in the country or State in which such foreign company is domiciled.

(f) Its name shall not be so similar to any name already in use by any such existing corporation, company or association organized or licensed in this State as to be confusing or misleading.

(g) It shall have established an office within the State of South Carolina.

(2) Upon compliance by any such company organized outside of this State with the provisions of this Section, such company shall be licensed and authorized to transact business in this State subject to the provisions of the following Section, and to the annual renewal of its license at the time provided for the renewal of license of stock insurance companies transacting the same kind of insurance.

1915, XXIX, 96; 1920, XXXI, 910.

(4217) § 17. Subject to State Laws.—Every mutual insurance company, whether organized within or without this State, shall be subject to all the provisions of law relating to policy forms, the supervision of rates, prohibition of discrimination and rebates, annual reports, reserves, taxes and fees, and shall make its annual report in such form and submit to such examinations and furnish such information as may be required by the Insurance Commissioner. As far as practicable such examination of mutual insurance companies organized outside of this State shall be made in cooperation with the Insurance Commissioner.

1920, XXXI, 910.

(4218) § 18. Other Insurance Laws Not to Apply.—Except as provided herein, or as such companies may be hereafter expressly designated in any other law, insurance companies organized or admitted to do business in this State under this Article shall not be subject to any other insurance law of this State.

1920, XXXI, 910.

(4219) § 19. Reinsurance.—Any such mutual insurance company organized or admitted to transact insurance in this State may reinsure any part or all of any risk or risks in any insurance company or insurer licensed in any State of the United States or in the District of Columbia: *Provided*, That no such reinsurance shall be effected with any company or insurer disapproved therefor by written order of the Insurance Commissioner filed in his office.

1920, XXXI, 910.

(4220) § 20. Annual Report.—License Fee.—The president or vice president, together with the secretary of each corporation organized to do business under this Article, shall annually, on or before the first day of

April of each year, prepare under oath, if required, and file with the Insurance Commissioner a full, true and satisfactory statement of the condition of the company on the thirty-first day of December of the preceding year, in such form as shall be prescribed by said Insurance Commissioner, and upon the payment of an annual Insurance Department license fee of \$25.00, the Insurance Commissioner shall issue license for the ensuing year.

1917, XXX, 55.

(4221) § 21. Violation a Misdemeanor—Penalty.—Any person or corporation violating the provisions of this Article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, and the Insurance Commissioner shall have power to revoke the license of any such person or corporation.

1920, XXXI, 910.

(4222) § 22. Extent of Repeal—Compliance With Article.—All laws or parts of laws in conflict with the provisions of this Article, so far as companies organized or admitted under this Article are concerned, are repealed, but no such repeal and nothing in this Article shall apply to or affect any company or association of this State or any other State now doing business or to any law under which any such company or association is organized or doing business. Any such company or association may, however, by resolution of its board of directors duly approved by a majority vote of the members at a meeting specially called for that purpose, and duly certified to by the president and secretary and filed with and approved by the Insurance Commissioner, elect to adopt and become subject to the provisions of this Article, in lieu of any Article or Acts theretofore governing such company or association. Any company or association so electing and fully complying with this Article may thereafter effect such kinds of insurance as authorized by this Article and specified in its certificate of incorporation then in force, or as then or thereafter amended, together with such additional kinds of insurance as are specified in such resolution and authorized by this Article.

1920, XXXI, 910.

(4223) § 23. Not Repeal of Laws as to Domestic Mutual Insurance Companies.—This Article shall not be construed to repeal any existing laws relating to domestic mutual insurance companies, and all such companies now, or that may hereafter be, organized under existing laws shall in nowise be affected by the provisions of this Article.

1920, XXXI, 910.

Members of Religious Denominations, Fraternal Orders and Labor Organizations May Form Mutual Aid Associations.

(4224) § 1. Mutual Aid Associations May Be Formed by Religious Denominations, Fraternal Orders, Etc.—Members of religious denominations or local lodges of fraternal orders under the control and supervision of a representative governing body within this State, or local labor organizations with a national or international charter, may form mutual asso-

ciations, incorporated or unincorporated, for the purpose of aiding their members or their beneficiaries in times of sickness and death by levying equitable assessments for the payment of sick relief or death benefits, upon compliance with the terms of this Article.

1914, XXVIII, 666.

(4225) § 2. No Agent.—Such association shall have no paid agents for the soliciting of business or members, and shall be conducted without profit. They shall file an annual report with the Insurance Commissioner, who shall issue to them a certificate showing that they have complied with the law of this State.

1914, XXVIII, 666.

(4226) § 3. Exempt from License Fees.—Such associations shall pay no license fee and shall be subject only to such examination by the Insurance Commissioner as will enable him to determine that such associations have complied with the insurance laws of the State. Nothing in this Article shall be construed to prevent such associations as are now operating in this State from continuing to operate on their present plans.

1914, XXVIII, 666.

ARTICLE V.

Bond, Investment, Etc., Companies.

(4227) § 1. Certain Investment Companies to Make Annual Report.—Every bond, investment, dividend, debenture, registry, guaranty, loan and fidelity company, and other such like company, incorporated under any law of this State or any other State or government, except banks and banking institutions, shall semiannually, on the last business days of June and December, respectively, or within ten days thereafter, in each and every year, make a full report in writing of the affairs and condition of such corporation, at the close of business on the last days of June and December, respectively, in each year, to the Insurance Commissioner of South Carolina, verified by oath, in such form and by such officers of said respective corporations as said Commissioner may designate. The said Commissioner may require that a like report, either wholly or in part, as to the particulars aforesaid, be made to him at any other time by any such corporation aforesaid within such period as he may designate. The Insurance Commissioner of this State may examine all such corporations in order to verify the correctness of the annual report required by law to be made to him.

Civ. '12, § 2781; 1910, XXVI, 546.

(4228) § 2. Contracts to Be Approved by Insurance Commissioner.—Before any such company shall issue or offer for sale any contracts or other securities in this State, copies of same, containing the full terms of all such contracts or securities, shall be filed with the Insurance Commissioner, and shall be approved by him. The Insurance Commissioner shall make public all information concerning such contracts or securities whenever called upon so to do by any citizen of this State. All laws regulating insurance com-

panies and their agents, in so far as they may be applicable to the companies mentioned in this Article, are hereby made applicable thereto.

1910, XXVI, 546.

LICENSES—FEES THEREFOR.—All such companies shall be licensed by the Insurance Commissioner, and, on or before April 1st of each year, shall pay an annual department license fee as follows: Those companies which shall do business in more than two adjoining counties, fifty dollars; those which shall do business in not more than two adjoining counties, twenty-five dollars; those which shall do business in one county, ten dollars. All such fees collected by the Insurance Commissioner shall be paid to the State Treasurer monthly, as annual insurance department license fees.

Civ. '12, § 2782; 1910, XXVI, 546.

See Criminal Code.

(4229) § 3. Domestic Investment Company—Foreign.—Every person, corporation, copartnership, company or association (except those exempt under the provisions of this Article) organized or which shall hereafter be organized in this State, whether incorporated or unincorporated, which shall either himself, themselves or itself, or by or through others, sell or negotiate for the sale of any stocks, bonds or other securities issued by him, them or it within the State of South Carolina, shall be known for the purposes of this Article as a domestic investment company. Every such person, corporation, copartnership or association resident of or organized in any other State, Territory or government shall be known for the purposes of this Article as a foreign investment company.

1912, XXVII, 912; 1915, XXIX, 251.

(4230) § 4. Article Does Not Apply to Certain Securities—Power of Insurance Commissioner.—The provisions of this Article shall not apply to (a) securities of the United States, or any foreign government; or of any State or Territory thereof, or of any county, city, township, district or other public taxing subdivision of any State or Territory of the United States, or any foreign government; (b) unsecured commercial paper; (c) securities of public or quasi-public corporations, the issue of which securities are regulated by a public service commission or board of equal authority of the United States or of any State or Territory of the United States or securities senior thereto; (d) securities of national banks or of State banks or trust companies under the supervision of the State Bank Examiner, or building and loan associations of this State; (e) securities of any domestic corporation organized without capital stock and not for pecuniary gain, or exclusively for educational, benevolent, charitable or reformatory purposes; (f) mortgages upon real and personal property situated within this State where the entire mortgage is sold and transferred with the note or notes secured by such mortgages; (g) increase of stock sold and issued to stockholders; also stock dividends; (h) securities which are listed in any standard manual of information approved by Insurance Commissioner: *Provided, however,* That said Insurance Commissioner shall have the power to call for additional and further information than that contained in such manuals with reference to any securities listed therein, and may, pending the filing of such information, suspend the sale of such securities, and also

suspend, either temporarily or permanently, the sale of any securities listed in such manuals after a hearing upon notice to the issuer of such securities if said Insurance Commissioner shall find that the sale of such securities would work a fraud upon the purchaser thereof; (i) sales or negotiations for sales of stocks, bonds or other securities by any corporation, copartnership or association in the county in which it is organized.

1912, XXVII, 912; 1915, XXIX, 251.

(4231) § 5. Statement to Be Filed With Insurance Commissioner—Filing Fee.—Before selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever in this State, any stocks, bonds or other securities of its own issue, every investment company, domestic or foreign, shall file in the office of the Insurance Commissioner a statement showing in full detail the plan upon which it proposes to transact business; a copy of all contracts, stocks, bonds or other instruments which it proposes to make with, or sell to, its contributors or customers, together with a copy of its prospectus, and of the proposed advertisement of its sale of stocks, bonds or other securities, which statement shall also show the name and location and main office of the investment company, the names and addresses of its officers, and an itemized account of its financial condition and the amount of its assets and liabilities, and such other information touching its conditions and affairs as the Commissioner may require. If such investment company shall be a copartnership or an unincorporated association, it shall also file with the Commissioner a copy of its articles of copartnership or association, and all other papers pertaining to its organization. If it be a corporation organized under the laws of South Carolina, it shall also file with the Commissioner a copy of its articles of incorporation, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other State, Territory or government, incorporated or unincorporated, it shall also file with the Commissioner a copy of the laws of the State, Territory or government under which it exists or is incorporated, and also a copy of its charter and the certificate of the proper officer of such State showing that it is authorized to transact business there; and also copies of its constitution and by-laws, and all amendments of any of the above-mentioned instruments which have been made, and all other papers pertaining to its organization. It shall also pay a filing fee of one-tenth of one per cent. upon the face value of the securities for the sale of which application is made: *Provided, however,* That such filing fee shall not be more than one hundred dollars, nor less than two dollars and fifty cents (\$2.50).

1912, XXVII, 912; 1915, XXIX, 251.

(4232) § 6. Verification and Certification of Papers Filed.—All of the above described papers shall be verified by the oath of a member of the copartnership or company if it be a copartnership or company, and by the oath of a duly authorized officer if it be a corporation or an unincorporated association. All such papers, however, as are recorded or are on file in any public office shall be further certified by the officer of whose records or archives they form a part, as being correct copies of such records or archives.

1912, XXVII, 912; 1915, XXIX, 251.

(4233) § 7. **Process Served on Insurance Commissioner — Consent Thereto.**—Every foreign investment company before offering for sale any of its stocks, bonds or other securities in this State, shall also file its irrevocable written consent that suits and actions may be commenced against it in the proper Court of any county in this State in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleadings authorized by the laws of this State, on the Commissioner, said consent stipulating and agreeing that such service of such process or pleadings on such Commissioner shall be taken and held in all Courts to be as valid and binding as if due service had been made upon the company itself, and said instrument containing such consent shall be authenticated by the seal of said foreign investment company, and by the acknowledged signature of a member of the copartnership or company, if it be a copartnership or company, or by the acknowledged signature of the president and secretary of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees or managers of the corporation or association, authorizing the secretary and president to execute the same. In case any process or pleadings mentioned in this Article are served upon the Commissioner, it shall be by duplicate copies, one of which shall be filed in the office of the Commissioner and another immediately forwarded by special delivery mail to the head office of the person or corporation against which said process or pleadings are directed.

1912, XXVII, 912; 1915, XXIX, 251.

(4234) § 8. **Powers of Commissioners.**—The said Commissioner shall have power to demand from any investment company seeking to come under the provisions of this Article any further information other than such investment company is required to furnish under the provisions of this Article which shall be necessary to the end that the Commissioner may be put in possession of all facts and information necessary to qualify him to properly pass upon all questions that may come before him. He may make or have made under his direction a detailed examination of such investment company's property, business and affairs, which examination shall be at the expense of such investment company. He may cause an appraisal to be made, at the expense of said investment company, of the property of said investment company, including the value of patents, good will, promotion and intangible assets, and it may fix the amount of stocks, bonds and securities that shall be issued by any incorporation, foreign or domestic, in payment for property, patents, good will, promotion and intangible assets at the value it shall find the same to be worth, and may require that such stocks and securities so issued for such property, patents, good will, promotion and intangible assets shall be deposited in escrow under such terms as said Commissioner may prescribe. And said Commissioner may withhold its license to sell stocks, bonds and securities, if such corporation has issued stocks, bonds and securities, in payment for property, patents, good will, promotion

and intangible assets in excess of their values as found by said Commissioner, or if said stocks, bonds and securities are not deposited in escrow according to the term fixed by such Commissioner until such stocks, bonds and securities issued in payment for property, patents, good will, promotion and intangible assets in excess of the value so found by said Commissioner has been surrendered to such corporation and cancelled by it, and until the said stock has been deposited in escrow under the terms prescribed by said Commissioner.

1912, XXVII, 912; 1915, XXIX, 251.

(4235) § 9. Commissioner to Investigate Plan of Business—Duty in Case of Fraud—Sale of Stocks—Certificate.—It shall be the duty of said Commissioner to examine the statements and documents filed in his office by any investment company and the reports of any investigation conducted under the direction of said Commissioner and to hear such applicant, and he shall have power to examine under oath any person interested or connected with such investment company, and if such Commissioner finds that the proposed plan of business of said investment company, or that its proposed contracts, stocks, bonds or other securities are fraudulent or are of such a nature that the sale of such contracts, stocks, bonds or other securities would, in the opinion of said Commissioner, work a fraud upon the purchaser, then said Commissioner shall disapprove the sale of such proposed contracts, stocks, bonds or other securities and shall notify such investment company by registered mail of his findings and disapproval, and it shall be unlawful for such company to do any business in the way of selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever of any such contracts, stocks, bonds and other securities in this State; and said contracts, stocks, bonds and other securities shall not be sold in this State. If, however, said Commissioner shall not find that the proposed plan of business of said investment company or that its proposed contracts, stocks, bonds or other securities are fraudulent or are of such a nature that the sale of such contracts, stocks, bonds or other securities would, in the opinion of said Commissioner, work a fraud upon the purchaser thereof, then he shall approve the sale of such stocks in the State of South Carolina and issue its certificate in substantially the following language:

“This is to certify, that the.....has this date been given permission to sell \$......of its.....within the State
(Stocks, bonds or securities)

of South Carolina. The Commissioner does not recommend the purchase of this security.

Dated.....

In witness whereof, I have hereunto affixed my seal.

[Seal]

.....,
Insurance Commissioner.”

The words “The Commissioner does not recommend the purchase of this security” shall be printed in type two sizes larger than any other part of said certificate, and in case said certificate or the fact that said Commissioner has approved said security is printed or published in any

circular, pamphlet or newspaper, the words "The Commissioner does recommend the purchase of this security" shall be printed in type two sizes larger than the type in which the statement of fact that such security has been approved by said Commissioner appears.

1912, XXVII, 912; 1915, XXIX, 251.

(4236) § 10. Who Deemed "Dealer."—Any person, firm, copartnership, corporation or association, whether domestic or foreign, not the issuer, who shall in this State sell or offer for sale any of the stocks, bonds or other securities issued by any foreign or domestic investment company, except the securities specifically exempted in this Article, or who shall by advertisement or otherwise profess to engage in the business of selling or offering for sale such securities, shall be deemed to be a "dealer" in such securities within the meaning of this Article, and no dealer within the meaning of this Article shall sell or offer for sale any such securities or profess the business of selling or offering for sale such securities unless and until he shall have filed a list of the same in the office of the Commissioner, as in this Article provided. The term "dealer" shall not include an owner, nor issuer, of such securities so owned by him when such sale is not made in the course of continued and successive transactions of a similar nature, nor one who in a trust capacity created by law lawfully sells any securities embraced within such trust.

1912, XXVII, 912; 1915, XXIX, 251.

(4237) § 11. Registration of Dealer—Agent—Information to Be Furnished Commissioner—Service of Process—License.—Any dealer desiring to sell or offer for sale within this State any stocks, bonds or other securities not exempted under the terms of this Article, shall first register with the Commissioner, and shall furnish said Commissioner, upon oath, in such form as the Commissioner shall prescribe, the following information, to wit: The dealer's name, residence and business address, the general character of the securities to be dealt in, the place or places where the business is to be conducted within this State, and where the business in this State is not to be conducted by the dealer in person, then the names and addresses of all the persons in charge thereof. Said dealer shall pay to the Commissioner a fee of one dollar and shall furnish said Commissioner with such other information in addition to that above specified as said Commissioner shall deem necessary in order to thoroughly acquaint such Commissioner with the character of the business of said dealer. All authorized agents of any dealer shall be registered with the Commissioner, and the name of any agent shall be stricken from the register by the Commissioner upon the written request of the dealer, and additional agents may be registered by the Commissioner upon like request of the dealer: *Provided*, That no agent shall act as such until his name and address shall be registered with the Commissioner. If the dealer shall be a nonresident of this State or a corporation other than a domestic corporation, he shall at the time he registers with the Commissioner file with the Commissioner a written, duly authenticated, appointment of the Commissioner as his or its agent

in South Carolina, upon whom process or pleadings may be served for and on behalf of the dealer, which appointment shall be irrevocable. Upon compliance by such dealer with the provisions of this Article, the said Commissioner shall issue to such dealer a license under the seal of said Commissioner, and signed by the Commissioner, which said license shall be good until revoked by said Commissioner for good cause upon notice to such dealer and a hearing duly had.

1912, XXVII, 912; 1915, XXIX, 251.

(4238) § 12. Agents' Fee—Appropriation.—In addition to the filing and examination fees herein provided for to be paid by investment companies and dealers, there shall be charged and collected by said Commissioner a fee of one dollar for the registration and authorization of each agent of any such investment company or dealer, and all the fees and charges collected by the Commissioner shall be turned into the State Treasury, and are hereby reappropriated to the Commissioner towards paying the expenses of enforcing this Article.

1912, XXVII, 912; 1915, XXIX, 251.

(4239) § 13. Accounts—Commissioner to Investigate—Per Diem, Etc.—License Revoked—Notice—Hearing.—General accounts of every investment company, domestic or foreign, shall be kept in a businesslike and intelligent manner and in sufficient detail that said Commissioner can ascertain at any time its financial condition, and the books of account shall at all times during business hours, except on Sundays and legal holidays, be open to stockholders and investors in said company and the said Commissioner or his duly authorized representatives, and all such investment companies shall be subject to examination by said Commissioner, or his clerks, accountants or examiners, at any time said Commissioner shall deem it advisable, and in the same manner as is now provided for the examination of State banks, and such investment company shall pay for such examinations of not to exceed \$7.00 for each day or fraction thereof and the actual traveling and hotel expenses of the person or persons making such examination, and the failure or refusal of any investment company to pay such fees, upon demand of the Commissioner, shall work a forfeiture of the right of such investment company to sell or offer for sale any of its contracts, stocks, bonds or other securities in this State. In case of a preliminary examination of any investment company by said Commissioner for the purpose of the ascertainment by said Commissioner as to whether said company shall be permitted to come under the provisions of this Article, the fee of such examination shall be the same as in this Section provided, and in case it shall be made to appear to the Commissioner from the examination of said investment after said investment company has been authorized to sell its stocks, bonds and other securities would work a fraud upon the purchaser, then said Commissioner may make an order revoking the license of said investment company to sell its stocks, bonds and securities, upon notice duly given and a hearing duly had, and may, pending such hearing, suspend the right of said investment company to sell its stocks, bonds and securities.

1912, XXVII, 912; 1915, XXIX, 251.

(4240) § 14. **Unlawful to Offer Securities Without Certificate of Commissioner — Advertisement Regulated.**— It shall be unlawful for any investment company or dealer, or representative thereof, either directly or indirectly, to sell or cause to be sold, offer for sale, take subscriptions for, or negotiate for the sale in any manner whatever in this State, any stocks, bonds or other securities (except as expressly exempted herein), unless and until said Commissioner has approved thereof and issued certificate in accordance with the provisions of this Article, nor shall it be lawful for any such investment company to transact business on any other plan than that set forth in the statements and papers required to be filed by virtue of the provisions of this Article or the rules of the Commissioner. It shall be unlawful for any investment company or dealer, or its or his agents, to issue, circulate or deliver any advertisement, pamphlet, circular, prospectus or other document in regard to its stocks, bonds or other securities in the State of South Carolina differing in any way from the copy filed with said Commissioner as provided by this Article. It shall be unlawful for any newspaper published in the State of South Carolina to advertise the sale of any stocks, bonds or securities which have not been approved by said Commissioner or which are not exempt under the provisions of this Article.

1912, XXVII, 912; 1915, XXIX, 251.

(4241) § 15. **Compliance With This Article Required.**— No dealer within the meaning of this Article shall sell or offer for sale within the State any of the stocks, bonds or other securities of any investment company unless such investment company shall have fully complied with all the provisions of this Article, nor until said dealer shall have registered with the Commissioner, under the terms of this Article: *Provided, however,* That should any dealer desire to sell or offer for sale within this State the stocks, bonds or other securities of an investment company which has not itself complied with the provisions of this Article, said dealer shall make application to the said Commissioner for license as hereinbefore provided for applications by investment companies and shall pay the same fee required to be paid by said investment company.

1912, XXVII, 912; 1915, XXIX, 251.

(4242) § 16. **Information for Benefit of Public.**— All information obtained by the Commissioner with reference to any securities and all records of the Commissioner relating thereto shall be open to examination by the public, and it shall be the duty of the Commissioner to preserve such information, and so classify and arrange it as to facilitate examination. The Commissioner may from time to time issue in pamphlet form, or by means of newspaper advertisements or otherwise, any and all information regarding any and all contracts, stocks, bonds or other securities sold or offered for sale within this State which he deems would be of public interest or advantage.

1912, XXVII, 912; 1915, XXIX, 251.

(4243) § 17. **State Bank Examiner.**— Nothing in this Article shall be construed to repeal or modify any laws giving the State Banking Depart-

ment of this State control of and supervision over State banks and the business of banking in this State.

1912, XXVII, 912; 1915, XXIX, 251.

(4244) § 18. Misdemeanor to Make False Statement.—Any person who shall knowingly or wilfully subscribe to or make or cause to be made any false statement or false entry in any book of any investment company, or who shall exhibit any false paper with the intention or for the purpose of deceiving any person authorized to examine into the affairs of said investment company, or shall make or publish any false statement of the financial condition of said investment company, or false statement relating to the contracts, stock, bonds or other securities by it issued and offered for sale, shall be deemed guilty of a misdemeanor and shall be punished as hereinafter provided.

1912, XXVII, 912; 1915, XXIX, 251.

(4245) § 19. Commissioner to Furnish Information—Fees—Expenses.—The Commissioner shall provide for the furnishing to those who may apply therefor, of any information regarding any investment company or its affairs, which is on file in his office, said Commissioner to charge therefor approximately the cost of preparing such information. All fees collected under the provisions of this Article shall be paid into the State Treasury, and a complete record of all fees received shall be kept in the office of the Commissioner, and all said fees so turned into the State Treasury are hereby reappropriated to the Commissioner for the purpose of paying salaries and expenses necessary for carrying this Article into effect. The Commissioner shall perform the duties imposed upon him by the terms of this Article without other compensation than the salary paid him by the State, but he shall be entitled to receive his actual expenses incurred when absent from the seat of government on business under this Article.

1912, XXVII, 912; 1915, XXIX, 251.

(4246) § 20. Companies to File Statement of Condition.—Every investment company, domestic or foreign, shall file before the first day of April in each and every year a detailed statement in such form and containing such information as the Commissioner shall require, showing its condition at the close of business on the preceding December 31st, and shall at the same time pay a filing fee therefor of one dollar.

1912, XXVII, 912; 1915, XXIX, 251.

(4247) § 21. Misdemeanor to Violate Article.—Any person or persons who shall violate any of the provisions of this Article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or shall be imprisoned in the county jail for not more than one year, or both such fine and imprisonment, in the discretion of the Court.

1912, XXVII, 912; 1915, XXIX, 251.

(4248) § 22. Interpretation of This Article.—Should the Courts of this State declare any Section or provision of this Article unconstitutional

or unauthorized, or in conflict with any other Section or provision of this Article, then such decision shall affect only the Section or provision so declared to be unconstitutional or unauthorized and shall not affect any other Section or part of this Article.

1912, XXVII, 912; 1915, XXIX, 251.

(4249) § 23. Provision to License and Supervise Foreign Companies Lending Money on Mortgages, Etc.—Foreign companies proposing to do exclusively a business of lending money on real estate mortgages, or collateral secured by real estate mortgages, may be licensed to do business in this State on the following terms: Each company shall file with the Insurance Commissioner a satisfactory statement of condition, and such other information as he shall require; a copy of its charter and amendments thereto; a certificate of compliance with the laws of its home State, and the appointment of the Insurance Commissioner of South Carolina as its attorney to accept service. It shall pay an annual department license fee of \$25 and shall not be subject to any other license fees, unless this class of companies is specifically mentioned.

1913, XXVIII, 145.

CHAPTER XLIX.

Provisions Applicable to Corporations Generally.

(4250) § 1. All Charters Subject to Amendment or Repeal.—It shall be deemed a part of the charter of every corporation created under the provisions of any general law, and of every charter granted, renewed or amended by Act or Joint Resolution of the General Assembly (unless such Act or Joint Resolution shall, in express terms, declare the contrary), that such charter, and every amendment and renewal thereof, shall always remain subject to amendment, alteration or repeal by the General Assembly.

Civ. '12, § 2783; Civ. '02, § 1842; R. S. 1499; 1886, XIX, 546.

Railroad Co. v. Gibbs, 24 S. C. 60; Railroad Co. v. Gibbs, 27 S. C. 385, 4 S. E. 49; Boyd v. Winnsboro Granite Co., 66 S. C. 433, 437, 45 S. E. 10.

The Northeastern Railroad Company was incorporated for fifty years, at which time this section was in existence. In 1855 the legislature passed an amendment to charter of a company, providing for exemption from taxation during continuance of the charter, which act did not except amendment from provisions of this section. In 1868. Constitution was adopted, which required that property of corporations then existing or thereafter created, shall be subject to taxation, and subsequent legislation provided for taxation of property of railroad companies, and under it property of Northeastern Railroad Company was taxed. Held, that the power reserved to State by this section authorized any change in contract created by charter between corporators and State. Tomlinson v. Jessup, 82 U. S. 434, 21 L. Ed. 204.

It seems charter granted before passage of this act is not amended by legislation authorizing extension of certain bonds made by a company (which State had guaranteed), by issue of new bonds of like character, and continuation of a mortgage for securing the payment of said bonds. Tomlinson v. Branch, 82 U. S. 460, 469, 21 L. Ed. 189.

(4251) § 2. Provisions Attaching to All Corporations Except Railroads and Banks.—The following provisions shall constitute a part of the charter of every corporation, other than railroad and banking corporations, already in existence under the Act of Assembly in this State, either general or special, passed since the adoption of the Constitution of 1868, or

which may be at any time hereafter created under or by virtue of any Act of Assembly, general or special, to wit:

Civ. '02, § 1843; R. S. 1500; 1905, XXIV, 842.

(A) **LIABILITY OF STOCKHOLDERS.**—The stockholders of all insolvent corporations other than banks and banking institutions, whether heretofore or hereafter incorporated under the Acts of the General Assembly of this State, either general or special, shall be individually liable to the creditors thereof only to the extent of the amount remaining due to the corporation upon the stock owned by them: *And provided, further*, That persons holding stock in such companies as trustee or executor, administrator, or by way of collateral security, shall not be personally subject to the liabilities of stockholders under the foregoing provisions, but the persons pledging such stock shall be liable to the creditors, and the estates and funds in the hands of such executors or administrators shall be liable in their hands in like manner and to the same extent as the deceased testator or intestate, or the ward or person interested in said trust estate would have been if they had, respectively, been living and competent to act and hold the stock in their own names.

1905, XXIV, 842.

(B) **FRAUDULENT MISREPRESENTATIONS.**—Unless some other provision for the prevention and punishment of fraudulent representations as to the capital, property and resources of such corporations shall have been inserted therein, in which case the provisions in reference thereto shall be only such as is specified in such charter, that any director or other officer or stockholder of the said corporation who shall knowingly and wilfully make or cause to be made any fraudulent misrepresentation or misrepresentations as to either the capital, property or resources of the said corporation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two thousand dollars (\$2,000), or imprisonment for not longer than two years, or both, at the discretion of the Court.

1905, XXIV, 842.

(C) **REAL ESTATE — OTHER GENERAL POWERS.**—Such corporations shall have power to purchase and hold such real estate as may be required for their purposes, or such as they may be obliged or may deem for their interest to take in the settlement of any debts due them, and they may dispose of the same; to sue and be sued in all Courts; to have and to use a common seal; to elect, in such manner as they may determine to be proper, all necessary officers, and fix their duties; to make by-laws and regulations consistent with the Constitution and laws of this State for their own government and the due and orderly conduct of their affairs, and the management of their property.

1905, XXIV, 842.

(D) **REGULATIONS AS TO STOCK.**—The shares in the capital stock of such corporations shall be deemed personal estate, except in the case of manufacturing companies, the stock in which shall be deemed realty, as stated in Section 23, and the mode of issuing the evidence of stock, and the man-

ner, terms and conditions of assigning and transferring shares, shall be prescribed by the by-laws of each corporation.

1905, XXIV, 842.

(E) NOT TO BE USED IN BANKING.—No part of the capital stock or any of the funds of such corporation shall, at any time during the continuance of their charter, be used or employed, directly or indirectly, in banking operations, or for any purpose whatsoever inconsistent with the provisions of their respective charters.

Civ. '12, § 2784; 1905, XXIV, 842.

Newton Cotton Mills v. Springs, 56 S. C. 534, 35 S. E. 222; *Sadler v. Nicholson*, 49 S. C. 7, 26 S. E. 893.

The liability of stockholders in insolvent corporations since the adoption of the Constitution of 1895, is governed by Article IX, Section 18, of that Constitution, which see. *Union Bank v. Wando Co.*, 17 S. C. 340; *Bird v. Calvert*, 22 S. C. 292; *Hall v. Klineck*, 25 S. C. 348; *Parker v. Carolina Savings Bank*, 53 S. C. 583, 31 S. E. 673. In order to reduce their liability to that prescribed in the Constitution of 1895, a corporation existing at the time of the adoption of that Constitution must surrender its old, and secure a new charter, as prescribed in Section 1907. *Lauraglen Mills v. Ruff*, 52 S. C. 587, 30 S. E. 448. The stockholder is not entitled to set off a claim against the corporation against such liability. *Lauraglen Mills v. Ruff*, 57 S. C. 58, 35 S. E. 387; *Eard v. Piedmont Land Company*, 55 S. C. 78, 32 S. E. 758. This liability includes damages from personal injuries. *Fleenniken v. Marshall*, 43 S. C. 80, 20 S. E. 788. See also *Bank v. Blake*, 3 Rich. Eq. 225, for liability under statute similar to new Constitution.

What constitutes capital stock. *State v. Hood*, 15 Rich. L. 177.

Blake v. Jones, Bail. Eq. 141.

Corporation subject to operation of this section is not liable to creditors of bank on stock subscribed and paid for by such corporation, on which it has collected dividends. *White v. Commercial etc., Bank*, 66 S. C. 491, 45 S. E. 94, 97 Am. St. Rep. 803.

Grice et al v. Anderson et al, 109 S. C. 388, 96 S. E. 222.

(4252) § 3. **Bond of Treasurer.**—The treasurer of any corporation in this State shall give bond in such sum and with such sureties as shall be required by the by-laws for the faithful discharge of his duty.

Civ. '12, § 2785; Civ. '02, § 1844; R. S. 1501.

(4253) § 4. **Stockholders' Meetings.**—At all meetings of any company, absent stockholders may vote by proxy, authorized in writing. Every company may determine by its by-laws what number of stockholders shall attend, either in person or by proxy, the form of such proxy, or what number of shares or amount of interest shall be represented at any meeting to constitute a quorum. If the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.

Civ. '12, § 2786; Civ. '02, § 1845; R. S. 1502.

(4254) § 5. **Cumulative Stock—How Voted.**—At least one meeting of stockholders of all corporations now chartered, or hereafter to be chartered in this State shall be held annually in this State, at such time and place, and upon such notice as the by-laws may provide. At all stockholders' meetings each stockholder shall be entitled to one vote for each share of stock held or owned, and shall be entitled to vote in person or by proxy for directors, trustees or managers, as provided in Section 11 of Article IX of the Constitution of the State of South Carolina; that is to say, that in the election of directors, trustees or managers of each and every such corporation, each stockholder shall be allowed to cast in person or by proxy, as many votes as the number of shares he owns, multiplied by the number of directors, trustees or managers to be elected; the same to be cast for any one candidate or to be distributed among two or more candidates.

Civ. '12, § 2787; Civ. '02, § 1846; 1901, XXI, 811.

(4255) § 6. **Certificates of Stock.**—The shares in any company shall be numbered, and every stockholder shall have a certificate, under seal of the corporation, and signed by the secretary or treasurer, certifying his property in such shares as are expressed in the certificate.

Civ. '12, § 2788; Civ. '02, § 1847; R. S. 1503; 1905, XXIV, 872.

Provisions as to transfer. *Fraser & Dill v. Charleston*, 11 S. C. 486; *Bank v. Cox*, 11 Rich. Eq. 344; *State v. McIver*, 2 S. C. 25; *Chapman v. City Council*, 28 S. C. 373, 6 S. E. 158. Mandamus to compel issuance of stock. *State v. C. & C. Ry.*, 16 S. C. 528.

(4256) § 7. **Corporations Required to Issue New Certificates of Stock.**—Whenever a stockholder holding one or more shares of stock in any corporation organized under any special Act or the general laws of the State, shall desire a new certificate of stock in the place of his original certificate of stock which shall have been lost or destroyed, he shall make application to such corporation for the issuing of such new certificate, after having caused to be published once a week for six successive weeks in a newspaper published in the county where such corporation has its principal place of business, a notice that such stock certificate (designating its number) has been lost or destroyed, and that application will be made to such corporation for a new certificate on a fixed date.

Civ. '12, § 2789; 1911, XXVII, 42.

(4257) § 8. **Only Bona Fide Owners of Stock to Have New Certificates.**—Any one so applying shall show to the officers of such corporation by affidavit that he is the *bona fide* owner of such shares of stock, and that the original certificate has been destroyed or lost, and has not been disposed of by him in any manner: *Provided*, That in addition to the requirement herein set forth the applicant file with the Secretary a good and sufficient bond, for two years, in the amount of the market value of the stock so lost or destroyed. At the expiration of two years the said lost or destroyed stock shall be null and void and no action can be maintained on account thereof.

Civ. '12, § 2790; 1911, XXVII, 42; 1920, XXXI, 876.

(4258) § 9. **Publication.**—Such publication shall be notice of the destruction and cancellation of such original certificate, and it shall not be redeemable by such corporation after the date fixed in the notice for the application to the corporation for a new certificate.

Civ. '12, § 2791; 1911, XXVII, 42.

(4259) § 10. **General Powers of Private Corporations.**—Every private corporation, as such, has power: 1. To have succession, by its corporate name, for the period limited in its charter; and when no period is limited, in perpetuity. 2. To sue and be sued. 3. To use a common seal, and to alter the same at pleasure. 4. To hold, purchase, lease, mortgage, or otherwise dispose of and convey, such real and personal estate as is limited by its charter; and if not so limited, such an amount as the business of the corporation requires. 5. To appoint such subordinate officers and agents as the business of the corporation requires, prescribe their duties and fix their compensation. 6. To make by-laws not inconsistent with any existing law, for the transfer of its stock, the management of its property or the

regulation of its affairs. 7. To declare and create, by appropriate by-laws, a lien on the stock of any stockholder in such corporation, for such sum as the stockholder is or may be indebted to such corporation for his subscription to stock therein.

Civ. '12, § 2792; Civ. '02, § 1848; R. S. 1504.

A deed should be under its seal. *Bank v. Rose*, 1 Strob. Eq. 257. A simple contract may properly be, as well as a specialty. *Central Nat'l Bank v. R. R. Co.*, 5 S. C. 156. A confession of judgment need not be. *Thew v. Mfg Co.*, 5 S. C. 415.

Estoppel to question sale of stock. *Graham v. Burgess*, 78 S. C. 404, 405, 59 S. E. 29.
S. C. R. R. Co. v. Blake, 9 Rich. L. 228.

(4260) § 11. Quorum.—When the corporate powers are directed to be exercised by any particular body or number of persons, a majority of such body or persons, unless it is otherwise provided, form a board for the exercise of such powers.

Civ. '12, § 2793; Civ. '02, § 1849.

(4261) § 12. To Organize in Two Years.—If any private corporation hereafter created by the General Assembly, incorporated under any law, does not organize and commence the transaction of its business within two years from the date of its incorporation or the date of the commission appointing the board of corporators, its corporate powers shall cease.

Civ. '12, § 2794; Civ. '02, § 1850; 1896, XXII, 101.

(4262) § 13. Certain Corporations May Increase or Decrease Capital Stock—Manner—Fees.—Any corporation heretofore or hereafter created or organized under any general or special Act of the Legislature of this State, except railroad, railway, tramway, turnpike and canal corporations, may at any time, and from time to time, increase or decrease its capital stock, as hereinafter provided.

INCREASE OF CAPITAL STOCKS.—The capital stock of any such corporations as aforesaid may be increased as follows: Whenever by resolution of the Board of Directors an increase of the capital stock of the corporation is determined upon, a meeting of the stockholders shall be called to consider such resolution, by a notice published at least once a week for four successive weeks previous to the date fixed in such notice for meeting, in some newspaper published in the county where the corporation has its principal place of business, which notice shall state the time and place of meeting, the purpose for which it is called, and the maximum amount to which it is proposed the capital stock shall be increased. The vote of two-thirds of the stock of the corporation shall be necessary to make an increase, which increase may be so made to any amount, not exceeding the maximum amount stated in the said notice of the meeting of stockholders. The Board of Directors shall certify the resolution of the stockholders to the Secretary of State, and that all the requirements of this Section as to such increase of capital stock have been complied with. In case the corporation so increasing its capital stock is incorporated under a general law, the Board of Directors shall likewise return to the Secretary of State the original charter or certificate of incorporation for the endorsement herein mentioned. The Secretary of State shall thereupon record the said certificate of the Board of Directors, and shall likewise endorse upon the charter or certificate of incorporation a certificate of the increase of the

capital stock, and shall forthwith return the charter or certificate of incorporation with such endorsement thereon to the Board of Directors; and in cases where the law under which such corporation is created or organized, requires the charter or certificate of incorporation to be recorded in the office of the Register of Mesne Conveyance or Clerk of Court, the certificate of such increase of the capital stock, endorsed by the Secretary on the charter or certificate of incorporation, as hereinbefore required, shall be recorded across the face of the record of the charter or certificate of the incorporation in the office of the Register of Mesne Conveyances or Clerk of Court, where the charter or certificate of the incorporation is required to be recorded, and the increase of the capital stock of such corporation shall be authorized when the certificate is lodged for record in said office. But in cases where the corporation has been created or organized under a special Act of the Legislature, or where such corporation has been created or organized under a general law and its charter has been amended by a special Act, the Secretary of State, upon receipt of the certificate of the Board of Directors, of the resolution of the stockholders aforesaid, and that all the requirements of this Section have been complied with as aforesaid, shall forthwith issue to said corporation a certificate of the increase of the capital stock, which certificate shall be recorded in the office of the Register of Mesne Conveyances or of the Clerk of the Court of the county in which said corporation has its principal place of business; and the increase of the capital stock of such corporation shall be authorized when such certificate is lodged for record in said office. In cases where the capital stock is increased as by this Section provided, the stockholder or stockholders thereof registered on the books of said corporation at the time when such increase of stock shall be authorized, shall have the preference of taking such increase of stock in proportion to the amount of the stock he, she or they may then own; but if such stockholder or stockholders shall not avail himself, herself or themselves of such privilege within ten days after the lodgment for record of such certificate of increase of the capital stock, the Board of Directors may dispose of the said increased capital stock as they may deem best at its market value in money or property.

The said corporation so increasing its capital stock shall pay to the Secretary of State the fees required by Section (4532) of this Code, which fees shall accompany the certificate of the Board of Directors.

Civ. '12, § 2795; Civ. '02, § 1851; 1899, XXII, 54; 1903, XXIV, 72; 1904, XXIV, 436.

State v. Bank of Charleston, Dud. Law 187. Fees for increase of capital stock. *Pacolet Mfg. Co. v. Gantt*, 68 S. C. 199, 46 S. E. 1005. Failure to comply with requirements of this Section in filing resolution with Secretary of State is a mere irregularity, which does not invalidate the increased issue. *Man v. Boykin*, 79 S. C. 1, 4, 60 S. E. 17, 128 Am. St. Rep. 830.

(4263) § 14. How Capital Stock May Be Decreased.—Decrease of capital stock: (a) When, in the judgment of the Board of Directors of any corporation mentioned in Section 13, the actual capital stock of such corporation has from any cause been impaired and is less than the par value of the shares representing the same, in such cases the nominal capital may be reduced to what, in the judgment of the Board of Directors, is the actual value of the stock of the corporation. When the capital is thus reduced, the outstanding certificates shall be called in, and certificates of

the reduced capital apportioned among the stockholders according to their respective holdings: *Provided, however,* That such reduction shall in no way impair the liability of the stockholders to creditors upon claims against the corporation existing at the time of such reduction. (b) When a corporation owing no debts desires to reduce its capital to a given amount, and to distribute among its stockholders its capital in excess of such amount in such case the outstanding certificates shall be called in, and the surplus capital and certificates for the reduced stock shall be apportioned among the stockholders according to their respective holdings. (c) The following provisions shall govern a reduction of capital in either of the cases mentioned: Should any stockholder or stockholders fail to surrender his, her or their certificate or certificates for conversion into certificates of the reduced stock, such certificate or certificates shall after such reduction represent only the amount of stock in the reduced capital to which the holder or holders would be entitled. Should the interest of any stockholder require the issue of a fractional part of a share, such fractional part of a share may be embodied in a certificate for one or more full shares, or, when necessary, a separate certificate issued therefor. Whenever, by resolution of the Board of Directors, a reduction of capital stock is determined upon, a meeting of the stockholders shall be called to consider such resolution by a notice published at least once a week for four successive weeks previous to the date fixed in such notice for such meeting, in some newspaper published in the county where the corporation has its principal place of business, which notice shall state the time and place of meeting, the purpose for which it is called, and the minimum amount to which it is proposed that the capital shall be reduced. The vote of two-thirds of the stock shall be necessary to make a reduction, which reduction may be made to any amount, not less than the amount stated in the said notice of the meeting of stockholders. The Board of Directors shall certify the resolution of the stockholders to the Secretary of State, and that all the requirements of this Chapter in relation to such decrease of capital stock have been complied with; and where capital is to be distributed, shall further certify that the corporation owes no debts. In case the corporation so decreasing its capital stock is incorporated under a general law, the Board of Directors shall likewise return to the Secretary of State the original charter or certificate of incorporation for the endorsement herein mentioned; the Secretary of State shall thereupon record the said certificates of the Board of Directors, and shall likewise endorse upon the charter or certificate of incorporation a certificate of the decrease or reduction of capital stock, and shall forthwith return the charter or certificate of incorporation, with such endorsement thereon, to the Board of Directors; and in cases where the law under which such corporation is created or organized requires the charter or certificate of incorporation to be recorded in the office of the Register of Mesne Conveyances or Clerk of Court, the certificate of such decrease or reduction of capital stock, endorsed by the Secretary of State on the charter or certificate of incorporation as hereinbefore required, shall be recorded across the face of the record of the charter or certificate of incorporation in the

office of the Register of Mesne Conveyances or Clerk of Court, where the charter or certificate of incorporation is required to be recorded; and such decrease or reduction of capital stock shall be authorized when the certificate is lodged for record in said office. But in cases where the corporation has been created or organized under a general law, and its charter has been amended by a special Act, the Secretary of State, upon the receipt of the certificate of the Board of Directors of the resolution of the stockholders aforesaid, and that the requirements of this Chapter have been complied with in relation to such decrease or reduction of capital stock, shall forthwith issue to said corporation a certificate of such decrease or reduction of capital stock, which certificate shall be recorded in the office of the Register of Mesne Conveyances or the Clerk of the Court of the county in which said corporation has its principal place of business; and the said decrease or reduction of capital stock shall be authorized when such certificate is lodged for record in said office. For the services required of him by this Section of this Chapter there shall be paid to the Secretary of State a fee of five dollars, which shall accompany the certificate of the Board of Directors: *Provided, however, That* in cases where at the time of the original authorization of preferred stock, one of the attaching conditions provides for its payment and retirement thereafter, such condition shall be valid and such stock may thus be paid and retired and the capital stock thus decreased, anything to the contrary herein notwithstanding.

Civ. '12, § 2796; Civ. '02, § 1852; 1899, XXII, 54; 1917, XXX, 331.

(4264) § 15. Fees to Be Paid Into State Treasury.—All fees received by the Secretary of State under the last two Sections shall be turned over quarterly by him to the State Treasurer.

Civ. '12, § 2797; Civ. '02, § 1853; 1899, XXII, 54.

(4265) § 16. Publication of Certificates Granted by Secretary of State—Reports to General Assembly.—The Secretary of State shall annually prepare, cause to be printed, and submit to the General Assembly, a true abstract of all certificates for the increase or decrease of the capital stock of corporation issued by him under the provisions of this Chapter; said abstract shall contain, under proper headings, the corporate name of the corporation, the date of its charter, its location, original amount of its capital stock, and such increase or decrease thereof, together with such remarks as he may deem necessary; said abstract shall be published as an appendix to the Acts and Joint Resolutions of the session of the Legislature to which such abstract is submitted; and the names of all corporations therein contained, stating whether the capital stock has been increased or decreased, shall be included in the index of said Acts and Joint Resolutions.

Civ. '12, § 2798; Civ. '02, § 1854; 1899, XXII, 54.

(4266) § 17. Payments for Stock Must Be Bona Fide.—Neither stock nor bonds shall be issued by any corporation except for money paid, property delivered, or labor done; and all fictitious increase of stock or indebtedness shall be void.

Civ. '12, § 2799; Civ. '02, § 1855; 1899, XXII, 54.

(4267) § 18. **Preferred Stock.**—Any coporation heretofore or hereafter created or organized under any general or special Act of the General Assembly, may at any time and from time to time issue stock with preferences, conditions and liabilities as herein provided.

Civ. '12, § 2800; Civ. '02, § 1856; 1901, XXIII, 712.

(4268) § 19. **Notice of Meetings on Attaching Conditions, Etc., to Stock**—When the Board of Directors or Managers of any corporation as aforesaid, deem it advisable to attach conditions, preferences or liabilities to stock issued or to be issued, they shall give four weeks' notice of a stockholders' meeting to consider the authorization of such preference or preferences, liabilities or conditions. The said notice shall contain the number of shares and aggregate amount that it is proposed to issue and the preferences that shall be given to, the conditions attached to, and the liabilities imposed upon the stock proposed to be issued.

Civ. '12, § 2801; Civ. '02, § 1857; 1901, XXIII, 712.

(4269) § 20. **Two-Thirds Vote.**—If two-thirds of the stock in value of the said company be present by proxy, or otherwise, at said meeting, and shall vote in favor of said preferences, conditions or liabilities, then the said preferences, conditions and liabilities shall be deemed a binding contract entered into by the aforesaid company when the stock shall have been issued and signed by the president and attested by the secretary.

Civ. '12, § 2802; Civ. '02, § 1858; 1901, XXIII, 712.

(4270) § 21. **Notice Dispensed With at Organization of Company.**—At the organization of any company the aforesaid four weeks' notice shall not be necessary or required: *Provided*, The subscription list shall state the amount of the preferred stock that it is proposed to issue at said organization, and two-thirds of the stock in value that has been subscribed shall be present and vote to authorize the issue of preferred stock as aforesaid.

Civ. '12, § 2803; Civ. '02, § 1859; 1901, XXIII, 712.

(4271) § 22. **Two-Thirds Vote Necessary to Attach Conditions to Stock.**—To impose any conditions or to attach any penalties to a portion only of the stock of a corporation that was not contemplated or provided at the time said stock was issued, it shall be necessary that two-thirds of the stock so affected vote therefor after notice as aforesaid.

Civ. '12, § 2804; Civ. '02, § 1860; 1901, XXIII, 712.

(4272) § 23. **Stock in Manufacturing Company Realty—Transfer—Distribution in Cases of Intestacy.**—Stocks representing shares in manufacturing corporations chartered under the laws of this State shall be deemed, and are hereby declared to be, realty, but the stock representing such shares may be transferred from one person to another, for any purpose whatsoever, by the same means as are or may be allowed by law for the transfer of shares in other corporations: *Provided*, That same shall not be subject to any claim of dower, shall be subject to debts in execution, or upon attachment as shares of stock in other corporations and to the laws

of distribution of deceased intestate's estate, as if the same were personal property: *Provided, further*, That such stocks shall be exempt, in the hands of the holder, from taxation when the corporation is taxed on the value of said stocks.

Civ. '12, § 2805; Civ. '02, § 1861; 1901, XXIII, 712.

(4273) § 24. Claims Against Corporations to Bear Interest After Thirty Days.—Any and all claims whatever against any and all corporations whatsoever shall bear legal interest from the expiration of thirty days after the day on which such claims may be due and payable, unless interest runs by agreement or contract from any earlier day, in which case the claim or claims shall bear interest from such earlier day; and further, unless a rate of interest (not usurious) different from the legal rate be agreed upon or contracted for, in which case the claim or claims shall bear the rate of interest agreed upon or contracted for.

Civ. '12, § 2806; Civ. '02, § 1862; 1898, XXII, 771.

(4274) § 25. All Debts Due for Work in This State Payable in This State.—All debts due and to become due by all corporations doing business in this State, to employees who reside in this State for labor or services rendered to such corporations within the limits of this State, shall be deemed or held to be due and payable within this State.

Civ. '12, § 2807; 1905, XXIV, 962.

(4275) § 26. Receipt of Relief Fund No Bar to Action for Damages.—When any corporation, firm or individual runs or operates what is usually called a relief department for its employees, the members of which are required or permitted to pay dues, fees, money or other compensation, by whatever name called, to be entitled to the benefit thereof, upon the death or injury of the employee, a member of such relief department, such corporation, firm or individual, so running or operating the same is required to pay to the person entitled to the same the amount it was agreed the employee, his heirs or other beneficiary under such contract should receive from such relief department; the acceptance of which amount shall not operate to estop, or in any way bar the right of such employee or his personal representative from recovering damages of such corporation, firm or individual for personal injury or death caused by the negligence of such corporation, firm or individual, their servants or agents, as are now provided by law, and any contract or agreement to the contrary, or any receipt or release given in consideration of the payment of such sum, is and shall be null and void.

Civ. '12, § 2808; 1905, XXIV, 962.

Acceptance of benefits from such relief association is bar to action for damages against corporation. *Atlantic, etc., R. Co. v. Dunning*, 166 Fed. 850. It seems that this section is unconstitutional as unreasonably abridging right to contract. *Sturgiss v. Railroad Co.*, 80 S. C. 167, 60 S. E. 939, 61 S. E. 261. *Baylot v. Atlantic Coast Line R. Co.*, 95 S. C. 210, 78 S. E. 871; *Keels v. Atlantic Coast Line R. Co.*, 104 S. C. 497, 89 S. E. 388; *Starr v. Atlantic Coast Line R. Co.*, 107 S. C. 528, 93 S. E. 176.

(4276) § 27. Corporations May Recover Debts from Their Members.—All bodies corporate, in any Court in this State, may sue for, recover and receive from their respective members all arrears or other debts, dues and

demands which now are or hereafter may be owing to them, in the like mode, manner and form as they might sue for, recover and receive the same from any indifferent person who might not be one of their body; any law, usage or custom to the contrary thereof in any wise notwithstanding.

Civ. '12, § 2809; Civ. '02, § 1863; G. S. 1577; R. S. 1512; 1792, VIII, 175.

(4277) § 28. Not to Issue Bills of Credit as a Circulating Medium—Penalty—Proviso.—No body politic or corporate within this State shall be allowed to issue any bills of credit in the nature of a circulating medium, or other than such as answer the purpose of contracts, under the penalty of ten dollars for each and every dollar issued; but this clause shall not be so construed as to affect the chartered rights of any banking institution within this State incorporated by an Act of the Legislature.

Civ. '12, § 2810; Civ. '02, § 1864; G. S. 1578; R. S. 1513; 1814, VIII, 33.

(4278) § 29. Refusal to Pay Taxes—Forfeiture—Action by Attorney General.—Whenever any corporation chartered under the laws of this State shall, within thirty days after the time required and permitted by law for taxes to be paid, with or without penalty, as now required by law, refuse, neglect or omit to pay the taxes for State and county purposes, as assessed and levied upon the property of such corporation, the charter of such corporation, with all the rights, privileges and franchises thereunder, shall become and be deemed forfeited, and the corporate existence of such corporation shall be annulled. In every such case it shall be the duty of the Attorney General, and he is hereby required, to bring an action against such corporation for the purpose of vacating and annulling the Act incorporating such corporation and all Acts amendatory or in renewal thereof, in the manner prescribed by the Code of Civil Procedure of this State.

Civ. '12, § 2811; Civ. '02, § 1865; 1893, XXI, 396.

(4279) § 30. Voluntary Dissolution of Corporations.—All corporations heretofore or hereafter incorporated in this State, either by the Legislature, the Secretary of State or a Clerk of Court, shall always have the right to go into liquidation and to wind up their affairs and dissolve by resolution of the stockholders representing a majority of capital stock had after such notice as is hereinafter provided; said resolution to be signed by the president and secretary and a majority of the board of directors of the corporation, and forwarded to the Secretary of State, to be filed and recorded in his office: *Provided*, That such resolution shall not bar an action for two years thereafter against the corporation or any of its members for any liability incurred during the existence of the corporation.

Civ. '12, § 2812; 1902, XXIII, 1036; 1919, XXXI, 56.

Henry Mercantile Co. v. Georgetown & W. R. Co., 104 S. C. 478, 89 S. E. 480.

(4280) § 31. Proceedings for Dissolution.—In order for any corporation to go into liquidation and wind up its affairs and dissolve as hereinbefore authorized, the board of directors, trustees or managers shall call

a stockholders' meeting, giving at least thirty days' notice of the time, place and purpose of said meeting, either by the mailing of written notice to each stockholder, and by publication in some newspaper published in the county where the corporation has its principal place of business, or (if no paper be published in the county) by written or printed notice, posted up on the Court House door: *Provided*, That such meeting may also be called by the president of the corporation, or by any stockholder owning in the aggregate 20 per cent. of the capital stock, in the manner above provided. If a majority of the stock of the corporation be present at such meeting, in person or by proxy, and a resolution that such corporation shall go into liquidation and wind up its affairs and dissolve, be adopted by a majority vote of all the shares of capital stock, said corporation may thereupon go into liquidation and proceed to wind up its affairs and dissolve.

Civ. '12, § 2813; 1902, XXIII, 1036.

(4281 § 32. Continuance of Corporations for Closing Affairs After Expiration, Annulment, Etc., of Charter.—All corporations, whether they expire by their own limitation or be annulled by the Legislature, or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing the business for which they were established.

Civ. '12, § 2814; Civ. '02, § 1866; 1898, XXII, 774.

American Cotton Oil Co. v. Saluda Oil Mill Co. et al, 107 S. C. 422, 93 S. E. 14.

(4282) § 33. Powers of Directors After Dissolution of Corporation.—Upon the dissolution in any manner of any corporation, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders after paying its debts, as far as such moneys and property shall enable them; they shall have power to meet and act under the by-laws of the corporation and under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of the sale of such property, and may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of said property.

Civ. '12, § 2815; Civ. '02, § 1867; 1898, XXII, 774.

Action by stockholder. Matthews v. Bank, 60 S. C. 183, 38 S. E. 437, 443.

Stockholders' action against directors for mismanagement. Sigwald v. City Bank, 82 S. C. 382, 64 S. E. 398.

(4283) § 34. Power to Sue and Liability to Suit of Directors After Dissolution.—The directors constituted trustees as aforesaid shall have authority to sue for and recover the aforesaid debts and property by the name of the corporation, and shall be suable by the same name or in their own names or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts to the amount of the moneys and property of the corporation which shall come to their hands or possession as such trustees.

Civ. '12, § 2816; Civ. '02, § 1868; 1898, XXII, 774.

Brookshire v. Farmers' Alliance, 73 S. C. 131, 52 S. E. 867.

American Cotton Oil Co. v. Saluda Oil Mill Co. et al, 107 S. C. 422, 93 S. E. 14.

(4284) § 35. Appointment of Receiver to Take Charge of Effects, Etc., of Corporation—Powers.—When any corporation shall be dissolved in any manner whatever, any Circuit Judge of this State, acting under the laws of this State as to receivers, on application of any creditor or stockholder, at any time, may either continue the directors as trustees as aforesaid or appoint one or more persons to be receivers of such corporation to take charge of the estate and effects thereof and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits necessary or proper for the purpose aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of its unfinished business; and the powers of such trustees or receivers may be continued as long as the Court shall think necessary for such purposes.

Civ. '12, § 2817; Civ. '02, § 1869; 1898, XXII, 774.

(4285) § 36. Jurisdiction of Court of Common Pleas Therein.—The Court of Common Pleas and the Circuit Judges at chambers shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such order and decrees therein as justice and equity shall require.

Civ. '12, § 2818; Civ. '02, § 1870; 1898, XXII, 774.

(4286) § 37. Duty of Trustees or Receivers.—The said trustees or receivers shall pay ratably, as far as its moneys and property shall enable them, all the creditors of the corporation who prove their debts in the manner directed by the Court; and if any balance remain after the payment of such debts and necessary expenses the same shall be distributed among stockholders.

Civ. '12, § 2819; Civ. '02, § 1871; 1898, XXII, 774.

(4287) § 38. Dissolution of Corporation Not to Abate Actions.—Any action now pending or to be hereafter begun against any corporation which may become dissolved before final judgment shall not abate by reason thereof, but no judgment shall be entered therein except upon notice to the trustees or receivers of the corporation.

Civ. '12, § 2820; Civ. '02, § 1872; 1898, XXII, 774.

(4288) § 39. Decrees of Dissolution to Be Filed With Clerk of Court.—A copy of every decree or judgment dissolving any corporation or forfeiting its charter shall be forthwith filed by the Clerk of the Court in the office of the Secretary of State, and a note thereof shall be made by the Secretary of State on the charter or certificate of incorporation and in the index thereof.

Civ. '12, § 2821; Civ. '02, § 1873; 1898, XXII, 774.

(4289) § 40. Renewal of Certain Charters—Petition—Certificate.—Any corporation, except railroad, railway, tramway, turnpike and canal companies, incorporated by a special Act of the General Assembly of this State, the duration of whose charter is limited, may, at any time before

its expiration, have its charter renewed, to continue of force perpetually unless limited by the term of the petition hereinafter provided for, in the following manner, namely: A petition authorized by the board of directors, managers or trustees of such corporation shall be filed with the Secretary of State setting forth the Act incorporating such corporation and asking for the renewal and extension of its charter, whereupon the said Secretary of State, upon payment of the fees hereinafter prescribed, shall issue and deliver to such corporation a certificate of renewal and extension of its said charter, such certificate to be of the following purport:

The State of South Carolina: Whereas, pursuant to a resolution adopted by the Board of Directors (Trustees or Managers, as the case may be) of a corporation created in and by an Act of the General Assembly of the State of South Carolina ratified the day of, A. D. (or approved the day of....., A. D., as the case may be), entitled, has filed with me its petition for renewal and extension of the Charter of said Corporation;

Now, know all men that the Charter of said Corporation is hereby renewed and extended in perpetuity (or for years, as the case may be), with all the franchises, powers, rights, privileges and immunities and subject to the responsibilities and liabilities heretofore granted to and imposed on such corporation.

Witness my hand and Seal of Office this day of,
A. D.
[L. S.]
Secretary of State.

Civ. '12, § 2822; Civ. '02, § 1874; 1891, XXIII, 713.

(4290) § 41. Effect of Certificate—Where Recorded.—Upon the issuing of the certificates hereinbefore provided for, the charter of such corporation shall thereupon be renewed and extended, and such corporation shall be entitled to and vested with all the franchises, powers, rights, privileges, immunities and property enjoyed, possessed and owned by it, and subject to the responsibilities and liabilities to which it is subject, at the date of the issuing of such certificates, except that the liability of the stockholders in such corporation shall be such as is provided in the Constitution of this State and none other, and such charter shall be subject to all the provisions of said Constitution applicable to such corporation as though such provisions were expressly inserted therein. Such certificate of renewal and extension shall be recorded in the office of the Register of Mesne Conveyances, or Clerk for the county in which such corporation has its principal place of business, and such certificate of or certified copy of such record thereof shall be evidence of the renewal and extension of the charter of such corporation.

Civ. '12, § 2823; Civ. '02, § 1875; 1891, XXIII, 713.

See post, § (4317), as to renewal of charters which have expired by limitation of time.

(4291) § 42. Charters Renewed Subject to Amendment or Repeal.—All charters renewed and extended under the provisions of Sections 40 and 41 shall at all times be subject to amendment or repeal by the General Assembly.

Civ. '12, § 2824; Civ. '02, § 1876; 1891, XXIII, 713.

(4292) § 43. **Renewals Confirmed.**—Any and all such renewals of charters as may have been heretofore granted by the Secretary of State prior to the expiration of the original charter are hereby confirmed and validated.

Civ. '12, § 2825; Civ. '02, § 1877; 1891, XXIII, 713.

(4293) § 44. **Publication of Lists of Renewals and Extensions.**—The Secretary of State shall publish with the Acts of the General Assembly a list of all such certificates of renewal and extension as he is now required by law to do in the cases of original charters issued by him.

Civ. '12, § 2826; Civ. '02, § 1878; 1891, XXIII, 713.

(4294) § 45. **Fees for Renewal Certificates.**—The same fees shall be allowed for such renewal certificate as are now prescribed by law for granting original charters.

Civ. '12, § 2827; Civ. '02, § 1879; 1891, XXIII, 713.

(4295) § 46. **Officers of Corporation to Send Out, on Request, Sworn Statements.**—The president or such other officer who shall have the custody of the funds of any corporation organized and doing business under the laws of this State, shall annually, on or before the thirtieth day of December of each and every year, make and submit to each and every stockholder or any such corporation who may make request therefor in writing, a general itemized statement, under oath, showing the actual assets and liabilities of such corporation, and deliver a copy of such statement to each and every such stockholder of said corporation as herein provided for, either in person or by mail, and proof of the mailing of any such notice as required by the terms of this Section shall be a sufficient compliance therewith: *Provided*, That in such report it shall not be necessary to set out the names of any creditor of such corporation. Any officer failing or refusing to furnish the foregoing statement within thirty days after such request shall be guilty of a misdemeanor, and, upon conviction, be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, or be imprisoned not more than thirty (30) days. Any president or other officer of a corporation organized under the laws of this State, who shall wilfully make any false statement under oath, when making and submitting the report required by this Section, shall be deemed guilty of wilful and corrupt perjury, and subject to the same punishment as is provided by law for wilful and corrupt perjury.

Civ. '12, § 2828; 1909, XXVI, 172; 1914, XXVIII, 486.

(4296) § 47. **Provisions as to Sworn Statements Not to Apply to Certain Corporations.**—Section 46 shall not apply to railroad corporations, nor to any banking institution which is now required by law to make an annual report to stockholders, nor to building and loan associations.

Civ. '12, § 2829; 1909, XXVI, 172.

(4297) § 48. **Procedure in Cases Against Corporations for Violating Criminal Laws.**—Whenever any corporation doing business in this State, whether incorporated under the laws of this State or not, shall be charged

in any Court of competent jurisdiction with the violation of any of the criminal laws of the State appertaining to corporations, the Court in which such prosecution originates shall obtain and have jurisdiction of such offending corporation in the following manner, to wit: If the offense charged be within the jurisdiction of the Magistrates' Courts in this State, it shall be that whenever any person shall make an affidavit before any Magistrate that such corporation has violated any of the criminal laws of this State in any matter now provided for by law, or that hereafter be provided for by law, it shall be the duty of such Magistrate to issue a warrant against such offending corporation in which shall be stated the substance of the offense charged against such corporation, together with a notice to such corporation stating the time and place and when and where such corporation must or shall appear for trial; and in such case, a copy of the warrant shall be served upon such corporation in the manner now provided by law for the service of process in civil actions. And when there is no agent or officer of the company, the service shall be made upon such person as is in charge of the property of the said corporation, and if no such person can be found, it shall be served upon the Secretary of State, who shall transmit a copy of the same by mail to the last known residence of the managing officer of said corporation, directed to said officer: *Provided*, That no criminal proceeding shall be instituted against any corporation unless the offense charged, or some part thereof, shall have been committed in the county where the prosecution shall be instituted: *And provided, further*, That in the case of a foreign corporation, it shall be necessary that such corporation have an agent or other officer within the county upon whom such process may be served in accordance with the provisions in civil actions; but if such foreign corporation have no agent or other officer within the county where the offense, or some part thereof, has been committed, then process shall be served on the person appointed by such corporation to receive service of process as now required by law regulating foreign corporations, or upon the Insurance Commissioner in cases when by law service of process in civil actions may be made upon the Insurance Commissioner, and such service shall be made in the same manner provided by law for service of summons in civil actions against such corporations.

Civ. '12, § 2830; 1911, XXVII, 39.

(4298) § 49. In Magistrate's Court.—If such corporation shall appear, or shall fail to appear, after such service, the Magistrate shall proceed with the trial as in criminal cases, and if such defendant corporation shall be found guilty of the offense charged whether by a verdict of a jury or by the findings of the Magistrate in case a trial by jury be waived by the party or parties appearing, the Magistrate shall pronounce sentence in conformity with the law in such case, and such sentence may be enforced by an execution against the property of such defendant corporation in the same manner as now provided by law for enforcing the judgments of Magistrates' Courts: *Provided*, That nothing herein shall be construed to prevent the right of appeal by either party to the Court of General Ses-

sions, as is now provided by law in criminal cases within the jurisdiction of Magistrates.

Civ. '12, § 2831; 1911, XXVII, 41.

(4299) § 50. In Court of General Sessions.—If the offense charged against such corporation be cognizable by the Courts of General Sessions, the Solicitor shall hand out a bill of indictment to the Grand Jury of the county in which such offense, or some part thereof, has been committed, and if the Grand Jury shall return a true bill, the Solicitor shall cause a copy of such indictment to be served on such corporation offending or upon such of its officers or agents as is now provided by law for the service of process in civil actions, and in the manner indicated in the preceding Section, together with a notice to such corporation of the term of the Court of General Sessions in which such case will be tried; and the sentence and judgment of the Court of General Sessions shall be enforced in the same manner by execution against the property of the defendant as is now provided by law for enforcing the judgments of the Courts of Common Pleas in civil actions.

Civ. '12, § 2832; 1911, XXVII, 41.

(4300) § 51. Appeal.—In all cases the right of appeal shall be preserved, and the procedure therein shall be the same as is now provided by law in appeals in criminal cases, whether in the Magistrates' Courts or in the Courts of General Sessions.

Civ. '12, § 2833; 1911, XXVII, 41.

CHAPTER L.

Private Corporations Organized Under General Laws.

ARTICLE 1. Business Corporations, 1280.

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ARTICLE 4. Railroads, Steamboat and Canal Companies, 1298.

ARTICLE I.

Business Corporations.

(4301) § 1. Certain Charters Granted by Secretary of State—Requisites.—The charter for every corporation, except railroad, railway, turnpike, and canal and steamboat corporations, shall be issued by the Secretary of State. Two or more persons desiring to form a corporation for any purpose or purposes whatsoever, or two or more combined (except for municipal purposes, and except also for railroad, railway, turnpike, canal, and steamboat corporations), may, after having given three days' public notice of their intention to do so, file with the Secretary of State a written declaration signed by themselves, setting forth (1) the names and residences of the declarants; (2) the name of the proposed corporation, which shall be different from the name of any previously chartered corporation; (3) the place at which it proposes to have its principal place of business, if any, or be located; (4) the general nature of the business, if any, which it

proposes to do; (5) the amount of capital stock, if any, and how and when payable; (6) the number of shares into which the capital stock is divided and the par value, if such there be, of each share; (7) that not less than fifty per cent. of the proposed capital stock has been subscribed by *bona fide* subscribers. That, after due notice, at a meeting of the subscribers, a majority of whom in value was present in person or by proxy, the organization of the company had been completed by the election from themselves of a board of directors, trustees, or managers, giving the names of said directors, which board shall manage the affairs of the corporation until their successors shall have been elected, and shall have qualified according to the constitution and by-laws of the corporation; that the board of directors, trustees, or managers, have secured the payment of the subscription to the capital stock, either in whole or in such installments as it shall see fit: *Provided*, The said amount shall not be less than twenty per cent. of the amount subscribed by each stockholder. That the said board of directors, trustees, or managers, have elected from their number a president, and that they have elected such other person or persons as they may see fit as secretary and treasurer, the latter of which officers shall be named in the declaration: *Provided, further*, That in case of continuing building and loan associations and other corporations of a like nature issuing stock in monthly series, the declaration may name an amount as the initial capital stock and a larger amount as the ultimate capital stock, to which the issue of the monthly series may extend according to the by-laws of said corporation; and when not less than fifty per cent. of the initial capital stock shall have been subscribed by *bona fide* subscribers, the meeting of the stockholders and other proceedings provided for in this Article may be had: *Provided, further*, That the stockholders of such corporation shall have the power at their meeting to adopt a by-law providing for the issuing of preferred stock, having such special privileges and to be issued in such amounts and in such manner as they shall establish by their said by-laws.

Civ. '12, § 2834; Civ. '02, § 1880; 1896, XXII, 92; 1897, XXII, 522; 1903, XXIV, 75; 1920, XXXI, 754.

The place of business constitutes its legal residence, but this residence is not confined to its principal place of business. *Cromwell v. Ins. Co.*, 2 Rich. L. 512.

Meyer et al v. Brunson et al, 104 S. C. 84, 88 S. E. 359.

(4302) § 2. Board of Corporators—Fees—Books of Subscription, Etc.

—The affairs of any corporation chartered hereunder may be wound up by a resolution of the stockholders representing a majority of the capital stock, said resolution to be signed by the president and secretary, or other officers of the corporation, and a majority of the board of directors, and forwarded to the Secretary of State to be filed: *Provided*, That such resolution shall not bar an action for two years thereafter against the corporation or any of its members for any liability incurred during the existence of the corporation.

Civ. '12, § 2835; Civ. '02, § 1881; 1896, XXII, 92; 1897, XXII, 522; 1920, XXXI, 754.

(4303) § 3. Subscription—How Payable.—All subscriptions to the capital stock of any corporation organized under this Article shall be payable in money, or in labor or in property at its money value, and shall be listed, the labor or the property and the value thereof to be specified in the list of subscriptions; but no subscription in labor or in property shall be received

unless such labor or property and the value thereof, so to be specified as aforesaid, be approved by said board of corporators; and in case of failure to perform the labor or to deliver the property according to the terms of the subscription, the money value thereof, as specified in the list of subscriptions, shall be paid by the subscribers.

Civ. '12, § 2836; Civ. '02, § 1882; 1896, XXII, 92; 1897, XXII, 522.

Subscription made before act of incorporation held binding if recognized afterwards. *Christ Church v. Simons*, 2 Rich. L. 368. So where subscriber participates in organization of the corporation. *G. & C. Ry. Co. v. Coleman*, 5 Rich. L. 118; *Same v. Woodside*, 1b. 145, 55 Am. Dec. 708. Conditional subscription binding. *Spartanburg and G. Ry. Co. v. DeGraffenreid*, 12 Rich. L. 675. Not released by amendment to charter. *Greenville v. Coleman*, *supra*. When released from subscription. *Nettles v. Marco*, 33 S. C. 47, 11 S. E. 595. Subscription binding. *N. E. Ry. Co. v. Rodrigues*, 10 Rich. L. 278. Necessity of signing subscription book. *C. & S. C. Ry. Co. v. Blakeley*, 35 Strob. 245. Action to recover. *Ramey v. Anderson*, 1 McMal. 500; *Columbia v. Harrison*, 2 Mills Const. 213. Subscription made on behalf of another. *Williams v. Benet*, 34 S. C. 112, 13 S. E. 97. Erasure of name. *C. & C. Ry. Co. v. White*, 10 S. C. 155.

(4304) § 4. Organization—When and How Perfected.—Where not less than fifty per cent. of the proposed capital stock shall have been subscribed by *bona fide* subscribers, the board of corporators shall call the subscribers together. At such meeting of the subscribers, a majority of whom in value being present in person or by proxy, the subscribers shall proceed to the organization of the company by the election from themselves of a board of directors, trustees or managers, of such number as they may deem proper, not to exceed nine in number, which board shall manage the affairs of the corporation until their successors shall have been elected, and shall have qualified according to the constitution and by-laws of the corporation. The board of directors, trustees or managers shall call for the payment of the subscription to the capital either in whole or in such installments as it shall see fit. The board of directors, trustees or managers shall elect from their number a president, and they may also elect such person or persons as they may see fit as secretary and as treasurer, the latter of whom shall give such bond as they may require: *Provided*, That in case of continuing building and loan associations and other corporations of a like nature issuing stock in monthly series, the declaration may name an amount as the initial capital stock, and a larger amount as the ultimate capital stock, to which the issue of the monthly series may extend, according to the by-laws of said corporation; and when not less than fifty per cent. of the initial capital stock shall have been subscribed by *bona fide* subscribers, the meeting of the stockholders and other proceedings provided for in this Article may be had: *Provided, further*, That the stockholders of such corporation shall have the power at their first meeting to adopt a by-law providing for the issuing of preferred stock, having such special privileges and to be issued in such amounts and in such manner as they shall establish by their said by-laws.

Civ. '12, § 2837; Civ. '02, § 1883; 1896, XXII, 94; 1900, XXIII, 386.

As to compliance with charter or statutory provisions, under special charter. *Spartanburg & A. R. Co. v. Ezell*, 14 S. C. 281. Conditions precedent to organization. *C. & C. R. Co. v. White*, 10 S. C. 155.

(4305) § 5. How Charter is Secured.—Upon the payment to the treasurer of the corporation, or to some other officer designated for the purpose by the subscribers, of at least twenty per cent. of the aggregate amount of the capital subscribed, payable in money, or upon the delivery to such officers of at least twenty per cent. of the property subscribed to the aggregate amount of the capital stock, or upon its delivery being secured by such

obligations of the subscribers as the board of directors, trustees or managers may approve, the board of corporators, or a majority of them, shall over their signatures certify to the Secretary of State that the requirements of this Article have been complied with, which certificate shall be known as the declaration of the corporation. Upon the filing of the said declaration, and the receipt of the charter fee hereinafter provided for, and upon the payment to him of the fee of \$2.50 for the recording of the declaration, the Secretary of State shall issue to the board of corporations a certified copy of their declaration, which shall constitute the charter of said corporation, authorizing the same to begin business under the name and for the purpose indicated in the written declaration, a copy of which charter shall be recorded in the office of the Register of Mesne Conveyance or Clerk of Court of each county where such corporation shall have an office or place of business. A copy of the certificate issued by the Secretary of State to the board of corporations, and known as the charter, when attested and certified by the Secretary of State or the Register of Mesne Conveyance or the Clerk of the Court of the county where such certificate is recorded, or by the deputy of either of them, shall in all Courts and places be evidence of the due organization and existence of the corporation and of the matters specified in such certificate of incorporation.

Civ. '12, § 2838; Civ. '02, § 1884; 1896, XXII, 94; 1920, XXXI, 754.

Corporation receiving charter and working under it cannot deny acceptance of it. *McKay v. Beard*, 20 S. C. 156.

Original charter duly certified is the highest evidence of incorporation. *Sumter Tobacco, etc., Co. v. Phoenix Insurance Co.*, 76 S. C. 76, 77, 56 S. E. 654, 121 Am. St. Rep. 941, 11 Am. & Eng. Ann. Cas. 780, 10 L. R. A., N. S., 736n.

(4306) § 6. Irregularities Not to Vitate Corporation Unless Ordered by Proper Proceedings.—No irregularity in complying with the provisions of this Article shall be held to vitiate the incorporation until a direct proceeding to set aside and annul the charter be instituted by the proper authorities of the State; and all acts done and contracts entered into shall have the same force and effect as if no irregularity had existed.

Civ. '12, § 2839; Civ. '02, § 1885; 1896, XXII, 92.

Irregularity in variance of name in charter and declaration can only be attacked by State in direct proceedings. *Sumter Tobacco, etc., Co. v. Phoenix Insurance Co.*, 76 S. C. 76, 77, 56 S. E. 654, 121 Am. St. Rep. 941, 11 Am. & Eng. Ann. Cas. 780, 10 L. R. A., N. S., 736n.

(4307) § 7. Board of Corporators to Turn Papers Over to Company.—Upon the issuance of the charter by the Secretary of State, the board of corporators shall turn over to the proper officers of the corporation all subscription lists or other papers they have taken as corporators, and all such papers shall be as valid as if taken and made by the corporators.

Civ. '12, § 2840; Civ. '02, § 1886; 1896, XXII, 92.

In action on subscription note for stock evidence as to falsity of statements in return of corporators was excluded. *Glenn v. Kosborough*, 48 S. C. 272, 26 S. E. 611. See citations under § (4303).

(4308) § 8. Proceedings to Be Recorded by Secretary of State.—The certificate of incorporation as provided in this Article shall be filed in the office of the Secretary of State, and recorded by him in books for that purpose.

Civ. '12, § 2841; Civ. '02, § 1887; 1896, XXII, 92; 1920, XXXI, 754.

(4309) § 9. Certain Recording Dispensed With.—That the recording by the Secretary of State of the following papers connected with charters

of corporations heretofore required by law be, and the same are hereby, dispensed with: Declaration or petition for charter, return of corporations, applications for increase or decrease of capital stock, applications for amendment of charter, application for renewal of charter.

1917, XXX, 36.

(4310) § 10. To Be Filed and Indexed.—That in lieu of the recording heretofore required, the Secretary of State shall file said papers under proper numbers and index the same, and shall collect therefor the fees now required for recording.

1917, XXX, 36.

(4311) § 11. What Papers Shall Be Recorded.—The Secretary of State shall record as heretofore required such papers connected with the charters of corporations as may be of original issue from this office.

1917, XXX, 36.

(4312) § 12. Fees for Charters—Consolidation of Railroad Companies—Disposition of Fees.—The Secretary of State is hereby authorized and required to collect the following fees: Upon each charter issued or renewed to any corporation, payable when the said charter is issued or renewed, the sum of one mill upon each dollar of the capital stock authorized up to and including one hundred thousand dollars; the sum of one-half of a mill upon each dollar of the capital stock exceeding one hundred thousand dollars and up to and including one million dollars; and the sum of one-fourth of a mill upon each dollar of the capital stock exceeding one million dollars; for recording each declaration, petition or return precedent to the granting of any commission of corporators, charter, amendment of charter or increase, or decrease of capital stock, or renewal of charter, required by law to be recorded in said office, the sum of two dollars and fifty cents for each paper so recorded; for filing each declaration or other paper, by any foreign corporation, five dollars; for filing each charter granted in another State and by-laws adopted thereunder, or either required by law to be filed, five dollars: *Provided*, That nothing herein contained shall be construed to apply to municipal charters: *Provided, further*, That nothing herein contained shall be construed to increase the fees for churches, lodges, colleges, schools or other eleemosynary organizations.

Upon the consolidation of any railroad company there shall be paid to the Secretary of State a fee upon the capital stock of the combined company as in the organization of a new company: *Provided*, That credit shall be given thereon for any charter fees paid by companies forming the consolidated company.

All fees collected hereunder shall be paid into the State Treasury by the Secretary of State.

Civ. '12, § 2842; Civ. '02, § 1888; 1901, XXIII, 710.

Under § (4262), Code, providing for increase of capital stock, and requiring fees herein named, the fees are to be based on the increase of stock. *Pacolet Mfg. Co. v. Gantt*, 68 S. C. 199, 46 S. E. 1005.

(4313) § 13. Secretary of State to Collect at Least Five Dollars for Charter—Exceptions.—The Secretary of State shall collect and receive at least five dollars for every charter issued by him, in addition to the record-

ing fee as provided for by law. The provisions of this Section shall not apply to eleemosynary corporations.

Civ. '12, § 2843; 1905, XXIV, 873.

(4314) § 14. Fees for Building and Loan Associations.—The fees to be charged by the Secretary of State for the issuing of a charter to building and loan associations organized within this State shall be twenty-five dollars; and, further, that no commissions shall be charged on any increase of the capital stock of such associations.

Civ. '12, § 2845; 1903, XXIV, 76; 1905, XXIV, 903.

(4315) § 15. How Certain Corporation May Secure a New Charter—Amendments—Fees.—Any corporation heretofore created which has not forfeited its charter, and any corporation created by the General Assembly of 1894, may surrender its charter and secure a new charter under this Article; and any such corporation or any corporation created under this Article may have its name changed or its charter amended in any particular under this Article. Any corporation chartered previous to the approval of this Article, desiring to increase its capital stock, shall, before such increase be allowed and resolution be filed and recorded, pay to the Secretary of State the fees prescribed in Section 12: *Provided*, That the granting of such new charter or such amendments shall not operate in any way to prejudice the claims of creditors of such corporation or to relieve such corporation of any liability already created or assumed, but that, although operating under a new charter, it shall be regarded as the same corporation. In order to obtain such new charter or such amendment of charter, the board of directors, trustees or managers shall call a stockholders' meeting, giving at least thirty days' notice of the time, place and purpose of said meeting, either by the mailing of written notice to each stockholder or else by publication in some newspaper published in the county where the corporation has its principal place of business, or (if no paper be published in the county) by written or printed notice posted up on the Court House door: *Provided*, That such meeting may also be called by the president of the corporation, or by any stockholder owning in aggregate twenty per cent. of the capital stock, in the manner above provided. If a majority of the stock of the corporation be present at such meeting, in person or by proxy, and a resolution asking for a new charter or an amendment of charter be adopted by a majority vote of the shares represented at the meeting, then the board of directors, trustees or managers, or a majority of them, shall certify such resolution, over their signatures, to the Secretary of State. Such resolution petitioning for such new charter or amendment shall set forth the date of the original charter of the company by reference to the Act of the General Assembly or to the record in the office of the Secretary of State, and shall in other respects conform to the form of the declaration provided for in Section 1. The Secretary of State, upon the filing of such declaration and upon payment of the charter fee in cases where an increase of capital stock is petitioned for, and upon the payment of a fee of three dollars, shall issue to the corporation a new charter or an amended charter in accordance with the terms of the petition. All papers connected with

the granting of such new charters or of such amendments shall be recorded as provided in Section 8.

Civ. '12, § 2846; Civ. '02, § 1889; 1896, XXII, 97; 1898, XXII, 769; 1901, XXIII, 710.

Surrender of old charter and acceptance of new. *Roye v. Charleston Savings Inst.*, 14 Rich. Eq. 54; *Lauraglen Mills v. Ruff*, 52 S. C. 448, 30 S. E. 587; *Attorney-General v. Clergy Soc.*, 10 Rich. Eq. 604.

See §§ (4262)-(4264) for provisions as to increase or decrease of capital stock.

As to sufficiency of notice of meeting authorizing execution of mortgage or bonds, see post § (4819), subsec. 8.

(4316) § 16. Expenses of Charters.—No expenses shall be attached to the granting of charters or amendments thereto further than the fees as specified herein: *Provided*, That the total fees for the charter of any church, cemetery company, Freemason or Odd Fellows or Knights of Pythias lodge, or any other charitable, social, educational or religious society, shall not exceed the sum of two dollars, to be paid to the Secretary of State upon the filing of the petition for incorporation.

Civ. '12, § 2847; Civ. '02, § 1890; 1896, XXII, 97.

(4317) § 17. Charters Perpetual—Liquidation.—All charters granted under the provisions of this Article shall continue of force perpetually unless limited by the terms of the petition: *Provided*, That all corporations shall always have the right to go into liquidation and to wind up their affairs upon a stockholders' vote representing a majority of capital stock had after such notice as is provided in Section 15.

HOW EXPIRED CHARTERS MAY BE RENEWED.—If the charter of any corporation heretofore or hereafter granted by special Act, or under general laws, has expired, or shall expire by limitation of time, such charter may be renewed (to continue of force perpetually unless limited by the terms of the petition, and to be subject to amendment or repeal by or under legislative authority) in the following manner:

FORM OF PETITION.—A petition shall be filed with the Secretary of State by any three or more of the officers, stockholders or members of such corporation for renewal of the charter thereof, setting forth such charter and the date of its expiration; and thereupon the Secretary of State shall, on payment to him of the charter fees prescribed by law, issue a certificate of renewal of such charter and deliver the same to the petitioners, such certificate to be to the following purport:

"The State of South Carolina: Whereas, . . . being three or more of the officers, stockholders or members (as the case may be) of the corporation known by the name of . . . (here state name of corporation) and chartered by . . . on the . . . day of . . ., A. D. . . . (here state how and when chartered), have filed with me their petition for renewal of the charter of such corporation. Now, know all men by these presents, That the charter of the said corporation is hereby renewed, with all the franchises, powers, rights, privileges and immunities, and subject to the responsibilities and liabilities granted and imposed heretofore to and on such corporation, in perpetuity or for . . . years (as the case may be). Witness my hand and seal of office this . . . day of . . ., A. D. . . .

(L. S.)

Secretary of State."

Upon the issuing of such certificate or renewal, that charter of such cor-

poration shall thereupon be renewed, and the corporation shall be entitled to and vested with all the franchises, powers, rights, privileges, immunities and property enjoyed, possessed and owned by it at the expiration of its charter, in all respects as if such charter had not expired, and subject to the responsibilities and liabilities to which it was subject at the time of such expiration; and all acts done by such corporation after the expiration of its charter shall thereupon be as valid as if such charter had not expired.*

RECORD.—And such certificate of renewal shall be recorded in the Secretary of State's office, and also in the office of the Register of Mesne Conveyances or Clerk, as required by Section 5 of this Article, and a certified copy thereof shall be evidence as provided in said Section 5.

SECRETARY OF STATE TO PUBLISH LIST OF RENEWALS.—The Secretary of State shall publish with the Acts of the General Assembly a list of all such certificates of renewal as he is now required by law to do in the cases of original charters issued by him.†

Civ. '12, § 2848; Civ. '02, § 1891; 1896, XXII, 97; 1897, XXII, 524; 1898, XXII, 771.

*The renewal of charter held to relate back to prevent reverter of property. *St. Phillips Church v. Zion Presbyterian Church*, 23 S. C. 297. See also, *Brown v. Chesterville Academy*, 3 Rich. Eq. 362.

†See §§ (4289)-(4294), as to renewal of charters before expiration.

(4318) § 18. Amendments by Special Acts Confirmed.—All amendments heretofore made of charters of corporations granted by special Act be, and the same are hereby, ratified and confirmed.

Civ. '12, § 2849; Civ. '02, § 1892; 1898, XXII, 771.

See ante, §§ (4253) and (4254), as to mode of elections by stockholders; time and place of meetings; see § (4251), subd. D, and (4272) as to status of stock; § (4261) as to the time within which it must organize.

(4319) § 19. Powers of Corporations Under This Article.—Every corporation chartered under this Article shall have the following powers, to wit:

1. To have perpetual succession.
2. To sue and be sued by the corporate name.
3. To have a common seal and to alter the same at pleasure.
4. To prescribe the mode of transferring the shares of the corporation.
5. To make contracts, to loan money, to acquire and to transfer property, both real and personal, including shares of stock in other corporations, possessing the same powers in such respects as individuals now enjoy.
6. To make by-laws and all rules and regulations deemed expedient for the management of its affairs not inconsistent with the Constitution and laws of this State or of the United States

All by-laws must be subordinate and conformable to its charter. *St. Luke's Church v. Matthews*, 4 DeS. 585.

7. To have a lien upon the shares of its stockholders to enforce the payment of installments due upon the capital stock, to provide and to enforce the collection of such fines and penalties for delinquency in payments of its installments upon the capital stock as its by-laws may fix, not to exceed ten per centum on account due.

Civ. '02, § 1893; 1896, XXII, 99; 1898, XXII, 770.

8. To borrow money for the purpose of carrying out the objects of its charter; to make notes, bonds or other evidences of debt; and upon a vote of the stockholders, had after such notice as is provided in Section 15, to secure the payments of its obligations by mortgage or deed in trust on all or any of its property and franchises, both real and personal: *Provided, however,* That no such notice or vote shall be required to enable the proper officers of any corporation to secure the payment of any temporary loan on promissory note or otherwise by pledge or hypothecation of any chose in action held or owned by such corporation or of the products, goods, wares or merchandise produced or manufactured by such corporation, unless such notice and vote be required by the by-laws or rules of such corporation: *And provided, further,* That nothing herein contained shall prevent a corporation, when so authorized by resolution of its board of directors or managing board, from executing and delivering a valid mortgage on property to secure a bond (or note) given solely for the unpaid portion of the purchase money of property *bona fide* purchased and mortgaged, where the conveyance or grant to the corporation and such bond (or note) and mortgage bear the same date, are interchangeably delivered at the same time, and the mortgage covers no more property than that which has been so purchased, such mortgage being hereby authorized.†

Civ. '12, § 2850; 1911, XXVII, 153.

†Deposits of title deeds by president cannot create an equitable mortgage. *Parker v. Carolina Sav. Bank*, 53 S. C. 583, 31 S. E. 678. Lien in favor of vendor under an attempted but irregular mortgage. *Hughes v. Edisto Cypress Shingle Co.*, 51 S. C. 1, 28 S. E. 2.

Stockholders can waive notice if they have actual notice of meeting. *In re Goldville Mfg. Co.*, 118 Fed. 892, 895.

Subsequent lien creditors cannot attack validity of a mortgage for valuable consideration on ground that all the stockholders were not notified as required by § (4815), where majority of stockholders were notified and attended meeting authorizing execution of mortgage. *Drewery v. Columbia Amusement Co.*, 87 S. C. 445, 69 S. E. 879, 1094.

Wise v. Carolina Hail Ins. Co. et al, 108 S. C. 504, 94 S. E. 535.

(4320) § 20. When Stock Shall Be Issued.—No stock shall be issued by any corporation until fully paid, except in cases of corporations when by the terms of the petition the capital stock is to be paid in installments; and no transfers of stock shall be valid except as between the parties thereto until the same shall have been regularly entered upon the books of the corporation.

Civ. '12, § 2851; Civ. '02, § 1894; 1896, XXII, 99.

After transfer entered on books of the company the original stockholder is no longer liable as such. *Eldred v. Piedmont Land, etc., Co.*, 55 S. C. 78, 32 S. E. 758.

Intention to transfer. *Maxwell v. Foster*, 67 S. C. 377, 45 S. E. 927. Actual entry of transfer on books is necessary to affect the statutory liability of stockholder. *Man v. Boykin*, 79 S. C. 1, 7, 60 S. E. 17, 128 Am. St. Rep. 830; *White v. Bank*, 66 S. C. 491, 45 S. E. 94, 97 Am. St. Rep. 803. The vendor or assignor may compel transfer to the vendee. *Man v. Boykin*, *supra*.

But in case of liability of assignor because transfer is not entered on books, he has his action against the transferee for reimbursement. *Man v. Boykin*, 79 S. C. 1, 5, 60 S. E. 17, 128 Am. St. Rep. 830.

(4321) § 21. Certain Powers of Corporations Chartered Under This Article.—Corporations organized for any purpose under the provisions of this Article shall have power to construct and operate a railroad, electric railway, tramway, turnpike or canal for their own use and purposes, and shall have the right to effect a crossing with any existing railroad or public roads as is now provided by law for railroad corporations; but they shall

have no power to condemn lands except for crossing any existing railroad or public road, as herein provided.

Civ. '12, § 2852; Civ. '02, § 1895; 1896, XXII, 99.

See *Ex parte* Baco, 36 S. C. 125, 15 S. E. 204, decided under former Act of 1886. Constitutional. *Alderman v. Wilson Lumber Co.*, 77 S. C. 165, 57 S. E. 756. Crossing enforced in behalf of private railroad. *Salem R. Co. v. Alderman*, 78 S. C. 1, 58 S. E. 940.

Charter of corporation obtained under General Laws of 1886, providing that it may take private property for right of way for railroad, is amended by Act of 1896, so that it now has no such power or right. *Boyd v. Winnsboro Granite Co.*, 66 S. C. 433, 437, 45 S. E. 10.

Gives private corporation right to condemn right of way for private railroad over public or private railroad or tramroad, and such condemnation may be had across right of way staked out on which proposed railroad has not been actually located. *Alderman & Sons Co. v. Wilson Lumber Co.*, 77 S. C. 165, 168, 57 S. E. 756.

Southern Railway Co. v. Diseker. Diseker v. Southern Railway Co., 81 S. E. 269. (Court of Appeals of Georgia.)

(4322) § 22. Shares of Stock Requisite for Eligibility of Directors, Etc., of Banking Corporations.—No stockholder in any corporation organized under the provisions of this Article for banking purposes shall be eligible to election as a director, manager or trustee who is not the owner of at least ten shares of stock in said corporation.

Civ. '12, § 2853; Civ. '02, § 1896; 1896, XXII, 99.

(4323) § 23. Unlimited Number of Directors for Certain Corporations.—Any corporation of this State, organized for the purpose of doing a general banking, or insurance, or shipbuilding and trust company business, or trust company business alone, may, by a resolution adopted at the meeting of the subscribers for organization, or its by-laws adopted after such organization, provide for the election of two classes of directors, to wit, active and advisory, and may prescribe distinct duties to be devolved upon each of said classes; and may elect such number of directors for each of said classes as may be deemed advisable, and that it may, from time to time, alter its by-laws with reference thereto.

Civ. '12, § 2854; 1902, XXIII, 1038; 1906, XXV, 54.

(4324) § 24. Books Open to Inspection.—The books of any corporation organized under this Article shall be open to the inspection of any stockholder at any and all times.

Civ. '12, § 2855; Civ. '02, § 1897; 1896, XXII, 99.

(4325) § 25. Nonuser of Charter for Five Years a Forfeiture.—Any corporation organized under the provisions of this Article shall cease to exist by a nonuser of its franchises for five years at any one time: *Provided*, That this shall not relieve any stockholder of any liability incurred during the existence of said corporation.

Civ. '12, § 2856; Civ. '02, § 1898; 1896, XXII, 99.

(4326) § 26. How Meetings of Stockholders May Be Called.—A failure to hold meetings or elect directors, trustees or managers on the day appointed by the by-laws shall not work a forfeiture of the charter of the company, but a meeting may be called hereafter by the president, or by the stockholders owning one-fifth of the capital stock of the corporation, by giving such notice as the by-laws may require for annual meetings.

Civ. '12, § 2857; Civ. '02, § 1899; 1896, XXII, 99.

(4327) § 27. Right to Charge for Use of Wharves.—Any corporation organized under this Article engaged in the transportation of freight or

passengers by means of steamboats or otherwise upon any of the navigable waters of this State shall have the authority to exact reasonable tolls and fees for the use of wharves or landings located upon lands that are the property of such corporation or that are under lease or control of such corporation.

Civ. '12, § 2858; Civ. '02, § 1900; 1896, XXII, 99.

(4328) § 28. Corporations Subject to Liabilities Now Imposed by Law.—Every corporation created under the provisions of this Article shall be subject to the liabilities now imposed by law, and shall have all the rights, powers and privileges now provided for by law.

Civ. '12, § 2859; Civ. '02, § 1901; 1896, XXII, 99.

(4329) § 29. Right of Manufacturing Corporations to Become Members of Certain Mutual Associations.—Each and every manufacturing corporation of this State, whether incorporated under the provisions of any special or general Act of the General Assembly of this State, shall, in addition to all the rights, powers and franchises which they and each of them now severally possess, have full power and authority to become a member of or effect insurance of their several property, in whole or in part, in any mutual protective association or associations, or mutual insurance company or companies of any kind, and to severally subscribe and subject themselves to all the provisions of the several constitutions or by-laws of such associations or companies.

Civ. '12, § 2860; 1903, XXIV, 74.

(4330) § 30. Manufacturing Corporation Member of Mutual Insurance Companies, Etc.—Warehouse Receipts.—Each and every such company shall further have full power and authority to become a member of any mutual company or association, and to severally subscribe and subject themselves to the constitution and by-laws thereof, which shall be or may have been formed or incorporated, with a view of affording to the members thereof, insurance against or indemnity for any accident or mishap, or which shall be or may have been formed or incorporated with a view of issuing warehouse or other receipts, or warehouse or other certificates, for the whole or any part of any product thereof, or for any raw product to be used by them, or with the purpose of guaranteeing such receipts or certificates, and the validity thereof.

Civ. '12, § 2861; 1903, XXIV, 74.

ARTICLE II.

The Formation of Cooperations, Associations, Societies, Companies, Unions or Exchanges, and to Define Their Duties.

(4331) § 1. Cooperative Associations—Purposes—Meaning of Words.—Five or more persons, residents of South Carolina, may associate themselves as a cooperative association, society, company, union or exchange for the purpose of conducting within this State any agricultural, dairy, mercantile, mining, mechanical or manufacturing business on the cooperative plan.

The word "cooperative" shall form a part of the name of the corporation, and, for the purposes of this Article, the words "association," "society," "company," "union" and "exchange" shall have the same signification and shall import a corporation.

1915, XXIX, 235.

(4332) § 2. Written Petition Filed With Secretary of State—Contents.—

They shall file with the Secretary of State a written petition, signed by themselves, setting forth the names and residences of the petitioners; the name of the proposed corporation; the place at which it purposes to have its principal place of business; the general nature of the business which it purposes to engage in; the amount of capital stock of the association, and how and when payable; the number of shares into which the capital stock is to be divided, and the par value of each share, and all other matters which it may be desirable to set forth.

1915, XXIX, 235.

(4333) § 3. Commission — Books of Subscription — Notice.—Upon the filing of the petition, as above, and upon the payment of fee for the recording of said petition, the Secretary of State shall issue to the said petitioners a commission constituting them a board of corporators and authorizing them to open books of subscription to the capital stock of the proposed association after such public notice, not exceeding ten days, as he may require in said commission.

1915, XXIX, 235.

(4334) § 4. Subscriptions—How Paid—Regulation.—All subscriptions to the capital stock of any association organized under this Article shall be payable in money, or in labor, or in property, at its money value, and shall be listed, the labor or the property, and the value thereof to be specified in the list of subscription; but no subscription in labor or property shall be received unless such labor or property, and the value thereof, so to be specified as aforesaid, be approved by said board of corporators; and in case of failure to perform the labor or to deliver the property according to the terms of the subscription, the money value thereof, as specified in the list of subscriptions, shall be paid by the subscribers.

1915, XXIX, 235.

(4335) § 5. Capital Stock — Par Value — Stockholder.—No association shall be formed under this Article with a capital stock less than one hundred dollars. The par value of the shares shall not be less than five dollars. No stockholder shall own shares of a greater par value than one-fifth of the capital stock of the association, or be entitled to more than one vote on any subject arising in the management of the association.

1915, XXIX, 235.

(4336) § 6. Organization—Removal of Officers—Bond of Treasurer.—When not less than fifty per cent. of the proposed capital stock shall have been subscribed by *bona fide* subscribers, the board of corporators shall call all the subscribers together. At such meeting of the subscribers, a majority of whom being present in person, the subscribers shall proceed to the

organization of the association by the election from themselves of a board of directors, not less than five nor more than nine in number, each subscriber having one vote and no more. This board of directors shall manage the affairs of the association for such term of office as the by-laws may prescribe and until their successors shall have been elected and shall have qualified and shall enter upon the discharge of their duties; but a majority of the stockholders meeting, legally called according to the by-laws of the association, to remove any director or officer for cause, and to fill the vacancy, and thereupon the director or officer so removed shall cease to be a director or officer of said association. The officers of every such association shall be a president, a secretary and a treasurer (or a secretary-treasurer combined), who shall be elected annually by the directors, and each of said officers must be a director of the association. The treasurer or secretary-treasurer shall give such bonds as the board of directors may require. The board of directors shall call for the payment of the subscription to the capital, either in whole or in such installments as it may see fit.

1915, XXIX, 235.

(4337) § 7. Certificate of Charter—Recording—Duties of Board of Corporators.—Upon the payment to the treasurer or the secretary-treasurer of the association of at least twenty per cent. of the aggregate amount of the capital subscribed payable in money, and also upon the delivery of at least twenty per cent. of the property subscribed to the aggregate amount of the capital stock, or upon its delivery being secured by such obligations of the subscribers as the board of directors may approve, the board of directors shall, over their own signatures, certify to the Secretary of State that all the requirements for the formation of such corporation have been complied with. Upon the filing of this return by the corporators and the payment of the required fee for recording such return, and upon the receipt of the charter fee as now provided by law, the Secretary of State shall issue to the board of corporators a certificate of charter authorizing the association to commence business under the name and for the purposes indicated in the written declaration. The certificate of charter granted by the Secretary of State shall be recorded in the office of Register of Mesne Conveyances or Clerk for the county in which such association shall have a business office. The board of corporators shall turn over to the proper officers of the association all subscriptions, lists or other papers which they have taken as corporators, and all such papers shall be as valid as if taken and made by the corporators.

1915, XXIX, 235.

(4338) § 8. Powers of Association.—Each association created under this Article shall have power to conduct any agricultural, dairy, mercantile, manufacturing or mechanical business on the cooperative plan, and may buy, sell and deal in the products of any other cooperative company heretofore organized or hereafter organized under the provisions of this Article.

1915, XXIX, 235.

(4339) § 9. Investment of Reserve Fund.—At any regular meeting, or at any duly called special meeting, at which at least a majority of all its stockholders shall be present, an association organized under this Article

may, by a majority vote of those present, authorize the investment of its reserve fund, or any part thereof, or of not to exceed twenty-five per cent. of its capital, in the capital stock of any other cooperative association.

1915, XXIX, 235.

(4340) § 10. Apportionment of Earnings.—The directors of each such association, subject to revisions by the association at any general or duly called special meeting, shall apportion the earnings of the business in the following manner:

(1) They shall declare and pay dividends on the paid-up capital stock not exceeding six per cent. per annum, said dividends to be paid at such time as the by-laws shall prescribe.

(2) They shall set aside annually not less than ten per cent. of the net profits of the association for a reserve fund until there is accumulated in said reserve fund an amount not less than thirty per cent. of the paid-up capital stock.

(3) They shall appropriate five per cent. of the net profits for an educational fund to be used in teaching cooperation.

(4) The remainder of said net profits shall be applied as a uniform dividend, as follows: (1) One-half of such uniform dividend upon the amount of purchases of shareholders, and upon the wages of employees, and (2) one-half of such uniform dividend to nonshareholders on the amount of their purchases from and through the association, which may be credited to the account of such nonshareholder on account of the capital stock of the association; but in productive associations, such as creameries, canneries, elevators, factories, and the like, such dividends shall be on the raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividend may be on both raw material delivered and on goods purchased by patrons.

1915, XXIX, 235.

(4341) § 11. Report to Commissioner of Agriculture, Commerce and Industries.—Every association organized under the terms of this Article shall, annually, on or before the first day of January each year, make a report to the Commissioner of Agriculture, Commerce and Industries. Such report shall contain the name of the association, its principal place of business, and generally a statement as to its business, showing total amount of business transacted, amount of capital stock subscribed for and paid in, number and names of stockholders, total expenses of operation, amount of indebtedness or liabilities, and its profits and losses. This annual report to the Commissioner of Agriculture shall be for his confidential information.

1915, XXIX, 235.

(4342) § 12. Other Associations May Accept Benefits of This Article.—All cooperative corporations, associations, or companies which have heretofore organized and are now doing business under the corporation statutes of this State, or which have attempted so to organize and so to do business, shall have the benefit of all the provisions of this Article, and shall be bound thereby, on filing with the Secretary of State a written declaration signed

and sworn to by the president and by the secretary to the effect that said cooperative company or association has, by a majority vote of its stockholders, decided to accept the benefits of, and to be bound by, the provisions of this Article. No association organized under this Article shall be required to do or to perform anything not specially required herein in order to become a corporation or to continue its business as such.

1915, XXIX, 235.

(4343) § 13. Restricted Use of the Term "Cooperative."—No corporation or association hereinafter organized or doing business for profit in this State shall be entitled to use the term "cooperative" as part of its corporate or other business name or title, unless it has complied with the provisions of this Article; and any corporation or association violating the provisions of this Section may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized hereunder.

1915, XXIX, 235.

ARTICLE III.

Charitable, Social and Religious Societies.

(4344) § 1. Issuance of Certificates of Incorporation to Religious, Educational and Other Such Associations.—The Secretary of State is hereby authorized and empowered to issue certificates of incorporation to any church, college, school, lodge, society, company or other association, having no capital stock divided into shares, but holding or desiring to hold property in common for religious, educational, social, fraternal, charitable or eleemosynary purposes other than for the insurance of life, health, accident or property.

Civ. '12, § 2862; Civ. '02, § 1902; 1900, XXIII, 390.

(4345) § 2. Declaration—What to Contain and Where Filed—Approved and Endorsed—When Secretary of State May Refuse Charter—Provisions Not to Apply to Charities, Religious and Eleemosynary Institutions.—Any lodge, church, college, school, society, association or company organized for the purposes aforesaid, may, after giving at least three days' public notice in one or more newspapers published in the county in which the organization is perfected, file in the office of the Secretary of State a written declaration, signed by two or more of the officers or agents elected or appointed to supervise or manage its affairs, setting forth:

First. The names and residences of the petitioners.

Second. The names of the proposed corporation.

Third. The place at which it proposes to have its headquarters or be located.

Fourth. The purpose of the proposed corporation.

Fifth. The names and residences of all officers, managers, trustees, directors or other officers or agents of the proposed corporation at the time the

application is made; such other information as it may desire, or the Secretary of State may require: *Provided*, That said declaration shall be approved by the Clerk of Court, Sheriff, Probate Judge, County Treasurer and County Auditor in the county in which said association proposes to have its principal place of business, and if located within an incorporated city or town must be endorsed by at least fifty freehold electors, and without an incorporated city or town, by at least twenty-five freehold electors: *Provided, further*, That if the Secretary of State has reason to suspect that any such association or society will be operated in violation of law, or will keep a place where alcoholic liquors or beverages are to be stored or kept, or given away or supplied to its members, then said charter shall be refused: *Provided*, That the provisions of this Section requiring declarations to be approved by the Clerk of Court, Sheriff, Probate Judge, County Treasurer and County Auditor and endorsed by freehold electors shall not apply to applications for charter for religious or eleemosynary institutions.

Civ. '12, § 2863; Civ. '02, § 1903; 1900, XXIII, 390; 1914, XXVIII, 496; 1915, XXIX, 190.

(4346) § 3. Fee for Certificate.—Upon the filing of the above declaration, and the payment of a charter fee of three dollars, the Secretary of State shall issue to the proposed corporation a certificate of incorporation for the term that may be fixed in the said declaration, or, in the absence of such limitation, in perpetuity.

Civ. '12, § 2864; Civ. '02, § 1904; 1900, XXIII, 390.

(4347) § 4. Powers of Corporation.—Every corporation chartered under this Article shall have the following powers: 1. To make contracts, to loan money, to acquire and transfer property, both real and personal, under such regulations as may be fixed in the by-laws of the said corporation, possessing the same powers in such respects as individuals now enjoy. 2. To sue and be sued by its corporate name. 3. To have a common seal, and alter the same at pleasure. 4. To make by-laws and all rules and regulations deemed expedient for its management, not inconsistent with the laws of this State and of the United States. 5. To borrow money for the purpose of carrying out the objects of its charter, to make notes, bonds or other evidences of debt, and to secure the payment of its obligations by mortgage or deed of trust on all or any of its property and franchises, both real and personal. 6. To expel or suspend members or associates. 7. To enforce the collections of dues and charges under such penalties as may be provided in the by-laws.

Civ. '12, § 2865; Civ. '02, § 1905; 1900, XXIII, 390.

(4348) § 5. What Necessary to Vitate Incorporation.—No irregularity in complying with the provisions of this Article shall be held to vitiate the incorporation until a direct proceeding to set aside and annul the charter be instituted by the proper authorities of the State; and all acts done and contracts entered into shall have the same force and effect as if no irregularity had existed.

Civ. '12, § 2866; Civ. '02, § 1906; 1900 XXIII, 390.

(4349) § 6. **How Corporation May Be Dissolved.**—Any corporation organized for the purposes aforesaid, which has been heretofore chartered or may be chartered under this Article, which shall have accomplished the purpose for which it has been organized, or which may desire to wind up its affairs, may do so, upon a vote of a two-thirds majority of its members, at a meeting of which published notice, or written notice mailed to each member, shall be given, which notice shall state the purpose of the proposed meeting, a certificate of such fact to be filed with the Secretary of State.

Civ. '12, § 2867; Civ. '02, § 1907; 1900, XXIII, 390.

(4350) § 7. **How Charter May Be Amended.**—Any corporation organized for the purposes aforesaid, which has been heretofore chartered or may be chartered under this Article, may have its charter amended in any particular by the Secretary of State by a majority vote of its members, at a meeting held pursuant to notice provided in Section 6.

Civ. '12, § 2868; Civ. '02, § 1908; 1900, XXIII, 390.

(4351) § 8. **Notice of Amendment.**—Any corporation sole now chartered or hereafter chartered may have the charter of such corporation amended in any particular by the Secretary of State, after publishing notice of such proposed amendment in any newspaper in the county where the holder of the charter resides, once a week for three weeks.

Civ. '12, § 2869; Civ. '02, § 1909; 1900, XXIII, 390.

(4352) § 9. **Certified Copy of Charter Evidence of Incorporation.**—A certified copy of the charter from the Secretary of State, or from the Clerk of the Court or Register of Mesne Conveyance of the county where said charter is required to be recorded, shall be sufficient evidence of the incorporation of any corporation chartered under this Article, or any amendments thereof.

Civ. '12, § 2870; Civ. '02, § 1910; 1900, XXIII, 390.

(4353) § 10. **Papers to Be Recorded by Secretary of State.**—All papers required to be filed hereunder, and all charters or amendments thereof that may be granted, shall be recorded by the Secretary of State in books kept by him for that purpose. The charter or amendments shall be recorded within thirty days after its receipt in the office of the Clerk of Court or Register of Mesne Conveyance in the county in which the corporation is organized. The Secretary of State is hereby required to publish, with the Acts of the General Assembly, a list of all charters granted hereunder.

Civ. '12, § 2871; Civ. '02, § 1911; 1900, XXIII, 390.

(4354) § 11. **Secretary of State to Report Collections.**—The Secretary of State shall, on or before the tenth day of each month, make an itemized report in writing to the Comptroller General of all fees and funds derived from any source whatsoever in connection with his office; and shall at the same time pay over to the State Treasurer the amount shown by the said report to have been collected.

Civ. '12, § 2872; 1905, XXIV, 911.

(4355) § 12. Incorporation of Eleemosynary Organizations — Amendment of Charters.—That before making and issuing a charter for the incorporation of a benevolent, charitable, eleemosynary or philanthropic organization the Secretary of State shall forward a copy of the petition for charter, together with such other information in his possession as pertains to the proposed incorporation, to the State Board of Public Welfare, and no certificate of incorporation for any such organization shall be issued unless there shall first be filed in the office of the Secretary of State the certificate of the State Board of Public Welfare that it has examined the petition for charter, and that in its judgment the incorporators are reputable and respectable persons, and that the proposed work is needed, and the incorporation of such an association is desirable for the public good. Amendments proposed to the charter of any such association shall be submitted in like manner to the State Board of Public Welfare, and the Secretary of State shall not record such amendment or issue his certificate therefor unless there shall first be filed in his office the certificate of the State Board of Public Welfare that it has examined such amendment, that the association in question is, in its judgment, performing in good faith the work undertaken by it, and that such amendment is, in its judgment, a proper one, and for the public good. In the event a petition for charter shall be denied hereunder appeal may be taken to the Circuit Court, which shall finally determine whether or not charter shall issue.

1920, XXXI, 838.

(4356) § 13. Duties and Powers of State Board of Charities and Corrections.—The State Board of Public Welfare shall investigate the condition, management and affairs of all charitable and eleemosynary undertakings whether incorporated or otherwise, and may require annual reports and returns from such agencies in such manner and form as it may prescribe, and may require reports at such times as it may deem necessary for the purposes of its investigation.

1920, XXXI, 838.

(4357) § 14. Annual Certificates Required—Violation a Misdemeanor—Penalty—Revocation of License.—The said Board shall annually pass upon the fitness of every such corporation, association or enterprise. When the Board is satisfied that the said corporation, association or enterprise is conforming in good faith to all the laws of this State applicable thereto, that the persons concerned therein are reputable and respectable, and that the work undertaken or proposed by such enterprise is needed and that it is desirable for the public good, it shall issue to the association or agency a certificate to that effect, which shall continue in force for one year, unless sooner revoked by the Board. Any corporation, organization, association or person who carries on the work of such enterprise or who receives or solicits money therefor beyond the limits of the county where the home office of such corporation is located or its managing officers and agents reside, or under the representation that the same is on behalf of such enterprise not so certified, or whose certificate has been revoked shall be guilty of a misdemeanor and fined not less than \$10.00 nor more than \$500.00, or imprisoned for not more than six months or be punished by both fine

and imprisonment within said limits as adjudged by the Court. Said Board may revoke the license of any such association for failure to comply with the provisions of the Article, or of any law of this State applicable thereto, or whenever, in its judgment, the work contemplated or carried on by said body is no longer needed or is not longer desirable for the public good. Any corporation, association or individual whose license is revoked within the provisions of this Article may appeal to the Circuit Court, which shall hear the case and finally determine whether or not a license shall reissue. Proceedings under this Section may be begun upon complaint made under oath or affirmation by an agent of the said State Board of Public Welfare, or by any other officer or person against any corporation, association or person guilty of any of the above named offenses, in the Municipal, County or Circuit Court, or in any Court of competent jurisdiction, or before a Magistrate.

1920, XXXI, 838.

(4358) § 15. Reports of State Board of Public Welfare.—The State Board of Public Welfare shall report annually to the Governor its doings under this Article, together with a list of all licenses issued, all revocations, and all prosecutions hereunder, together with such other facts relating hereto as it deems essential for the full and complete information of the public.

1920, XXXI, 838.

ARTICLE IV.

Railroads, Steamboat and Canal Companies.

(4359) § 1. Mode of Incorporation of Steamboat, Street Railway, and Canal Companies—Powers, Etc.—Three or more persons desiring to form themselves into a corporation for the purpose of building and operating a railroad, or for the purpose of carrying on a steamboat, street railway or canal business, may file with the Secretary of State a written declaration and petition, signed by themselves, and setting forth:

First. The names and residences of the declarants.

Second. The name of the proposed corporation.

Third. The place at which it proposes to have its principal place of business.

Fourth: The general nature of the business it proposes to do, giving in detail all the powers and privileges which it proposes to assume or claim under the provisions of the Constitution and laws of South Carolina. And in case of railroad corporations, the termini, route, counties, townships, cities, and towns through which the proposed road shall pass; the total lengths of roads; whether any portion of it has already been constructed, and, if so, how much; the motive power proposed to be used, whether steam or electricity; and the gauge of the road, whether standard or narrow, and any other matter which declarants may deem to be important; also, whether the proposed road will be altogether within the limits of the State of South

Carolina or will be extended into some other State; in the event it is proposed that such road shall be constructed to a point without the State, it shall be further shown whether the corporation organizing expects to operate the line as an independent corporation, or propose to consolidate with some other established road or company. In case of steamboat companies, the termini of the line, nature of proposed equipment, and whether it is proposed to operate a passenger or freight line, or both. In case of street railway, the city or town it proposes to do business in, and the motive power. In case of canal companies, the termini of the canal proposed to be constructed, river or rivers, stream or streams, or body or bodies of water to be used or connected, whether the canal is to be used for navigation, hydro-electric power and lighting or water supply, or for any or all such purposes; and when a canal company is organized hereunder it shall have all the powers and privileges of electric light and power companies under the laws of this State, and may own, build, maintain, purchase, lease and operate the canal or canals specified in its charter, and in connection therewith may build, maintain, purchase, lease, own and operate all dams, locks, reservoirs, feeders, basins, wharves, appurtenances, ways, means and appliances necessary to such canal, and the said company shall have the power to acquire by lease or purchase the lands necessary for the above purposes, and when the canal is to be kept open for the use of the public for navigation the company shall have the right to condemn such lands as may be necessary to that end, and such condemnation may be had in the manner now provided by law in case of railroad rights of way; and said company shall have the power to mortgage its property and franchises and issue bonds on such terms and conditions and for such purposes and uses of the corporation as the company may from time to time deem necessary: *Provided*, That the consent to the issue of any bonds shall be obtained from the State Public Service Commission: *Provided*, That nothing herein contained shall be construed to prevent any owner of riparian rights or other landowner from recovering just compensation for any injury to or diminution of such rights sustained by reason of any corporation exercising any rights hereunder.

Fifth: The minimum amount of the capital stock upon which the corporation may organize, and the maximum amount to which said capital stock may thereafter be increased, and the par value thereof, and how payable, if subscriptions are to be payable in installments, the date and amount of installments.

Sixth: That it is proposed to organize such corporation under the provisions of this Article, naming it by its title.

Seventh: That where the corporation will have the power to condemn lands for rights of way, if the charter is granted, the parties proposing to ask for the same shall give notice, for four weeks before the application is made, that such application will be made, stating the time and the place of the application for the same, said notice to be published in each county where the right to condemn lands will be acquired under such charter, in some newspaper published in such counties, for each week, for four weeks, before such application is made; and any parties desiring to oppose the application may appear and oppose the same, setting forth such facts as

may sustain his reasons for said opposition, by affidavit or otherwise; and the Secretary of State may, on such showing, refuse to grant such charter, or may grant the same according to his judgment in the matter; and said charter shall be subject to repeal and amendment by the Legislature.*

Eighth: That no rights of the State in canals or rights therein now existing or hereafter arising shall be transferred, leased, or conveyed away, or otherwise used or burdened except by Act of the General Assembly.

That the State reserves the right to alter, amend or dissolve any charter obtained hereunder.

That the State reserves the right to declare its policy in reference to the method of taxation to be applied to corporations chartered hereunder and to impose upon and collect such license or royalties upon corporations organized hereunder and the business authorized to be conducted as it may deem wise. The State shall have the right to acquire title to any property of any canal company chartered hereunder upon paying just compensation therefor in case the parties cannot agree upon just compensation. The same shall be determined by any Court of competent jurisdiction.

Civ. '12, § 2873; Civ. '02, § 1917; 1899, XXIII, 64; 1921, XXXII, 146.

*The terminus determined by charter. *R. R. Co. v. Payne*, 5 Rich. 177.

Sections (4359)-(4363), are applicable in case where owners or projectors of railroad company, already incorporated in another State, wish to extend their road into this State. *Lyles v. McCown*, 82 S. C. 127, 129, 63 S. E. 355, 17 Am. & Eng. Ann. Cas. 436.

(4360) § 2. When Commission Will Issue—Fee for Same—Books of Subscription, Etc.—Upon the filing of the declaration of the petitioners as above, and the payment of a fee of three dollars for the recording thereof, the Secretary of State shall issue to any two or more of them a commission constituting them a board of corporators, and authorizing them to open books of subscription to the capital stock of such proposed company, after such public notice, not less than thirty days, as he may require in said commission. Said notice to be published in some newspaper in each of the counties through which proposed road shall pass; and in the case of steamboat companies, such notice to be given at the termini only.

Civ. '12, § 2874; Civ. '02, § 1918; 1899, XXIII, 64.

Lyles v. McCown, 82 S. C. 127, 63 S. E. 355, 17 Am. & Eng. Ann. Cas. 436.

(4361) § 3. Subscriptions—In What Payable.—All subscriptions to the capital stock of any corporation organized under this Article shall be payable in money or in labor, or in property at its money value. The labor or the property, or the value thereof, to be named in the list of subscription, to be approved by the board of corporators; and in the case of a failure to perform the labor, or to deliver the property subscribed according to the terms of subscription, or pay the true money value thereof, the board of corporators, in behalf of the corporation, or the board of directors after the corporation shall have been organized, shall have a cause of action against such subscribers as in case of other subscriptions to the capital stock of corporations as now provided by law.

Civ. '12, § 2875; Civ. '02, § 1919; 1899, XXIII, 64.

(4362) § 4. **When Company May Organize.**—When not less than fifty per cent. of the capital stock shall have been subscribed by *bona fide* subscribers, in the case of canal, steamboat and street railway companies, and in the case of railroads when not less than five hundred dollars per mile shall have been subscribed by *bona fide* subscribers, the board of corporators shall call the subscribers together and proceed to organize the company, with not less than three nor more than twelve directors; the election of officers shall be had in all respects as is provided for in the case of industrial corporations organizing under Section 2787.

Civ. '12, § 2876; Civ. '02, § 1920; 1899, XXIII, 64.

(4363) § 5. **Corporators' Return and Its Contents — Charter Fees — Issuance of Charter, Etc.**—Upon the completion of the organization of such corporation, it shall be the duty of the corporators to immediately file in the office of the Secretary of State a return, under their hands and seals, duly attested, sworn to or acknowledged before some officer qualified to administer an oath, that the requirements of this Article have been complied with, that at least fifty per cent. of the capital stock has been subscribed and at least twenty per cent. of the amount subscribed has been paid in or secured. In the case of railroad companies, that five hundred dollars per mile has been subscribed and at least twenty per cent. of the amount subscribed has been paid or secured, and in the event that a survey of the proposed route shall have been made, a copy of the profile map of such route shall be filed with such return; and in case no survey shall have been made, the return shall aver an intention to file such map within one year from the date of such return. Such return shall further show the names and residence of the subscribers, the amount subscribed by each, and the names and residence of the board of directors, president and secretary of the company. Upon the filing of the return and the payment of charter fees, required by Section (4312) of this Code, the Secretary of State shall issue to the board of directors a certificate, to be known as a charter, that the corporation has been fully organized, according to the laws of the State of South Carolina, under the name and for the purpose indicated in the written declaration; that they are fully authorized to commence business under their charter; and in all cases such certificate or charter shall contain the further provision that such company is a body politic and corporate, and as such may sue and be sued in any of the Courts of this State; and in the case of railroad corporations shall be entitled to all the rights and privileges and be subject to all the liabilities of railroad corporations embraced in what is called the general railroad law, being Chapter LII of this Code, and Acts amendatory thereof, as well as any Acts now existing or hereafter to be passed regulating the duties, privileges and liabilities of railroad companies. Such charter shall be recorded in the office of the Register of Mesne Conveyance or Clerk of the Court in each county where such corporation shall have a business office. In the case of street railway and steamboat companies, such charter shall be recorded in the office of the Register of Mesne Conveyance or Clerk of the Court of the county in which their respective termini shall be or in which said street railway may be. The declaration, commission, corporators' return and the charter shall

be recorded by the Secretary of State in books kept by him for that purpose: *Provided*, That should no return as herein provided be made to the Secretary of State within twelve months from the granting of corporators' commission, then all proceedings hereunder shall be void, and the corporators shall be deemed to have waived all rights acquired under their declaration and said commission.

Civ. '12, § 2877; Civ. '02, § 1921; 1899, XXIII, 64.

Montgomery v. Seaboard Air Line Railway, 73 S. C. 506, 53 S. E. 987.

(4364) § 6. Irregularity Not to Vitate the Corporation.—No irregularity in complying with the provisions of this Article shall be held to vitiate the corporation until a direct proceeding to set aside and annul the charter be instituted by the proper authority of the State; and all acts done and contracts entered into shall have the same force and effect as if no irregularity had existed.

Civ. '12, § 2878; Civ. '02, § 1922; 1899, XXIII, 64.

(4365) § 7. Corporators to Transfer to Corporation Lists of Papers.—Upon the issuance of a charter by the Secretary of State, the board of corporators shall turn over to the proper officers of the corporation all subscription lists or other papers they have taken as corporators, and all such papers shall be as valid as if taken and made by the incorporation.

Civ. '12, § 2879; Civ. '02, § 1923; 1899, XXIII, 64; 1900, XXIII, 387.

(4366) § 8. Rights and Powers of Railroad and Street Railway Corporations.—All railroad corporations organized under the provisions of this Article shall be privileged to acquire rights of way not exceeding seventy-five feet from center of track in each direction, and additional land necessary for deep cuts, high fills, borrow pits, and streams, and highway changes made necessary by the construction of the railroad: *Provided*, That in no case shall the right of way acquired exceed one hundred and fifty feet from the center of the track in each direction; and exercise the same powers with relation to said tracks, depots, crossing other railroads, highways and streams, as railroads chartered by the General Assembly; and any street railway corporation organized under the provisions of this Article, or where charter may be amended hereunder, shall be authorized and empowered, upon proper application therefor, to make, produce, generate and supply light, power and heat by the means of electricity and gas, or either of them, both for its corporate purposes and for sale to the public, subject to the restrictions and limitations that may be imposed by the municipalities in which they may seek to do business.

Civ. '12, § 2880; Civ. '02, § 1924; 1909, XXVI, 45.

(4367) § 9. Electric Railway, Gas and Electric Light Companies May Lease Property.—It shall be lawful, except as prohibited in Section 7, Article IX of the Constitution of 1895, for any electric railway, gas and electric light company organized under the laws of this State to lease its property and franchises to any other electric railway, gas and electric light company, upon such terms as may be agreed upon by a majority of the stockholders at a special meeting called after thirty days' advertisement.

Civ. '12, § 2881; 1908, XXV, 1090.

(4368) § 10. How Charters May Be Amended by Secretary of State.—

Any corporation organized under the provisions of this Article, or heretofore chartered by the General Assembly, may be amended by the Secretary of State, by proceeding in all respects as in the organization of a railroad company hereunder—that is to say, may file with the Secretary of State a written declaration showing the desired changes in its charter; and after such notice as the Secretary of State may prescribe, upon a proper showing being made, the Secretary of State shall issue to it a certificate as a supplement to its charter, which shall be recorded as charters hereunder, and shall embody the changes, additions or alterations sought, upon the payment of a fee of \$5.00 to cover recording fees and issuance of papers.

Civ. '12, § 2882; Civ. '02, § 1925; 1899, XXIII, 68.

(4369) § 11. How Capital Stock May Be Increased, Name Changed, or Charter Amended.—

Any railroad, steamboat, street railway, or canal company in this State desiring to increase its capital stock, have its name changed or charter amended shall call a stockholders' meeting, giving at least thirty days' notice of the time, place and purpose of the meeting; and if a majority of the stock of the corporation be present in person or by proxy, a resolution embodying the proposed changes, alterations, amendments or increase of capital stock be adopted, such resolution shall be attached to the petition filed with the Secretary of State under the provisions of Section 10 hereof.

Civ. '12, § 2883; Civ. '02, § 1926; 1899, XXIII, 68.

(4370) § 12. Right of Corporation to Increase Its Capital Stock.—Any corporation organized under the provisions of this Article, and any corporation whose charter may be amended hereunder, may increase its capital stock to any amount by proceeding as in Section 11 hereunder: *Provided*, The original stockholders be given the preference of taking the increase in proportion to the amount of original stock they may individually own.

Civ. '12, § 2884; Civ. '02, § 1927; 1899, XXIII, 68.

(4371) § 13. Duration of Charter.—All charters granted under the provisions of this Article shall continue of force perpetually, unless limited by the terms of the declaration or unless forfeited by failure to comply with the conditions of said charter or of this Article.

Civ. '02, § 1928; 1899, XXIII, 68.

ALL CHARTERS SUBJECT TO REPEAL BY GENERAL ASSEMBLY—WAIVER OF CHARTER RIGHT.—All charters granted hereunder shall be subject to repeal by the General Assembly. And railroad, street railway and canal companies organized hereunder shall be deemed to have waived their charter rights, franchises and privileges unless they shall begin the construction of the proposed road within two years from the date of the charter and complete the same within a period to be fixed by the Secretary of State in his certificate of incorporation, which said period shall in no case exceed fifteen years. Steamboat companies hereunder shall commence operating their

lines within two years from the date of said charter, or their charter rights shall be deemed forfeited.

Civ. '12, § 2885; Civ. '02, § 1928; 1899, XXIII, 68.

A similar proviso as to time within which they should commence operations, was held not to be a condition precedent. *C. & C. Ry. Co. v. White*, 14 S. C. 51; *Same v. Garland*, *Ib.* 63. A corporation is not *ipso facto* dissolved by failure to commence or complete work in time limited; and the Court will not declare the charter forfeited on a mere motion in an action brought for such purpose. *City Council v. S. C. & G. R. Co.*, 51 S. C. 129, 28 S. E. 145.

(4372) § 14. Meeting of Stockholders.—At least one meeting of stockholders of all organizations hereunder shall be held annually in this State, at such time and place and upon such notice as the by-laws may provide. At all stockholders' meetings each stockholder shall be entitled to one vote for each share of stock held or owned, and shall be entitled to vote for directors, trustees or managers, as provided in Section 11 of Article IX of the Constitution and in Section (4254) of this Code.

Civ. '12, § 2886; Civ. '02, § 1929; 1899, XXIII, 68.

(4373) § 15. When Capital Stock to Be Issued.—No capital stock shall be issued by any corporation until fully paid, except when, by the terms of the petition, the capital stock is to be paid in installments, and the deferred portion shall be secured; and no transfer of stock shall be valid, except as between the parties, until the same shall have been regularly entered upon the books of the corporation. The books of any corporation organized under this Article shall be at all times open to the inspection of any stockholder.

Civ. '12, § 2887; Civ. '02, § 1930; 1899, XXIII, 68.

(4374) § 16. Directors Must Be Stockholders.—No person other than a stockholder shall be elected a director of any corporation organized hereunder.

Civ. '12, § 2888; Civ. '02, § 1931; 1899, XXIII, 68.

(4375) § 17. Fictitious Stock or Indebtedness is Prohibited.—Neither stocks nor bonds shall be issued by any corporation except for money paid, property delivered or labor done; and all fictitious increase of stock or indebtedness shall be void.

Civ. '12, § 2889; Civ. '02, § 1932; 1899, XXIII, 68.

(4376) § 18. Rights to Exact Tolls.—Any corporation organized under the provisions of this Article engaged in the transportation of freight or passengers, by means of steamboat or otherwise, upon any of the navigable waters of this State, shall have the authority to exact reasonable tolls or fees for the use of wharves or landings located upon lands that are the property of the corporation or that are under lease or control of such corporation.

Civ. '12, § 2890; Civ. '02, § 1933; 1899, XXIII, 68.

(4377) § 19. Unlawful for Certain Steamboat Lines to Change Schedule Without Notice—Penalty.—It shall hereafter be unlawful for any steamboat company, firm or corporation running a line of boats from Savannah to Bluffton, South Carolina, and way stations, and return on a regular schedule, to change their schedule without giving ten days' notice of said change by posting same in a conspicuous place at each landing.

Any steamboat company, firm or corporation violating the provisions of this Section shall be subject to a fine of not less than \$50 and not more than \$100.

Civ. '12, § 2891; 1911, XXVII, 150.

(4378) § 20. Fees to Be Paid Into the State Treasury.—All fees collected by the Secretary of State in accordance with the provisions of this Article shall be paid into the State Treasury.

Civ. '12, § 2892; Civ. '02, § 1934; 1899, XXIII, 68.

CHAPTER LI.

Municipal Corporations.

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ARTICLE I.

General Provisions as to Cities and Towns.

(4379) § 1. How City and Town Charters May Be Amended.—The charter articles of incorporation of any city or town in this State, whether such city or town was originally incorporated by Act of the General Assembly or under the general law by the Secretary of State, may be amended in any particular, not inconsistent with the Constitution and laws of the State, in the following manner: A petition shall first be submitted to the Town or City Council by a majority of the freeholders of such town or city praying that an election be ordered to ascertain whether such amendment or amendments ought to be made or not; whereupon the said Council shall order an election, after not less than ten days' public advertisement. At such election each amendment shall be voted upon separately, and the tickets or

ballots shall be prescribed by the said Council in such ways as to plainly express the will of the voter as to each question submitted. At such election the qualified electors of the municipality shall be allowed to vote on the question or questions of the proposed amendment or amendments, at the usual voting places, in a box provided for the purpose at each voting place. If a majority of the votes cast be ascertained and declared to be in favor of any or all of the proposed amendments, then the said Council shall publish the result of said election, and declare the adopted amendment or amendments to be a part of the charter of incorporation of such city or town, plainly showing the reading of the parts involved as amended, and shall forthwith file with the Secretary of State a copy of such declaration; whereupon such adopted and declared amendment or amendments shall stand as a part of the charter of incorporation of such city or town.

Civ. '12, § 2985; Civ. '02, § 1996; 1899, XXIII, 71.

This section is permissive and directory, and has no effect on prior existing charters. *Hill v. Abbeville*, 59 S. C. 407, 38 S. E. 16.

Action on contract with city for street paving. *Blassingame v. Laurens*, 80 S. C. 33, 61 S. E. 96.
Enterprise Real Estate Co. v. City Council of Charleston et al, 107 S. C. 492, 93 S. E. 184.

(4380) § 2. Municipal Charters Perpetual.—All municipal charters heretofore or hereafter issued by the Secretary of State, and also all municipal corporations heretofore created by Acts of the General Assembly of this State, shall be, and are hereby, declared to be perpetual: *Provided*, That nothing contained in this Section shall be deemed or taken to prevent the General Assembly from amending or repealing said charters.

Civ. '12, § 2986; 1904, XXIV, 500; 1918, XXX, 778.

(4381) § 3. How Municipal Charters May Be Extended.—The charters or articles of incorporation of any city or town in this State, incorporated or chartered under a general law by the Secretary of State, may be extended in the following manner:

PETITION AND PRAYER FOR ELECTION.—A petition shall first be submitted to the Town or City Council, signed by a majority of freeholders who are citizens of said town or city, setting out the length of time it is desired to extend the charter of such town or city, and praying that an election be ordered to ascertain whether such extension should be made or not; whereupon the Council of such town or city shall order an election to be held on such question, and shall appoint managers to conduct the same.

Civ. '12, § 2987; 1902, XXIII, 1043.

(4382) § 4. Notice of Election.—The Council of such city or town shall give notice of such election by publishing the same for twenty consecutive days in the newspapers published therein, or, if there be no such newspapers, then by posting in not less than three public places within the corporate limits, which notice shall plainly and definitely state the object of such election.

Civ. '12, § 2988; 1902, XXIII, 1043.

(4383) § 5. How Election to Be Conducted.—The polls shall be opened at the usual voting precincts in such town or city from 8 o'clock a. m. until 4 o'clock p. m., and tickets or ballots shall be prescribed by the Council of such city or town on which shall be printed or written the words "For the Extension" and "Against the Extension," respectively, so as to plainly

express the will of the voter. At such election the qualified electors of the municipality shall be allowed to vote on the question of such extension of the charter.

Civ. '12, § 2989; 1902, XXIII, 1043.

(4384) § 6. Declaration of Result of Election—Certificate of Extension.

—If a majority of the votes cast be ascertained and declared to be in favor of the proposed extension of the charter of such town or city, then the Town or City Council, as the case may be, shall publish the result of such election and declare the charter extended for the time mentioned in the petition, and shall forthwith file with the Secretary of State a copy of the petition and declaration duly signed by the members of the Town or City Council in their official capacity, and certified to as being correct by the Clerk of such town or city. Whereupon the Secretary of State shall issue his certificate to the Council of such city or town declaring the charter thereof extended for the number of years stated in the petition and declaration: *Provided*, That before issuing said certificate the Secretary of State shall require the payment of the fees provided by law.

Civ. '12, § 2990; 1902, XXIII, 1043.

(4385) § 7. How the Corporate Limits of Cities and Towns May Be Extended.

—Any Town or City Council shall have power to extend the corporate limits of said city or town in the following manner: A petition shall first be submitted to said Council by a majority of the freeholders of the territory which it is proposed to annex, praying that an election be ordered to see if such territory shall be included in said town. The said Town Council shall order an election after not less than ten days' public advertisement. At such election the qualified voters of the municipality shall vote at the usual voting precincts thereof in a box provided for that purpose, and the qualified electors of the territory proposed to be annexed shall vote in a separate box to be provided for that purpose within the territory proposed to be annexed. If a majority of the votes cast by the qualified electors of the town and of the territory proposed to be annexed, each aggregated separately, shall be each in favor of annexation, or if neither give a majority against annexation, then the Council shall publish the result of said election and declare the annexed territory a part of said town: *Provided, however*, That if the property sought to be annexed belongs to a corporation only, it may be annexed on the petition of the stockholders of said corporation. Any town increasing its territory shall file a notice with the Secretary of State describing its new boundaries.

Civ. '12, § 2991; Civ. '02, § 1997; 1896, XXII, 82; 1897, XXII, 459; 1901, XXIII, 658.

Election held hereunder is controlled by Art. II, § 11 of the Constitution. *Gunter v. Gayden*, 84 S. C. 49, 65 S. E. 948.

(4386) § 8. Extension of Corporate Limits of Cities and Towns by Consolidation.

—Whenever it is proposed to extend the corporate limits of any city or town in this State so as to include any adjacent territory under the provisions of Section 7, whether the said adjacent territory be in whole or in part in incorporated municipality, it shall be lawful for said city or town and such adjacent territory to stipulate and agree upon terms of consolidation, and such stipulations shall become a binding contract upon the city or town when enlarged: *Provided*, That such stipulations shall be printed in full, or fully identified by reference to some easily accessible

publication thereof in full, on a majority of the affirmative votes cast at the election held under the requirements of the preceding Section, both in the city or town seeking enlargement and in the territory or portion of territory so included as a result of such election.

Civ. '12, § 2992; 1911, XXVII, 22.

(4387) § 9. How Cities and Towns May Decrease Their Limits.—Any town or city may reduce its corporate limits in the following manner: Whenever a petition is presented to the Town Council signed by a majority of the resident freeholders of said town asking for a reduction of the corporate limits of said town, then said Council shall order an election after not less than ten days' public advertisement; such advertisement shall describe the territory that is proposed to be cut off. At such election, should a majority of the qualified electors vote in favor of the release of the territory, then said Council shall issue an ordinance declaring the territory no longer a portion of said town, and shall so notify the Secretary of State, furnishing him at the same time with the new boundaries of said town.

EXTENSION OF LIMITS TO INCLUDE CEMETERIES.—Any town or city may extend its corporate limits so as to include any or all cemeteries adjoining said town or city, for the purposes only of police and sanitary measures, by the passage of "an ordinance" declaring them to be a portion of said town or city; but the inclusion of said cemeteries does not convey to the city or town the right to tax them in any manner whatsoever.

Civ. '12, § 2993; Civ. '02, § 1998; 1896, XXII, 82; 1897, XXII, 459; 1901, XXIII, 658.

(4388) § 10. Power to Enact Rules or Ordinances for Police Government.—The City Councils and Town Councils of the cities and towns of the State shall, in addition to the powers conferred by their respective charters, have power and authority to make, ordain and establish all such rules, by-laws, regulations and ordinances respecting the roads, streets, markets, police, health and order of said cities and towns, or respecting any subject as shall appear to them necessary and proper for the security, welfare and convenience of such cities and towns, or for preserving health, peace, order and good government within the same. And the said City or Town Councils may fix fines and penalties for the violation thereof, not exceeding one hundred dollars fine or thirty days imprisonment: *Provided*, That such rules, by-laws and ordinances shall not be inconsistent with the laws of this State: *Provided, further*, That nothing herein contained shall be construed to repeal the law establishing local Boards of Health.

Civ. '12, § 2994; Civ. '02, § 1999; 1898, XXII, 820.

Burial grounds. *City Council v. Baptist Church*, 4 Strob. 306. Cultivation of soil. *Summerville v. Pressley*, 33 S. C. 56, 11 S. E. 545. Carrying concealed weapons. *Abbeville v. Leopard*, 61 S. C. 99, 39 S. E. 243. Street railways. *State v. Sloan*, 48 S. C. 21, 25 S. E. 898. As to power of Courts to pass on the reasonableness of ordinances, see *Darlington v. Ward*, 48 S. C. 570, 26 S. E. 906. Ordinance against permitting any inclosure, place or house to be used as a place for gambling. *City Council of Greenville v. Kemmis*, 58 S. C. 427, 36 S. E. 727. Ordinances against swine running at large. *Kennedy v. Sowden*, 1 McMul. 326; *Crosby v. Warren*, 1 Rich. L. 385. Keeping hogs in town. *Darlington v. Ward*, 48 S. C. 570, 26 S. E. 906. Keeping liquors in shops. *Heisenbritle v. City Council*, 2 McMul. 233; *City Council v. Ahrens*, 4 Strob. 306. Bawdy houses. *State v. Williams*, 11 S. C. 288. Sunday observance. *City Council v. Benjamin*, 2 Strob. 508; *Allen v. Adams*, 66 S. C. 352, 44 S. E. 938.

They have only powers as are expressly granted by the Legislature or are necessarily implied from those so granted. *Blake v. Walker*, 28 S. C. 517.

Municipality may provide that same act which is contrary to statute is offense against its ordinance. *Anderson v. Seligman*, 85 S. C. 16, 18, 67 S. E. 13.

Town of Dillon v. Saleeby, 96 S. C. 442, 81 S. E. 153.

(4389) § 11. Municipalities May Regulate Hotels, Cafes, Etc.—Proviso.—

Full power and authority is hereby given to and vested in all towns and cities in this State to provide by ordinances such rules and regulations regarding the conduct and operation of markets, hotels, restaurants, cafes and lunch counters therein, so as to provide for the public health, comfort and convenience; and when such rules and regulations have been established to provide by ordinance for the punishment of all offenders against the same, within the limits now provided by law: *Provided*, That should there be a Board of Health in such town or city, its approval shall first be obtained.

1917, XXX, 46.

(4390) § 12. Inspection—Penalty for Obstruction of Same.—

All such towns and cities may, by ordinance, provide for the inspection of all such places by some competent person appointed by the Mayor or Intendant, and all persons, firms or corporations conducting or operating such places shall at all times permit and allow inspections to be made of their premises by such inspectors, and any person, firm or corporation who shall refuse to allow such inspection, or who shall obstruct any officer whose duty it is to make such inspection shall be deemed guilty of a misdemeanor, and, upon conviction, shall be subject to such penalties as such towns or cities may impose by ordinance, not exceeding a fine of one hundred dollars (\$100.00) or imprisonment not exceeding thirty (30) days.

1917, XXX, 46.

(4391) § 13. Ordinances to Be Obeyed—Revocation of Licenses.—

That all persons, firms and corporations within the meaning of this Article shall carry out and obey all ordinances passed or enacted by any town or city, and upon neglect or refusal to comply therewith shall be subject to the penalties herein provided: *Provided*, That such towns and cities shall have the power to deny or to revoke any and all licenses granted to conduct such business when, in the judgment of the Mayor or Intendant, such ordinances are not complied with.

1917, XXX, 46.

(4392) § 14. Segregation of Races.—

That municipal corporations of this State may provide by reasonable and suitable ordinances for the segregation of the races in their respective municipalities.

1915, XXIX, 180.

(4393) § 15. Town and City Councils—How Elected.—

In all towns and cities which by law have been divided into wards or other political and geographical sections the Town or City Councils shall be composed of Wardens or Aldermen elected from each ward or section separately by the electors of such ward, and not by the electors at large of said towns or cities, and the Mayors or Intendants shall be elected at large by a direct vote of the qualified electors of such city or town: *Provided*, That the provisions of this Section shall not apply to the cities of Greenville, Georgetown, Sumter, Marion, Summerville and Charleston.

Civ. '12, § 2995; Civ. '02, § 2000; 1896, XXII, 56; 1897, XXII, 408.

(4394) § 16. **Salary of Mayor or Intendant of Cities and Towns.**—The salary of the Mayor or Intendant of any city or town in the State of South Carolina shall be and remain the same after any such city or town shall have surrendered its charter, or whose charter shall have expired, and such city or town has been reincorporated under the general laws of the State, that it was prior to the reincorporation of such city or town, whether such reincorporation shall have taken place heretofore or shall take place hereafter, until such salary shall be changed by law.

Civ. '12, § 2996; 1909, XXVI, 148.

(4395) § 17. **Licenses for Sale of Fresh Meats—Exceptions.**—No City or Town Council shall charge any citizen or citizens of this State license fees for the right to sell or offer for sale fresh beef, pork, mutton, fish, poultry or veal, produced or grown by the vendor, excepting regular butchers who shall keep a regular butcher's stall or market house inside the incorporate limits of any city or town in which license may be required.

Such license shall not give the holder thereof a monopoly of the sale of the articles enumerated above, but any farmer or stock raiser may sell or offer for sale, at any time, beef, mutton, pork or veal in cities or towns granting such license without being required to pay any fee for the right so to do.

Civ. '12, § 2997; Civ. '02, § 2001; 1896, XXII, 91.

This does not prevent the city or town charging a regular butcher who resides outside the corporate limits and has not stall therein, a license fee. *City Council of Camden v. Roberts*, 55 S. C. 374, 33 S. E. 456.

(4396) § 18. **Farm Products Marketed Without License.**—All products of the farms of this State may be sold in any town or city by the producer of said product or his agent without said producer being required to pay license to make such sale: *Provided*, Said producer or agent is not engaged in selling the produce of other persons.

Civ. '12, § 2998; 1902, XXIII, 1039.

(4397) § 19. **Municipal Officer Cannot Contract With Municipality.**—No municipal officer shall take a contract to perform work or furnish material for the municipal corporation of which he is an officer, and no such officer shall receive any compensation on any contract for said purpose: *Provided*, That in cities of over thirty thousand inhabitants such contracts may be allowed by the unanimous vote of City Council upon each specific contract, such vote to be taken by yeas, and nays, and entered upon the Council's journal.

Civ. '12, § 2999; Civ. '02, § 2002; 1900, XXII, 455.

(4398) § 20. **Municipalities of More Than 200 Inhabitants Required to Publish Itemized Statement of Receipts and Disbursements.**—That all towns in this State of more than two hundred population shall keep an itemized account of all receipts and disbursements, and shall publish quarterly statements of same in some newspaper in the county in which such corporation is situated, or by posting at some conspicuous place or places in the town: *Provided*, This Section shall not apply to the Counties of Sumter, Newberry, Hampton, Richland, Marlboro, Georgetown, Abbeville, Spartanburg, Aiken and Marion.

1912, XXVII, 817.

(4399) § 21. Jurisdiction of Intendants or Mayors—Right of Trial by Jury.—The Intendants or Mayors of the cities and towns of this State that have been heretofore chartered or that may be hereafter chartered by special Act of the General Assembly or under general laws shall have all the powers and authority of Magistrates in criminal cases within the corporate limits and police jurisdiction of their respective cities and towns, and shall especially have the power and authority to speedily try all offenders against the ordinances of said town in a summary manner and without a jury unless demanded by the accused; and the Mayor *pro tempore* shall have the same powers. When the accused shall demand a jury the same shall be drawn in the same manner as is provided for in the Courts of Magistrates. The Chief of Police or Marshal of the town, or such officer as the Mayor, Intendant or Mayor *pro tempore* may appoint, shall act as Constable to prepare the jury list; and the complainant, or some officer to be designated by the Mayor, Intendant or Mayor *pro tempore*, is authorized to make the challenges allowed on the part of the prosecution.

Civ. '12, § 3000; Civ. '02, § 2003; 1897, XXII, 498; 1901, XXIII, 651.

See, also, § (4521).

Similar provisions as to mode of trial: first by the Mayor and second on appeal, *de novo*, by the Council, considered in *Anderson v. O'Donnell*, 29 S. C. 355, 364, 7 S. E. 523.

In criminal cases the municipal court must follow the practice prescribed for Magistrates' Courts. *Greenville v. Latimer*, 80 S. C. 92, 61 S. E. 224. Punishment by labor on the streets. *Union v. Hampton*, 83 S. C. 48, 64 S. E. 1017. Demand for jury trial. *Clinton v. Leake*, 71 S. C. 28, 50 S. E. 541.

Town council may amend information and try case at once, where defendant makes no showing of surprise by amendment or prejudice by immediate trial. *Ridgeland v. Gens*, 83 S. C. 562, 65 S. E. 828.

Mayor of a city may try one charged with gambling under valid ordinance although crime of gambling under statute was then triable in Court of General Sessions. *Anderson v. Seligman*, 85 S. C. 16, 18, 67 S. E. 13.

(4400) § 22. In Towns of Less Than One Thousand Jurors May Be Drawn from Territory Adjacent.—Whenever it shall appear that a sufficient number of competent jurors cannot be had for the trial of cases arising under the ordinances within the corporate limits of a town of less than one thousand inhabitants, it shall be lawful for a jury or any deficiency of jurors to be drawn, as now provided by law, from the territory adjacent to such towns: *Provided*, That no person shall be compelled to serve as juror who resides more than five miles from such town.

1912, XXVII, 773.

(4401) § 23. Municipal Courts in Cities of Limited Population.—It shall be lawful for the City Council of any city in this State whose population by the last census was not less than fifteen hundred and not more than twenty thousand, or which may now or hereafter by actual enumeration have such population within said limits, by ordinance duly enacted, to establish in said city a Municipal Court for the trial and determination of all cases arising under the ordinances of such city.

Civ. '12, § 3001; 1904, XXIV, 397; 1905, XXIV, 911; 1915, XXIX, 197.

City of Greenville *v. Foster*, 101 S. C. 318, 85 S. E. 769.

(4402) § 24. Jurisdiction.—The said Municipal Court shall have jurisdiction to try and determine all cases arising under the ordinances of the city in which said Court is established, and generally shall have all such judicial powers and duties as are now conferred upon the Mayor of such city either by its charter or by the laws of the State of South Carolina. The

said Municipal Court shall also have all such powers, duties and jurisdiction in criminal cases as are now conferred by law upon the Magistrates appointed and commissioned for the county in which said Court is established, except that said Court shall not have the authority of a Magistrate to appoint a Constable.

Civ. '12, § 3002; 1902, XVIII, 1048.

(4403) § 25. Recorder—Election, Term and Salary.—The Municipal Court hereby established shall be held by a Recorder, who shall be elected by the Mayor and Aldermen of the city in which said Court is established. The Recorder shall hold his office for a term of four years and until his successor is elected and qualified. The salary of the Recorder shall be fixed by the Mayor and Aldermen of such city and shall not be increased or diminished during his continuance in office. Before entering upon the discharge of the duties of his office he shall take and subscribe the usual oath of office.

Civ. '12, § 3003; 1902, XVIII, 1048.

(4404) § 26. Vacancy in Office of Recorder.—In case of a vacancy in office of Recorder, in any city, the Mayor and Aldermen of such city may elect a successor to fill the unexpired term. In case of the temporary absence, sickness or disability of the Recorder, the Municipal Court shall be held by the Mayor, the Mayor *pro tempore*, or by an Alderman selected by the City Council.

Civ. '12, § 3004; 1902, XVIII, 1048.

(4405) § 27. Chief of Police to Attend Sessions of Court.—It shall be the duty of the Chief of Police of the city in which said Municipal Court is established to attend upon the sessions of said Court, and the said Chief of Police and the Policemen of such city shall be subject to the orders of said Court, and shall execute the orders, writs and mandates thereof, and shall perform such other duties in connection with said Court as may be prescribed by the ordinances of such city or town. The said Chief of Police and the Policemen shall also be invested with the same powers and duties as are now or which may hereafter be devolved upon Magistrates' Constables.

Civ. '12, § 3005; 1902, XVIII, 1048.

City of Rock Hill v. Worthy, 104 S. C. 450, 89 S. E. 393.

(4406) § 28. Jury Trial as in Magistrates' Courts—Stenographer.—In the trial of any case in the said Municipal Court, upon the demand for a jury, the same shall be summoned and empanelled in accordance with the law for summoning and empanelling juries in Magistrates' Courts. The jury shall consist of six. Any party shall have the right to have the testimony given at such trial taken stenographically by a stenographer to be appointed by the Recorder: *Provided*, Such party shall first tender or pay the charges of such stenographer for taking and transcribing the same.

Civ. '12, § 3006; 1902, XVIII, 1048.

(4407) § 29. Jury Commissioners in Columbia—Duties—Jury Box.—That the Mayor and Councilmen of the City of Columbia are hereby

declared to be the Jury Commissioners for the Recorder's Court for the City of Columbia, and shall, within the first ten days of each year, prepare and place in a box, to be known as the jury box, the names of each and every citizen within the corporate limits of said city eligible to do jury duty, and shall lock and keep said jury box convenient for the drawing of a jury, as hereinafter specified.

1916, XXIX, 821.

City of Columbia v. Smith, 105 S. C. 348, 89 S. E. 1028.

(4408) § 30. Jury May Be Had in Criminal Cases—How Drawn.—In all criminal cases in said Recorder's Court, in which a jury may be demanded by either the city or the defendant, a jury shall be selected in the following manner: The City Clerk, or if said Clerk cannot be had, any other person appointed by the Recorder of said city, shall draw out of the jury box referred to in Section 29 of this Article, eighteen ballots, each containing the names of an eligible juror, and list the said eighteen names in duplicate, delivering one copy of same to the Attorney for the city, if he be present, if not, to the Chief of Police, or some officer designated by said Chief, and one copy to the defendant or his attorney.

1916, XXIX, 821.

City of Columbia v. Smith, 105 S. C. 348, 89 S. E. 1028.

(4409) § 31. Challenges—Additional Names.—The City Clerk shall place the eighteen ballots so drawn out in some box or hat and shall draw out one, and the person so drawn out shall be one of the jury, unless challenged by either party; and the City Clerk shall then proceed until he shall have drawn six, who shall not have been challenged. Neither party being allowed more than six challenges, but if the first twelve drawn shall be challenged and the parties do not agree to a choice, the last six shall be the jury, and when any of the six jurors so drawn cannot be had or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the City Clerk shall proceed to draw out of said jury box ballots for three times the number thus deficient, which shall be disposed of and be drawn as above provided.

1916, XXIX, 821.

City of Columbia v. Smith, 105 S. C. 348, 89 S. E. 1028.

(4410) § 32. Appeal—Recognizance.—Any party shall have the right to appeal from the sentence or judgment of the Recorder to the City Council of the city, or the Court of General Sessions of the county in which the trial is held: *Provided, however,* Notice of intention so to appeal be given in writing and served on the Recorder within twenty-four hours after sentence is passed or judgment rendered, and the party appealing do enter into bond, payable to such city, to appear and defend such appeal at the next meeting of the City Council of such city or the next term of said Court of General Sessions as the appeal may be taken in such amount and with such sureties as the Recorder may determine.

Civ. '12, § 3007; 1902, XVIII, 1048.

(4411) § 33. Return on Appeal—Contents—Hearing in General Sessions.—In the event of an appeal the Recorder shall make a return to the

tribunal to which the appeal is taken, and the appeal shall be heard by the City Council, or presiding Judge, as the case may be, upon such return. The return of the Recorder shall consist of a written report of the charges preferred, the testimony, the proceedings and the sentence or judgment, and where the testimony has been taken by a stenographer as herein provided, shall embrace the stenographer's report of the testimony. If the appeal is taken to the Court of General Sessions said return shall be filed with the Clerk of the Court of General Session of the county in which the trial is had, and the cause shall be docketed for trial in the same manner as is now provided in case of appeals from Magistrates' Courts.

Civ. '12, § 3008; 1902, XVIII, 1048.

(4412) § 34. Punishments by Mayor or Intendant—Right of Appeal to Full Council.—Whenever the Mayor, Intendant, or Mayor *pro tempore*, shall find the party tried before him guilty of violating an ordinance of said town, he shall have power to impose, in his discretion, a fine, or imprisonment in the alternative, not to exceed the limits prescribed for such violation by the ordinances of said city or town, and such imprisonment may be accompanied with the additional requirement of hard labor on the streets of said city or town, under such regulation as by ordinances may be established.

From all decisions of such Mayor, Intendant, or Mayor *pro tempore*, any defendant, feeling himself or herself aggrieved, shall have the right to appeal to the City or Town Council: *Provided*, He give notice of such appeal within twenty-four hours after sentence has been passed, and to enter into bond to appear and defend before said Council at a time to be specified in such undertaking, and to abide the sentences of the City or Town Council: *Provided*, That in those cities of over five thousand inhabitants, incorporated under Article V of this Chapter, the appellant may pay the fine imposed under protest and appeal to the City Council without giving bond. At the trial of such appeal the Mayor, Intendant, or Mayor *pro tempore*, shall preside and the Aldermen shall sit as a Court, and a concurrence of a majority of the Aldermen present shall be necessary for the reversal of the judgment of the Mayor, Intendant, or Mayor *pro tempore*; but if the Aldermen present shall divide equally in opinion, the judgment of the Mayor, Intendant, or Mayor *pro tempore*, shall be affirmed. They may reverse, modify or confirm any or all rulings or conclusions of the Mayor, Intendant, or Mayor *pro tempore*, made or reached in the first trial of the case.

Civ. '12, § 3009; Civ. '02, § 2004.

An officer is not disqualified from acting as a judge or jurymen on the trial of defendant for violation of ordinance, on the ground that he is a party to the prosecution. But the Mayor or Mayor *pro tem*. before whom a trial has been had cannot vote as a juror on the appeal to Council from his decision. *City Council v. Fowler*, 48 S. C. 8, 25 S. E. 900.

Punishment by labor on streets, alternative sentence; section constitutional. *Union v. Hampton*, 83 S. C. 48, 64 S. E. 1017.

This section is not limited by § (4399) limiting jurisdiction of magistrates. *Id*. Ordinance authorizing Mayor to impose both fine and imprisonment is not void as whole where complete ordinance is left after striking out void part. *Greenville v. Fridmore*, 86 S. C. 442, 444, 68 S. E. 636, 138 Am. St. Rep. 1058.

(4413) § 35. Right of Appeal to Court of General Sessions.—From all the decisions of said Mayor, Intendant, or Mayor *pro tempore*, or City or Town

Council, any party in interest feeling himself or herself aggrieved shall have the right of appeal to the Court of General Sessions for the county in which the trial is had: *Provided, however*, That he must give notice of such appeal in writing within twenty-four hours after the sentence has been passed and enter into bond to appear and defend before said Court at its next ensuing session thereafter: *Provided*, That in those cities of over five thousand inhabitants incorporated under Article V of this Chapter, in all cases the person convicted shall have the right of appeal to the Court of General Sessions within five days from time of sentence. Such appeal may be taken either from the sentence of the Mayor or from the sentence of the City Council; but the appeal shall not operate to stay the execution of the sentence unless the appellant give bond, to be approved by the Mayor, conditioned to abide the judgment of the Court of General Sessions. Said appeal in said Court of General Sessions shall be heard upon the report of the presiding officer of the trial below and upon the testimony reported by him. The provisions of Sections 21, 34 and 35 shall not apply to the City of Charleston.

Civ. '12, § 3010; Civ. '02, § 2005.

Requirement that appeal be taken in twenty-four hours is constitutional. *Town Council of Due West v. Fuller*, 72 S. C. 150, 51 S. E. 546.

(4414) § 36. Inspector of Buildings to Inquire Into All Fires—Duty of Insurance Commissioner—Powers of Inspector—Inspector *Ex Officio*.—That the Inspector of Buildings of every incorporated city or town in this State shall hold an inquiry into the origin of every fire occurring within the limits of said city or town, and the Insurance Commissioner, either personally or by a deputy, when in the opinion of the Insurance Commissioner it is desirable, shall make inquiry into the origin of fires occurring outside the limits of incorporated cities and towns to which his attention may be called. The said Inspector of Buildings shall have power to send for persons and papers, subpoena witnesses and to compel attendance as are possessed by a Magistrate of the State. The Mayor, Chief of Fire Department or other municipal officer may be *ex officio* Inspector of Buildings.

1917, XXX, 361.

(4415) § 37. Report to the Insurance Commissioner.—That after making a complete inquiry upon such fire the said Inspector of Buildings shall make report in writing to the Insurance Commissioner of the State upon blanks to be furnished by the Insurance Commissioner, showing how, in his opinion, the said fire originated.

1917, XXX, 361.

(4416) § 38. Fee for Inquiry—From Whom Derived—Proviso.—That the Inspector of Buildings shall be entitled to a fee of three (\$3.00) dollars for making said inquiry, the said fee to be taxed against the person owning the property burned, if fire was caused by faulty construction or negligence of owner, but in case the Inspector shall conclude that the fire was due to lack of proper care on the part of the occupant of the house in which the fire occurred, the fee shall be paid by the occupant, except that upon affidavit made that the occupant is in indigent circumstances, and is unable to pay the fee, it shall be paid by the municipality within whose limits the

fire occurred, or if it be without the limits of the municipality, the fee shall be paid by the Insurance Commissioner out of funds available for this purpose: *Provided*, That when the fire originated from accidental causes the fee shall be paid by the Insurance Commissioner out of funds available for this purpose.

1917, XXX, 361.

(4417) § 39. Procedure and Penalty in Cases of Criminal Carelessness.—If the officer shall consider that the fire be due to criminal carelessness, the person responsible for the same shall be indicted before a Magistrate for a misdemeanor, and, upon conviction of the same, may be fined in a sum not exceeding fifty (\$50.00) dollars, or imprisonment for not more than ten days.

1917, XXX, 361.

(4418) § 40. Procedure Where Municipality Fails to Appoint Inspector.—That in case the governing body of any municipality shall fail or refuse to appoint an officer to make the investigation required, the Insurance Commissioner shall make such appointment.

1917, XXX, 361.

(4419) § 41. Penalty for Failure to Execute Article—Insurance Commissioner Charged With Enforcement.—An officer so appointed, after accepting such appointment, failing to carry out the provisions of the five preceding Sections, shall be liable to a penalty of twenty-five (\$25.00) dollars, recoverable before a Magistrate, and to dismissal from office. It shall be the duty of the Insurance Commissioner to enforce the provisions of this Article.

1917, XXX, 361.

(4420) § 42. Municipal Taxes—On What Property Levied.—All municipal taxes levied by cities and towns in this State shall be levied on all property, real and personal, not exempt by law from taxation, situate within the limits of said cities and towns, and in accordance with Section 6, Article VIII of the Constitution of 1895.

The clauses of the charters of any towns or cities restricting taxation in said towns to real estate only are hereby repealed.

Civ. '12, § 3011; Civ. '02, § 2006; 1897, XXII, 409.

This Section is intended to secure uniformity in taxation of property. F. C. & P. Ry. Co. v. Columbia, 54 S. C. 266, 32 S. E. 412.

(4421) § 43. Towns and Cities Authorized to Collect Taxes in Installments.—The towns and cities of this State are hereby authorized and empowered to collect the taxes of such towns or cities in such installments as the municipal authorities thereof may by ordinance prescribe.

Civ. '12, § 3012; Civ. '02, § 2007; 1898, XXII, 728.

(4422) § 44. City of Columbia Permitted to Adopt Certain State Legislation to Enforce Collection of Municipal Taxes and Assessments.—That the City Council of Columbia be, and they are hereby, authorized and empowered for the enforcement and collection of taxes and assessments for

municipal purposes, on real and personal property within the city of Columbia, to adopt such of the State legislation heretofore enacted or hereafter to be enacted, or as they may deem expedient and as may be applicable, with reference to the enforcement and collection of State and county taxes and sales of real and personal property for payment of same, including the levy and sale of real and personal property for delinquent taxes and assessments and proceedings subsequent to sale, as provided in the Act entitled "An Act in relation to forfeited lands, delinquent lands and collection of taxes," approved December the 24th, 1887, and all amendments thereto: *Provided, always*, That such municipal legislation shall provide for the priority of State and county taxes over municipal taxes.

1914, XXVIII, 759.

(4423) § 45. Unlawful to Apply Proceeds of Tax Specially Levied for Any Other Purpose.—Whenever a municipal corporation shall levy and collect a tax for any specific purpose it shall be unlawful for the officers or agents of any such municipal corporations to apply any of the proceeds of such tax levy to any other purpose than that for which it was collected until the same shall have been discharged or fulfilled or abandoned.

Civ. '12, § 3013; 1909, XXVI, 124.

(4424) § 46. Municipalities May Grant Exclusive Franchises for Furnishing Lights and Water.—All cities and towns of the State of South Carolina are hereby empowered to grant to persons or corporations the exclusive franchise of furnishing light or water to said cities and towns and the inhabitants thereof: *Provided*, That no such franchise shall be valid unless it shall first receive the vote of two-thirds of the Board of Aldermen or Common Council of the city or town granting the same and be subsequently confirmed by a vote of the majority of the qualified electors of said city or town voting at an election to be called specially for the purpose: *And provided, further*, That the ordinance or resolution granting such franchise shall fix a minimum rate for furnishing water or light, both for public and private consumption, beyond which the persons or corporation obtaining such exclusive franchise shall have no power to charge or receive any further price for light or water thus furnished: *And provided*, That no such franchise shall exceed a period of thirty years or affect any existing contractual rights.

Civ. '12, § 3014; 1902, XXIII, 1039.

Grantee of franchise not liable to individuals damaged by failure to furnish. *Ancrum v. Camden Water, Light and Ice Co.*, 82 S. C. 284, 64 S. E. 151, 21 L. R. A., N. S., 1029; *Cooke v. Paris Mountain Water Co.*, 82 S. C. 235, 64 S. E. 157.

(4425) § 47. Municipal Corporations May Acquire and Operate Ice Plants—Previous Acquisition Ratified—Elections Hereafter.—That it shall and may be lawful for the municipal authorities of any incorporated city or town in this State to acquire, by construction or purchase, and to operate manufactories or plants for making ice, and may furnish ice at wholesale or retail to individuals, firms and private corporations for reasonable compensation: *Provided*, That the purchase or construction of any such ice plant heretofore made by any city or town is hereby ratified, authorized and confirmed: *Provided, further*, That no such purchase or construction

shall be made hereafter except upon a majority vote of the electors in such cities or towns who are qualified to vote on the bonded indebtedness of said cities or towns.

1920, XXXI, 1040.

(4426) § 48. **Issue of Bonds Therefor—Election.**—Subject to the limitations upon the bonded indebtedness provided by law, it shall and may be lawful for any such cities or towns to issue bonds for the purpose of acquiring by construction or purchase such ice plants, and enlarging or improving the same, if such be necessary; such bonds to bear such interest rate as may be determined upon by said municipal authorities, and to mature at such time or times as may be determined by said municipal authorities: *Provided*, That the question of issuing said bonds for said purposes be first submitted at an election to the qualified electors of such cities and towns under the laws governing municipal elections, and a majority vote for said bonds.

1920, XXXI, 1040.

(4427) § 49. **Operation of Plant—Bonds of Operators—Removal.**—That the Mayor and Council of any city, or the Intendant or Wardens of any town, acquiring an ice plant under the provisions of this Article, are hereby authorized to appoint such suitable and competent person or persons as may be necessary to operate said ice plant, at a salary to be fixed by said municipal authorities, and the person or persons so appointed may be required to give bond for the faithful performance of their duties in a sum to be fixed by said municipal authorities, and such person or persons may be removed at the will and pleasure of such municipal authorities.

1920, XXXI, 1040.

(4428) § 50. **Selling Price of Ice.**—The price at which the product of such ice plants as may be established hereunder shall be sold may be fixed from time to time by said municipal authorities at any such city or town, and shall be sufficient to reimburse such cities or towns for the expenses and cost of manufacture thereof, together with any interest for which said city or town may be liable upon any bonds issued for the purpose of acquiring such ice plant.

1920, XXXI, 1040.

(4429) § 51. **Powers of Municipal Corporations—Provisos.**—All cities and towns in this State are hereby authorized and empowered to incur bonded indebtedness and to own and possess property to any amount within the discretion of the municipal authorities of such towns and cities for the purposes of purchase, establishment and maintenance of waterworks plants, sewerage systems and lighting plants: *Provided*, That the question of such purchase or establishment shall be submitted to an election, and no such purchase or construction shall be made except upon a majority of the electors of such cities or towns who are qualified to vote on the bonded indebtedness of said cities or towns: *And provided, further*, That the question of incurring such indebtedness be submitted with favorable results to the freeholders of such municipalities by petition, and the qualified voters of such

municipalities for decision according to the requirements of the Constitution of this State upon the question of other bonded indebtedness.

1918, XXX, 801.

Harby v. Jennings, Mayor, 112 S. C. 479, 101 S. E. 649.

(4430) § 52. Construction and Operation of Waterworks and Electric Plants—Issuance of Bonds—Elections.—All cities and towns shall have full power and authority to construct, operate and maintain waterworks and electric light works within or without, or partially within and partially without, their corporate limits, for the use and benefit of such cities and towns and the inhabitants thereof, and to purchase, own, operate and maintain machinery, equipment and apparatus for generating either electricity or gas for the use and benefit of such cities and towns and the inhabitants thereof, or to purchase or acquire existing waterworks by condemnation in the manner now provided by law for railroad corporations to acquire rights of way, or to contract for the erection of plants for waterworks, sewerage or lighting purposes, one or all, for the use of such cities and towns and to supply the inhabitants thereof, and to sell, convey and dispose of any and all such properties; and to meet the cost of acquiring the said properties, or any of them, cities and towns may issue coupon bonds, bearing interest at a rate not to exceed six per centum per annum, payable in any legal tender money of the United States of America ten years or more, but not exceeding forty years, after date, with the privilege of redemption at such time as the City or Town Council may fix in said bonds: *Provided*, That before any such construction or purchase, or any such sale, conveyance and disposal of any such property, or any part thereof, and before any bonds shall be issued under the provisions of this Section, the City or Town Council of the municipality shall submit the question of such construction or purchase or of such sale, conveyance and disposal of such property to the qualified registered electors of the city or town, at an election to be ordered for that purpose by the City or Town Council to be conducted in accordance with the laws governing municipal elections: *And provided, further*, That before any election shall be held under the provisions of this Section, at least the majority of the resident freeholders of the city or town, as shown by its tax books, shall petition the City or Town Council that the said election be ordered; and if a majority of the electors voting in such election shall vote for the acquisition of the property in question and for the issue of bonds, the City or Town Council shall so declare by ordinance and shall acquire the property and issue the bonds and dispose of them as required by law. And if a majority of the electors voting in any such election shall vote for the sale of the property in question, the City or Town Council shall sell, convey and transfer the same as so authorized. o'clock in the forenoon and shall be closed at 4 o'clock in the afternoon: *Provided*, That proceedings to condemn existing waterworks shall not be instituted until after an election ordered by the City or Town Council upon thirty days' notice shall have determined, by a majority of the

qualified electors of the city or town, the policy of the city or town in favor of municipal ownership of waterworks. Every sale, conveyance and transfer of any water, gas or electric light works, plant or system, or any part thereof, heretofore made by any city or town is hereby declared to be lawful and valid.

Civ. '12, § 3015; Civ. '02, § 2008; 1899, XXIII, 49; 1914, XXVIII, 511; 1915, XXIX, 53; 1916, XXIX, 939; 1920, XXXI, 767, 797.

See, also, post, § (4448).

Act of March 2, 1896, is intended to apply to cities in which there are no waterworks. *Seegers v. Gibbes*, 72 S. C. 532, 541, 52 S. E. 586.

Relates to construction, purchase and operation of waterworks and electric light plants, and was intended to carry into effect Const. 1895, Art. VIII, § 5.

The Act must be read in connection with the Constitutional limitations as to amount of bonded indebtedness. *Germania Sav. Bank v. Darlington*, 50 S. C. 337, 27 S. E. 846. This Act is in effect an amendment to charters limiting the indebtedness of cities. *Todd v. Laurens*, 48 S. C. 395, 26 S. E. 632. Rule for determining whether the Constitutional limit has been exceeded. *Id.* As to election under this Act, see *State v. Evans*, 47 S. C. 418, 25 S. E. 216; *Cleveland v. Calvert*, 54 S. C. 83, 31 S. E. 871. An agreement by which a city undertakes to issue certificates of indebtedness to be paid out of current taxes in future years in effect would create a bonded indebtedness within the meaning of the Constitution. *Duncan v. Charleston*, 60 S. C. 532, 39 S. E. 265. So also attempt to purchase waterworks subject to a bonded indebtedness which is to be assumed by the corporation. *Stehmeyer v. City Council*, 53 S. C. 259, 31 S. E. 322.

Municipality may issue bonds payable in gold. *Dicta. Ross v. Lipscomb*, 83 S. C. 136, 149, 65 S. E. 451, 137 Am. St. Rep. 794.

Election on issue of bonds for waterworks and sewerage systems or either submitted as one proposition is void under §§ (4430) and (4445). *Johnson v. Roddey*, 83 S. C. 462, 464, 65 S. E. 626.

Construction and operation of municipal waterworks should be "for the use and benefit of said cities and towns and its citizens." *Childs v. Columbia*, 87 S. C. 566, 570, 70 S. E. 296, 34 L. R. A., N. S., 542n.

Election of sewerage commission. *State v. Young*, 66 S. C. 115, 44 S. E. 586; *Matheny v. Aiken*, 68 S. C. 182, 47 S. E. 56; *Ancrum v. Water Co.*, 82 S. C. 292, 64 S. E. 151, 21 L. R. A., N. S., 1029; *Black v. Fishburne*, 84 S. C. 454, 66 S. E. 681, 19 Am. & Eng. Ann. Cas. 1104; *Childs v. Columbia*, 87 S. C. 570, 70 S. E. 296, 34 L. R. A., N. S., 542n.

State ex rel. Watkins v. Brasington, 93 S. C. 447, 76 S. E. 1086; *Paris Mountain Water Co. v. City of Greenville*, 110 S. C. 36, 96 S. E. 545; *Harby v. Jennings, Mayor et al*, 112 S. C. 479, 101 S. E. 649.

(4431) § 53. Election of Commissioners of Public Works—Terms of Office, Etc.—At such election for bonds, the elector shall vote for three citizens of such town or city, whose terms of office shall be respectively two, four and six years, and until the general election for municipal officers next following the expiration of the short term, and until their successors are elected and qualified. The classification above designated as to the term shall be ascertained by the Commissioners after election by lot. At each general election for municipal officers following the expiration of the term of the Commissioner holding the short term, and at every such election every two years thereafter, one such Commissioner shall be elected for a term of six years, and until his successor is elected and qualified. The officers so elected and their successors in office shall be known as the Commissioners of Public Works of such municipality, and by that name may sue and be sued in any of the Courts of this State. At the first meeting of the Commissioners after election, and after any election for full term, they shall organize by the election of one of their number as Chairman. The Clerk or Recorder of the municipality shall act as Secretary of the Commissioners. The Mayor and Aldermen of the city or the Intendant and Wardens of a town shall fill any vacancy occurring in said Commissions by death, resignation or otherwise, by appointment for the unexpired term. The persons elected or appointed to such office shall qualify by taking the same oath as the election officers of the municipality take. The Mayor of the city or the Intendant of the town shall notify the persons so elected as members of the Commissioners

of Public Works of their election within ten days after the results of such election is declared: *Provided*, That there shall be no Board of Commissioners of Public Works in the City of Laurens and the City of Camden and the Town of Clinton and in the City of Abbeville and St. George, but all the duties, powers and responsibilities of the Board of Commissioners of Public Works are hereby devolved upon the City Council of the City of Laurens and the City of Camden and the Town of Clinton, and the City of Abbeville and the Town of St. George: *And provided, further*, That there shall be no Board of Commissioners of Public Works in the City of Chester, but all the duties, powers and responsibilities of the Board of Commissioners of Public Works are hereby devolved upon the City Council of the City of Chester. In the Town of Gaffney said Board of Public Works shall consist *ex officio* of the Mayor and Treasurer and Clerk of the Town Council of Gaffney, who shall give bond for the faithful performance of the duties of their office in the sum of ten thousand dollars each: *Provided*, That there shall be no Board of Public Works for the City of Cheraw, but all the duties, powers and responsibilities of the Board of Public Works are hereby devolved upon the City Council of the City of Cheraw: *Provided*, That in the City of Orangeburg, which city has adopted and is now operated under the commission form of government, the Board of Commissioners of Public Works is hereby abolished, and all the powers, duties and responsibilities of the said Commissioners of Public Works, including all powers and duties in relation to issuing and selling bonds for municipal purposes, are hereby devolved upon the City Council of Orangeburg: *Provided, further*, That there shall be no Board of Commissioners of Public Works in the City of Georgetown, but all the duties, powers and responsibilities of the Board of Commissioners of Public Works are hereby devolved upon the City Council of the City of Georgetown: *Provided*, That in cities of fifty thousand (50,000) inhabitants or more, that in addition to the three Commissioners of Public Works to be elected as provided for in this Section, the Mayor of any such city and the Chairman of the Committee on Water Supply, if there be such Committee, shall be *ex officio* members of said Commissioners of Public Works: *And provided*, That in such cities said Commissioners of Public Works shall serve without compensation: *Provided, further*, That the Board of Commissioners of Public Works in and for the City of Sumter be, and the same is hereby, abolished, and the duties heretofore imposed by law upon said Board are hereby devolved upon the Council of the City of Sumter: *Provided, further*, That the Commissioners of Public Works for the City of Spartanburg shall receive as compensation for their services twenty-five (\$25.00) dollars a month, except the Chairman, who shall receive seventy-five (\$75.00) dollars, all salaries to be paid monthly: *Provided, further*, That there shall be no Board of Commissioners of Public Works in the Town of Blacksburg, and the same is abolished as it now exists, but all the duties, powers and responsibilities of the Board of Commissioners of Public Works are hereby devolved upon the Mayor and Town Council of Blacksburg, as hereinabove established,

which Board shall give bond in the sum of \$2,000.00 each, payable to the municipality of Blacksburg, for the faithful performance of the duties of their office: *Provided*, That there shall be no Commissioners of Public Works in the City of Aiken, and the same as it now exists is abolished, but all the duties, powers and responsibilities of the Board of Commissioners of Public Works are hereby devolved upon the Mayor and City Council of the City of Aiken. That the old Board of Commissioners of Public Works of the City of Aiken shall, upon demand to do so, turn over to the Mayor and City Council of Aiken, as the new Board herein established, all property, books, vouchers, records and moneys now in their hands, and thereafter among the other duties devolving upon the Mayor and City Council of Aiken, they shall make a full statement at the end of each month of their receipts and disbursements of all kinds during the preceding month, which shall be open to public inspection: *Provided, further*, That the provision relative to the City of Aiken shall be taken and deemed inoperative unless an amendment to the provisions of this Section shall have been voted for and approved by the qualified electors of the City of Aiken at an election directed to be held at Aiken on the second Tuesday in June, 1916, in accordance with the provisions of an Act of the General Assembly of South Carolina approved the 25th day of March, 1916: *Provided*, There shall be no Board of Commissioners of Public Works in the Town of Dillon, but all the duties, power and responsibilities of the Board of Commissioners of Public Works are hereby devolved upon the Mayor and Town Council of said Town of Dillon, and that the offices of the said Commissioners of Public Works in and for said town are hereby abolished and that said Commissioners of Public Works are hereby required, forthwith upon the approval of this Act, to turn over to the said Mayor and Town Council the records of their offices, and to account to the said Mayor and Town Council for their acts and doings as said Commissioners of Public Works since their last monthly report to the said Mayor and Town Council and all of the legitimate obligations and debts incurred by the said Commissioners of Public Works shall be assumed and paid by the said town.

Provided, further, That before this Article shall become effective there shall be held an election in the Town of Dillon upon the question of abolishing the office of Commission of Public Works, at which election the qualified electors shall vote for and against the Commissioners of Public Works. If a majority of the electors vote in favor of abolishing the offices of the Commissioners of Public Works then this Article shall immediately go into effect, but if a majority vote against abolishing said Commissioners of Public Works, then this Article shall not take effect. Said election to be called by the Town Council of the Town of Dillon, and held according to the rules governing town elections, and shall be held at least one week prior to the election in said town for municipal officers: *Provided*, That there shall be no Board of Commissioners of Public Works for the Town of Walterboro, but all the duties, powers and responsibilities of the Board of Commissioners of Public Works are

hereby devolved upon the Town Council of the Town of Walterboro in Colleton County.

Civ. '12, § 3016; Civ. '02, § 2009; 1896, XXII, 83; 1899, XXIII, 50; 1900, XXIII, 383; 1904, XXIV, 403; 1907, XXV, 625; 1913, XXVIII, 48, 208; 1915, XXIX, 61; 1916, XXIX, 826, 946; 1917, XXX, 60; 1918, XXX, 715, 770; 1920, XXXI, 716, 986; 1921, XXXII, 39, 196, 248.

Seegers v. Gibbs, 72 S. C. 541, 52 S. E. 586; Black v. Fishburne, 84 S. C. 454, 66 S. E. 681, 19 Am. & Eng. Ann. Cas. 1104.

Board of Public Works of Gaffney. Ross v. Lipscomb, 83 S. C. 136, 149, 65 S. E. 451, 137 Am. St. Rep. 794.

Harby v. Jennings, Mayor et al, 112 S. C. 479, 101 S. E. 649.

(4432) § 54. Powers of Commissioners of Public Works—Reports—Concurrence of Council.—Said Board of Commissioners of Public Works shall be vested with authority to purchase, build or contract for building said waterworks and said electric light plant and to operate the same, and shall have full control and management of same. They may supply and furnish water to citizens of said cities and towns and also electric, gas or other light, and may require and exact payment of such rates, tolls and charges as they may establish for the use of water and light. They may sell and dispose of said bonds and apply the proceeds, or so much thereof as may be necessary, towards the purchase of, or payment for, said plants: *Provided*, That the said Board shall make a full statement to the City or Town Council at the end of each month of their receipts and disbursements of all kinds during the preceding month. They shall have no power to incur any indebtedness without the concurrence of such Council.

Civ. '12, § 3017; Civ. '02, § 2010; 1896, XXII, 85; 1901, XXIII, 725; 1915, XXIX, 53.

(4433) § 55. Taxes for Interest on Bonds—Levy, Collection and Disposition.—The said City or Town Council are hereby authorized to assess, levy and collect, in addition to the annual tax levied for other purposes, a sufficient annual tax from the taxable property of said cities or towns to meet the interest to become due upon said bonds, and also to raise the sum of at least one-fortieth part of the entire bonded debt as a sinking fund in aid of the retirement and payment of said bonds. Said sinking fund shall be under the control and management of the Board of Commissioners of Public Works, and shall be applied to the said bonds, or invested to meet the payment of same when due.

Civ. '12, § 3018; Civ. '02, § 2011; 1896, XXII, 83.

(4434) § 56. Sinking Fund Commission for City of Greenville.—That there is hereby created and established a Sinking Fund Commission for the City of Greenville, consisting of three upright and intelligent citizens.

1916, XXIX, 732; 1917, XXX, 116.

(4435) § 57. Election of Members.—The three members of said Sinking Fund Commission shall be elected by the City Council of Greenville.

1916, XXIX, 732; 1917, XXX, 116.

(4436) § 58. Terms of Members.—The members of the first Sinking Fund Commission elected shall hold their offices for two, four and six years, respectively, from the first Tuesday in April, 1917, and until their successors shall have been elected and qualified; and on the first Tuesday in

April, 1918, and every two years thereafter, or as soon thereafter as can be done, there shall be elected one member of said Commission in the same manner as above prescribed, for a term of six years, and until his successors have been elected and qualified.

1916, XXIX, 732; 1917, XXX, 116.

(4437) § 59. Meetings—Bond—Organization—Penalty for Refusal to Serve.—The members of said Sinking Fund Commission shall meet as soon as it may be convenient after their election, at some suitable place, and after giving such bond as the City Council of Greenville may fix, signed by a surety company authorized to do business in this State, and after taking the oath of office similar to the one taken by the Mayor of said city, shall proceed to organize by electing a Chairman and Secretary from their number. They shall then proceed to draw lots for the term of office each shall serve. The member drawing the lowest number shall serve two years, and the one drawing the next lowest number four years, and the one drawing the remaining number six years. Said Commission shall prescribe such rules as they may think proper for the conduct of the business of said Commission, and proceed forthwith to carry out the provisions of this Act. The Commission shall have regular monthly meetings, and extra meetings shall be called by the Chairman of said Commission whenever he shall deem it expedient, or upon request of one of the other members thereof. The members of said Commission shall receive no compensation for their services as such, and if any member, after being duly elected and accepted, shall refuse to serve on said Commission he shall be subjected to a fine of twenty-five (\$25.00) dollars, to be imposed by the Recorder, and collected as other fines. Any member of said Commission may be removed from office for good cause by a vote of two-thirds of all the members elected to said City Council.

1916, XXIX, 732; 1917, XXX, 116.

(4438) § 60. Filling of Vacancies.—All vacancies shall be filled by election, as above provided, and a person elected to fill an unexpired term shall serve only to the expiration of such term, unless reelected.

1916, XXIX, 732; 1917, XXX, 116.

(4439) § 61. Who Eligible as Members.—No person shall be eligible to election on said Commission who is not a citizen of Greenville, and who has not resided in said city one year previous to his election, nor shall any person be elected who at the time of his election holds any office of profit or trust under the national, State, municipal or county government, except Notaries Public and members of the State militia; and any member of said Commission accepting any such office thereby vacates his membership on the Commission.

1916, XXIX, 732; 1917, XXX, 116.

(4440) § 62. Record—Office—Expenses.—The acts and doings of said Commission shall be recorded in a book kept for the purpose, which shall be open to the inspection of all citizens. The City Council of Greenville shall furnish said Commission with a permanent office, and all of its legit-

imate expenses for stationery, including premium on bonds, etc., shall be paid by said Commission out of said sinking funds, upon vouchers signed by the Secretary and approved by the Chairman.

1916, XXIX, 732; 1917, XXX, 116.

(4441) § 63. Disposition of Sinking Funds.—That all sinking funds heretofore or hereafter levied and collected by the city of Greenville in aid of the retirement and payment of bonds of said city, or for any other purpose whatsoever, shall be turned over to said Commission and deposited by it in some reliable bank or banks of said city, at interest, said bank or banks to be selected by said Commission, subject, however, to the approval of City Council; and said funds shall not be drawn out of the bank except by vouchers signed both by the Chairman and Secretary of said Commission. Said funds, with the approval of City Council of Greenville, may be invested, however, by said Commission in State, county or municipal bonds whenever they may think it wise and expedient to do so.

1916, XXIX, 732; 1917, XXX, 116.

(4442) § 64. Cities and Towns May Purchase Lands, Etc., for Certain Municipal Purposes.—The said cities and towns shall have the power and authority to purchase and hold suitable lands and water, and to erect such aqueducts, dams, canals, buildings, machine shops and other works, and to construct and lay such conduits, mains and pipes as may be necessary to obtain and secure a supply of water and power for operating said waterworks and electric light works. And said cities and towns shall have power to erect poles and wires along any of the adjacent highways and in said cities and towns, and shall have the right to condemn any property and lands, the drainage from which would contaminate the water supply of said city or town, and such streams, lakes or lands as may be required for the water supply of said city or town, or right of way to enable it to lay mains and pipes for water, sewerage or drainage, and erect and operate said aqueducts, dams, canals and water and electrical works and electric lines on paying to the owner or owners thereof just compensation for such property or rights of way to be condemned, such compensation to be determined in the manner now provided by law for the condemnation of lands and rights of way by railroad corporations.

Civ. '12, § 3019; Civ. '02, § 2012; 1896, XXII, 83.

See also, ante, § (4430).
Private persons whose property outside of city limits is damaged by reason of emptying sewerage pipes into stream, thereby contaminating waters, may have compensation awarded him. This remedy is exclusive. Could owner, in absence of statute, have nuisance abated, or maintain suit for damages? Such nuisance is private. *Matheny v. Aiken*, 68 S. C. 163, 182, 47 S. E. 56.

(4443) § 65. Powers to Be in Addition to Powers Now Enjoyed.—The powers conferred by Sections 52 to 55, inclusive, and Section 64 upon the cities and towns of the State are, and shall be taken, deemed and construed to be, in addition to the powers now enjoyed by said cities and towns.

Civ. '12, § 3020; Civ. '02, § 2013; 1897, XXII, 507.

(4444) § 66. Sewerage Commission—When and How Constituted.—Any municipal corporation in this State which is about to enlarge, extend

or establish a system of sewerage therein may, by its Mayor and Aldermen, or Intendant and Wardens, or City or Town Councils, elect five or seven of its citizens, who shall be freeholders therein, as a Sewerage Commission, which shall be known and designated as the Sewerage Commission of such municipal corporation, who shall continue as such for a term of two years and until their successors are elected, or until the enlarging, extending or establishment of its system of sewerage is fully completed, as contemplated under the laws and ordinances providing therefor: *Provided*, That not more than three persons so elected as members of said Commission shall be members of the body electing such Commission. Any vacancy occurring in said Commission shall be filled by election as hereinbefore provided; and any member thereof may be removed for cause by any such City or Town Council. The members of such Commission, before entering upon their duties, shall take the same oaths required of members of the body electing them.

Civ. '12, § 3021; 1902, XXIII, 1040.

Commissioners of Public Works elected by Town Council under Act of 1896 have no right to possession and control of sewerage bonds or proceeds thereof as against Town Council, such Town Council being about to proceed under Act of 1902 to elect Sewerage Commission. *State v. Young*, 66 S. C. 115, 44 S. E. 586.

(4445) § 67. Duties of Sewerage Commission.—It shall be the duty of such Sewerage Commission, subject to the approval of such City or Town Council, to advertise for bids for at least 30 days in two or more newspapers for the work to be done, for material to be used therein, with the right to reject any and all bids, and to enter into contracts with the lowest responsible bidders thereon, and to secure competent persons, if deemed advisable, to superintend the construction thereof and counsel and advise in matters relating thereto. Such shall have the construction of the system of sewerage in charge, and shall organize by electing one of its members as Chairman thereof, and a Secretary, which may be the same person as the Clerk of such City or Town Council. A permanent record shall be made and kept by the said Commission of all its proceedings, contracts and other matters done and performed by it, including an accurate plan of the work done, showing the situation of the sewerage pipes, manholes, water flushes and all other things relating thereto that should be shown. And such records shall be open at all times to the inspection of any citizen of such corporation, and to the City or Town Council thereof, and shall be turned over to such City or Town Council as a permanent record thereof, with all convenient speed, on the completion of its work. No such Sewerage Commission shall expend more money in the enlarging, extending or establishing such system of sewerage than has been appropriated therefor, according to law; and all payments for material furnished and work performed shall be made by the Treasurer of such City or Town Council on warrants issued by such Commission and approved by such City or Town Council. No member of any such Commission shall be permitted to enter into any contract with such Commission for furnishing materials or for the construction of any of the work of such sewerage system.

Civ. '12, § 3022; 1902, XXIII, 1040.

(4446) § 68. Condemnation Proceedings by Municipal Authorities.—For the purpose of enlarging, extending or establishing a system of sewerage within and adjacent to its corporate limits, any municipal corporation shall have the right and power, by its City or Town Council, to condemn, take and use any land that it may deem necessary thereto, whether the same be situate within or without its corporate limits, or it may purchase or lease the same; and it may likewise condemn, purchase or lease any stream of running water for the purpose of emptying therein to the sewerage from its sewer pipes, conduits, drains or chambers; and for this purpose, when the owner or owners of land, or of any running stream of water, refuses or fails to sell or lease the same, such City or Town Council shall have the right to have the compensation therefor ascertained in the following manner: Such City or Town Council shall select one member of a Board of Arbitrators, the owner of the land or stream one member (and when the owner is a corporation, then its president or secretary shall make the selection), and these two shall select a third, which shall compose said Board, and all of whom shall possess the qualifications of jurors in the Courts of Record in this State. Said Board shall fully inform itself with regard to all the facts relating to the controversy, and shall hear the parties thereto, in their own behalf, or by attorney, and shall then forthwith render its findings of the amount of compensation in writing, and file the same in the office of the Clerk of Court of General Sessions and Common Pleas in the county where the land is situate, who shall receive and record the same, and make therefor a charge of not exceeding two dollars. From the award so rendered it shall be the right of either party to appeal to the first term of the Circuit Court next ensuing in the county, giving to the opposite party ten days' notice of such intended appeal, with the grounds thereof; and upon the hearing of such appeal, an issue shall be ordered, in which the appellant shall be the actor, and the question of compensation shall be thereupon submitted to a jury in open Court, whose verdict shall be final and conclusive, unless a new trial shall be ordered by the Supreme Court. But in no case of appeal shall the progress of the work be stayed: *Provided*, The corporation requiring the use of the property shall deposit with the Clerk of the Court the amount of the award from which the appeal is taken: *Provided*, That if any person shall fail to select or secure some suitable person to act on said Board, for a period of three days after receiving notice from such City or Town Council so to do, such City or Town Council shall have the right to request some disinterested citizen to select a member of the Board of Arbitrators for such landowner, and on his doing so, these two shall proceed to select the third, and the said Board shall be thus composed. In case the owner of any such land is legally disqualified from acting for himself or herself, such City or Town Council may have a guardian *ad litem* appointed for such person in the same manner that guardians *ad litem* are appointed in actions in the Court of Common Pleas, who shall act for such person fully as he or she might if legally disqualified. On the payment by the City or Town Council of the compensation thus ascertained, it shall have the right to enter upon and use such premises for all proper and necessary purposes

connected with the enlarging, extending or establishment of its system of sewerage, and for the repairing, flushing, protecting or otherwise keeping the same in a sanitary, safe or satisfactory condition.

Civ. '12, § 3023; 1902, XXIII, 1040.

Parrish v. Town of Yorkville, 96 S. C. 24, 79 S. E. 635.

(4447) § 69. Use of Streets and Highways for Sewerage Purposes—Regulations.—Any municipal corporation in this State, for the purpose of enlarging, extending or establishing a system of sewerage, as aforesaid, shall have the right to use any of the streets of such municipal corporation, and any of the public buildings, roads and highways of the county in which the same is located for the purpose of constructing, operating, repairing and protecting the same; but it shall restore all highways to as good a condition as they were in prior thereto without any unnecessary delay and with the least possible inconvenience to the public. And it shall have the right to enact all necessary ordinances, rules and regulations consistent with law for the establishment, construction, maintenance, operation, protection, use, control and repairing its system of sewerage, both within and without its corporate limits.

Civ. '12, § 3024; 1902, XXIII, 1040.

(4448) § 70. Cities and Towns May Furnish Light and Water Beyond City Limits.—All cities and towns in this State owning water and light plants be, and are hereby, authorized and empowered, through the proper officials of the said city or town, to enter into contract with persons, firms or corporations without the incorporate limits but contiguous thereto, to furnish said persons, firm or corporation electric current or water from said water and light plant of said city, and to furnish the same upon such terms, rates and charges as may be fixed by the contract or agreement between the parties in this behalf, either for lighting or for manufacturing purposes, when in the judgment of said City or Town Council it is for the best interest of the municipality so to do.*

That no such contract shall be for a longer period than two years, but may be renewed from time to time for a like period.

Civ. '12, § 3025; 1907, XXV, 625; 1904, XXIV, 403.

*This section, together with § (4430), does not impose on municipality duties of public service corporations as to nonresidents. *Childs v. Columbia*, 87 S. C. 566, 570, 70 S. E. 296, 34 L. R. A., N. S., 542n.

Paris Mountain Water Co. v. City of Greenville, 110 S. C. 36, 96 S. E. 545.

(4449) § 71. Municipalities to Provide Drains for Surface Water.—Whenever within the boundaries of any municipality, it shall be necessary or desirable to carry off the surface water from any street, alley or other public thoroughfare, over the private lands, property adjacent or adjoining such thoroughfare, upon demand from the owner or owners thereof, such municipality shall provide sufficient drainage for such water through open or covered drains except where the formation of the street renders it impracticable, along or under such streets, alleys or other thoroughfare in such manner as to prevent the passage of such water over such private lands or property: *Provided*, That if such drains cannot be had along or under such streets, alleys or other thoroughfare, then the municipal authorities shall have the power and authority to

obtain under proper proceedings for condemnation as for highways on payment of damages to the landowner, a right of way through the lands of such landowner for the necessary drains for such drainage.* That if any municipal corporation in this State shall fail or refuse to carry out the provisions of this Section, any person injured thereby may have and maintain an action against such municipality for the actual damages sustained by such person.†

Civ. '12, § 3026; 1902, XXIII, 1038.

*City of Columbia v. Melton, 81 S. C. 356.

†City is liable for injury caused by negligent construction of drain pipes. Mayrant v. Columbia, 77 S. C. 286, 57 S. E. 857, 10 L. R. A., N. S., 1094.

(4450) § 72. Municipal Corporations May Condemn Land for Waterworks and to Protect Water Sheds.—Any municipal corporation in this State desiring to establish waterworks or to enlarge or extend the same, whether they own or operate the plant or not, shall have the right to condemn lands, water rights and water privileges or any other property including existing waterworks or pipe lines, or any part thereof, necessary for the purpose of establishing, maintaining, extending or operating waterworks plants for supplying water to said municipal corporations, and to citizens thereof: *Provided*, That proper compensation be first made to the owners thereof, such condemnation to be made in the same manner as condemnations are now made by railroad corporations: *Provided, further*, That no municipality shall condemn any such waterworks during the life of any franchise granted by such municipality for the operation of such waterworks, and while the same are being operated under such franchise, nor when by contract there shall be any other method of valuation for the purpose of acquisition by such municipality upon the expiration of such franchise: *Provided, further*, That such condemnation proceedings may be had during the last year of the term of such franchise to take effect by the transfer of title and possession immediately upon the expiration of such franchise. They shall also have the right to enter upon and condemn lands and tenements for the purpose of protecting the water sheds from contamination, nuisances or any conditions which may be a menace to the public health, upon proper compensation being first made to the owner thereof.

Civ. '12, § 3027; 1905, XXIV, 867; 1914, XXVIII, 499; 1916, XXIX, 941.

Paris Mountain Water Co. v. City of Greenville, 105 S. C. 180, 89 S. E. 669.

(4451) § 73. Water Companies Have Right to Condemn Land for Waterworks, Etc.—Any other corporation now engaged exclusively in the business of supplying water for fire, sanitary or domestic purposes in this State, or which may extend to engage exclusively in the business of supplying water for such purposes, shall have the same rights and same powers as are herein conferred upon municipal corporations in Section 72.

Civ. '12, § 3028; 1905, XXIV, 867.

(4452) § 74. Damages for Land Condemned—Land Must Be Necessary.—When any lands are condemned by a municipal corporation for the use of a corporation other than itself, such other corporation shall pay all the costs and expenses incurred in such condemnation, together with all damages which may be assessed in favor of the landowner under such condem-

nation proceedings, as well as all damages that may be recovered against such municipality in any Court of competent jurisdiction by any one injured or damaged by such condemnation: *Provided, however*, That if in any case the ingress or egress from the lands of any person be cut off, said corporations shall open, construct and maintain convenient means of ingress and egress to the lands so cut off: *Provided, further*, That no such condemnation shall be had for benefit of any corporation unless it is made to appear to the satisfaction of the Town or City Council of the municipal corporation that the land sought to be condemned is necessary for the proper use and maintenance of such waterworks or for the proper protection of the health of the citizens of such municipality, the Town or City Council of such municipality to determine the question as to whether such land is necessary for the proper use and maintenance of such waterworks or for the proper protection of the health of such municipality.

Civ. '12, § 3029; 1905, XXIV, 867.

(4453) § 75. Condemnation to Be Made in Same Manner as for Railroads.—The condemnation therefor to be made in the same manner and same way as provided for railroad corporations, in Chapter LII of this Code: *Provided*, The jury of condemnation shall have the power to give special damages to the owner of the property condemned, as well as actual damages.

Civ. '12, § 3030; 1905, XXIV, 867.

(4454) § 76. Who May Not Serve on Condemnation Jury—Election.—That in all condemnation proceedings no person living in the city or town affected shall be eligible to serve on the Jury of Condemnation: *Provided*, That proceedings to condemn existing waterworks shall not be instituted until after an election ordered by the City Council upon thirty days' notice shall have determined, by a majority of the qualified electors of the city, the policy of the city in favor of municipal ownership of waterworks.

1916, XXIX, 941.

(4455) § 77. Municipal Corporations May Own Lands for Use of Corporation.—Any municipal corporation desiring to become the owner of any land, situate within the corporate limits of such municipal corporation, in this State, for the erection of a public building, for the use of the corporation, or the purpose of procuring a supply of water or establishing a sewerage system or other public works, for the use of the corporation, shall have the right to purchase said land from the owner or owners thereof, and pay for the same in such manner as said municipal corporation may determine.

Civ. '12, § 3032; 1907, XXV, 640.

(4456) § 78. Condemnation on Refusal to Sell Municipal Corporation the Land Desired.—In case the owner or owners of any land desired by a municipal corporation for the above purposes shall refuse to sell the same, it shall and may be lawful for said municipal corporation to condemn said land in the manner hereinafter provided.

Civ. '12, § 3033; 1907, XXV, 640.

(4457) § 79. Valuation of Land—How Made.—In case any owner or owners of the lot or lands desired for the purposes aforesaid shall demand what may be deemed by the said authorities an unreasonable price, then the said authorities shall nominate and appoint six freeholders, resident in said city or town, who shall meet any equal number to be named on the part of the owner or owners, to determine and fix upon the true and real value of such land, and any damages thereto by reason of the taking of said property, with full power in the Commissioners appointed as aforesaid, in case of disagreement, to call in one other Commissioner. In determining the value of the land so taken, the Commissioners shall estimate alone the quantity and value of the land so taken, and the special damage to the property which the owner may sustain by reason of the taking, but shall make no allowance to the corporation for the supposed benefits accruing to the owner of the property. And on the payment of the full value of said land, and such special damages aforesaid, ascertained and determined on in the manner herein provided, the fee simple of the said lot or lands shall be vested in such city or town for the use of the public, and the said owner shall execute his deed, without warranty therefor, to said city or town.

Civ. '12, § 3034; 1907, XXV, 640.

(4458) § 80. Appeal from Valuation May Be Made to Circuit Court.—In case any owner, or said corporation, shall be dissatisfied with the valuation of said lands, or such special damages aforesaid, either party shall have the right of appeal to the Circuit Court of the county where the land lies, by giving a notice in writing to the opposite party, or their attorneys, within ten days after written notice of the valuation and assessment of damages, and at the next term of the Court of Common Pleas for said county either party shall have the right to move for a trial by a jury in the Circuit Court, and said case shall be tried, as near as may be, like other civil cases, the appellant being the actor. The verdict of said jury shall be final, unless a new trial is granted by the Circuit Judge for some reason now provided by law, and after final judgment in such case, the fee simple of said land shall be vested in said city or town upon the payment, or tender of payment, of the amount of such valuation and damages, and the said owner shall thereupon execute his deed in fee simple, without warranty, for said land so condemned.

Civ. '12, § 3035; 1907, XXV, 640.

(4459) § 81. Clerk of Court May Execute Deed.—In all cases where, under the last preceding Section, the owner is required to execute his deed to said city or town, and shall fail or neglect so to do, then the Clerk of the Court of Common Pleas for the county in which said land is situated shall, on behalf of said owner, execute a deed, without warranty, for said land to said city or town, which said deed shall as effectively bind said owner and his and her heirs and assigns as though executed by said owner. And said deed, and all proceedings had in such matter, shall be recorded by the Register of Mesne Conveyances, or the Clerk of the Court, in the books wherein real estate deeds are by law required to be recorded.

But this shall not require the proceedings of the Court to be recorded, but such proceedings shall be recorded as are all other civil cases.

Civ. '12, § 3036; 1907, XXV, 640.

(4460) § 82. **Landowner to Be Summoned.**—The Mayor or Intendant of such city or town shall call a meeting of the said owner or owners of any property so required at some proper time and place by the service of a notice, as summons are now required to be served, for the purpose of appointing said Commissioners; and in case the owner or owners refuse to attend said meeting, or neglect or fail to appoint said Commissioners, then the Commissioners appointed by the city or town on its behalf, or a majority of them, shall be, and they are hereby, authorized to proceed to discharge the duties herein prescribed, and their judgment in the matter shall be final and conclusive, except in case of appeal as herein prescribed.

Civ. '12, § 3037; 1907, XXV, 640.

(4461) § 83. **Guardian Ad Litem in Case of Person Under Disability.**—When the owner, or any one of several owners, of the land is an infant, or *non compos mentis*, the required notice shall be served personally upon the trustee, guardian or committee of such person, and personally on such owner, and if there be no such trustee, guardian or committee in the State, the Clerk of the Court of Common Pleas shall have the power to appoint such person a guardian *ad litem*, upon whom the service shall be made, and who shall represent the interest of such infant, or person *non compos mentis*; said appointment shall be made by said Clerk in the manner now provided by law for the appointment of guardians *ad litem* in civil actions. If any owner of the land shall reside beyond this State, or his or her place of residence be unknown, the service shall be made upon the agent of such owner in charge of said lands, or if there be no such agent, then such owner shall be served by publication of the notice, as is now provided for publishing summons in civil cases.

Civ. '12, § 3038; 1907, XXV, 640.

(4462) § 84. **Proceedings Not to Be Suspended by an Appeal.**—When the Commissioners shall have assessed said lands, and damages therefor, the proceedings shall not be suspended by an appeal, but upon depositing the amount of such award with the Clerk of the Court of Common Pleas in the county in which the land lies, and filing a good and sufficient bond to pay whatever damages the owner of said land may suffer by reason of the taking of such land, for the purpose aforesaid, upon paying said money and executing the bond herein provided for.

Civ. '12, § 3039; 1907, XXV, 640.

(4463) § 85. **Oath of Commissioners.**—The aforesaid Commissioners, before proceeding to act in the premises, shall severally make oath before the Clerk of the Court, or some other officer authorized to administer an oath, that they will fairly, faithfully and impartially discharge the duties herein required of them.

Civ. '12, § 3040; 1907, XXV, 640.

(4464) § 86. **Power of Towns to Hold Property.**—All towns in this State may own and possess property, real, personal or mixed, not exceeding in

value eight per centum of the assessed value of the taxable property in said towns, notwithstanding any special provision in their respective charters to the contrary.

Civ. '12, § 3041; Civ. '02, § 2014; 1897, XXII, 464.

Power to take land by devise at common law. *McIntosh v. Charleston*, 45 S. C. 584, 23 S. E. 943.

(4465) § 87. Issuance of Bonds for Certain Purposes by Cities, Towns, Townships, and Other Municipalities.—Any city, town or township, or other municipal corporation, for the purpose of refunding or paying the whole or any part of its bonded indebtedness, whether the same has matured or not, and any unpaid past interest thereon, shall be, and is hereby, authorized and empowered to issue its negotiable coupon bonds from time to time, and in such amounts as shall be proper, and to use and dispose of the same, either by sale or exchange, for the purposes aforesaid. Said bonds issued under the provisions of this Article shall be payable in not more than fifty years from their date, and shall be in sums of one hundred dollars, five hundred dollars, or one thousand dollars, each bearing interest at such rate as shall be directed by the City Council or Town Council, or other corporate authority of said cities, towns, townships, or other municipal corporation, respectively; said interest to be paid semiannually: *Provided*, Said rate of interest shall not exceed the rate of interest borne by the previous issue of bonds; except that in cases where the City Council, Town Council, or other corporate authority of said cities, towns, townships, or other municipal corporations, respectively, shall be able to retire such previous issue of bonds in advance of the maturity thereof, at or below their par value, the new bonds issued for such purpose may be made to bear a rate of interest in excess of the rate borne by the original issue of bonds by one per cent. per annum, in the discretion of the Mayor or Aldermen of such city or town, or other corporate authority of said cities, towns, townships, or other municipal corporations, respectively; but in no case shall the amount of interest to be paid exceed the aggregate amount of interest payable upon the bonds of the previous issue so redeemed, retired, taken up and refunded or paid: *And provided, further*, That the aggregate amount of the principal of the bonds at any time issued under this Article by any city, town, township, or other municipal corporation, shall not exceed the aggregate amount of said bonded indebtedness, and past due interest thereon, to refund or pay which said bonds shall be issued under this Article: *And provided, further*, That the principal and interest shall be paid in any legal tender money of the United States: *And provided, further*, That the limitations as to the rate of interest shall not apply to a bond issue of the Town of Darlington for refunding fifty thousand (\$50,000.00) dollars bonds which matured May, 1920, so that said town may refund said bonds at a higher rate of interest than the previous issue bore.

Civ. '12, § 3042; Civ. '02, § 2015; 1896, XXII, 86; 1897, XXII, 406; 1899, XXIII, 71; 1908, XXV, 1027; 1921, XXXII, 219.

Baist v. City Council, 77 S. C. 269, 57 S. E. 862; *Black v. Fishburne*, 84 S. C. 454, 66 S. E. 681, 19 Am. & Eng. Ann. Cas. 1104.

City may issue bonds to refund outstanding maturing bonds without submitting question to qualified electors of city, when so authorized by its charter. *Jordan v. Greenville*, 79 S. C. 436, 437, 60 S. E. 973. See, also, post, § (4466).

(4466) § 88. Bonds—How Issued.—The bonds authorized to be issued under Section 87 may be issued without submitting the question as to the

creation of such bonded indebtedness to the qualified electors of such city, town or other municipal corporation issuing such bonds under said Section, and all provisions in any charter of any city, town or other municipal corporation requiring such submission to the qualified voters thereof be, and the same are hereby, repealed.

Civ. '12, § 3043; Civ. '02, § 2016; 1896, XXII, 87.

(4467) § 89. Tax for Payment of Bonds.—The City Council or Town Council or other corporate authorities of said cities, towns, townships, or other municipal corporations, respectively, be, and they are hereby, authorized and empowered to levy an annual tax on all taxable property of said cities, towns, or other municipal corporations, respectively, to provide for the payment of the principal and interest of the said bonds as the same shall become due.

Civ. '12, § 3044; Civ. '02, § 2017; 1896, XXII, 87.

(4468) § 90. Powers of Council to Make Coupons Receivable for Taxes—Mandamus for Issuance.—The City Council or Town Council or other corporate authorities of such city or town, township or other municipal corporation, respectively, who may issue bonds under the terms of this Article shall have authority to provide in any ordinance adopted requiring or permitting the issuing of said bonds that the coupons and principal on said bonds, or either, shall be receivable for taxes due to the city, town, township or other municipal corporation, respectively, issuing the said bonds during the year in which they mature, and shall further have authority to declare by such ordinance that in case of the neglect or failure of the City Council or Town Council or other municipal authority, respectively, to levy the taxes required by this Article to be levied to provide for the payment of the principal and interest of said bond, then the holder or holders of any of the said bonds or coupons may enforce the same by mandamus in any of the Courts of this State.

Civ. '12, § 3045; Civ. '02, § 2018; 1896, XXII, 87.

(4469) § 91. Corporate Authorities to Issue Bonds.—For the purpose of issuing the bonds provided for in Sections 87, 88, 89 and 90, the County Boards of Commissioners of the counties of the State, or such other officers as may hereafter be charged with the performance of the same duty, shall be, and they are hereby declared to be, the proper corporate authority for the townships of their respective counties to issue such bonds; except that in cases where an incorporated city or town is within a township, the said County Board of Commissioners, or other officer hereafter charged with the performance of the same duty, and the City Council or Town Council, as the case may be, shall, and they are hereby declared to be, the proper corporate authority of the township to issue such bonds.

Civ. '12, § 3046; Civ. '02, § 2019; 1896, XXII, 87; 1902, XXIII, 1016.

(4470) § 92. Provisions Made to Apply to Counties Also.—All the provisions of Sections 87, 88, 89 and 90 be, and the same are hereby, extended to and made applicable to counties, and to the County Boards of Commissioners thereof, the same as they apply to municipal corporations and to the authorities thereof: *Provided*, That when county bonds are issued under the provisions hereof, after the issues shall have been authorized by a reso-

lution of the County Board of Commissioners, entered in the minutes of said Board, it shall not be necessary for the members of said Board to sign bonds, but the signature of the County Supervisor thereto shall be sufficient.

Civ. '12, § 3047; Civ. '02, § 2020; 1899, XXIII, 73.

(4471) § 93. School Districts Included—Provisions.—The words "other municipal corporations" used in Section 87 shall be held and deemed to include any School District of this State, and that the Trustees of the School Districts shall be the corporate agents thereof for the purposes of said Section and of Sections 88, 89, 90, 91 and 92.

Civ. '12, § 3048; 1902, XXIII, 1046.

(4472) § 94. Provisions Not to Affect Certain County Bonds.—The provisions of Sections 88 to 92, both inclusive, shall in no wise affect the Acts heretofore passed, authorizing and empowering the several counties of the State, or any of them, to issue bonds for the purpose of refunding or paying in whole or in part, any indebtedness; whether bonded or otherwise of any of the said counties.

Civ. '12, § 3049; 1902, XXIII, 1046.

(4473) § 95. Special Elections as to Issue of Municipal Bonds for Certain Purposes.—It shall be the duty of the municipal authorities of any incorporated city or town in this State, upon a petition of a majority of the freeholders of said city or town, as shown by its tax books, to order a special election in any such city or town for the purpose of issuing bonds for the purchasing, repairing or improving of city or town hall, or park or grounds therefor, markets and guardhouse; enlarging, extending or establishing electric light plants or other lights, or waterworks or sewerage; erecting, repairing or altering school buildings, fire protection purposes, improvement of streets and sidewalks, or any corporate purposes set forth in said petition: *Provided*, That in exercising the powers conferred by this Section and other Sections authorizing the issuance of bonds, the city or town shall observe the limitations applicable to such city or town, imposed by the Constitution of South Carolina, upon the amount of bonded indebtedness of cities and towns: *Provided, further*, That the bonded indebtedness of the Town of Bamberg shall not exceed fifteen (15) per cent. of the taxable value of the property of said town.

Civ. '12, § 3050; Civ. '02, § 2021; 1896, XXII, 88; 1897, XXII, 410, 453; 1908, XXV, 1038; 1911, XXVII, 10; 1914, XXVIII, 461; 1915, XXIX, 90; 1917, XXX, 228; 1920, XXXI, 948, 1052, 1087, 1108; 1921, XXXII, 54, 84.

Bonds sustained under this Act. *State v. Evans*, 47 S. C. 418, 25 S. E. 216. The effect of the Constitutional amendment of 1901, to Const. Art. 10, § 5, considered in *Bray v. City Council*, 62 S. C. 57, 39 S. E. 810; *Dillingham v. Spartanburg*, 75 S. C. 551, 56 S. E. 381, 117 Am. St. Rep. 917, 9 Am. & Eng. Ann. Cas. 829, 8 L. R. A., N. S., 412.

Construed to confer on municipalities power to vote bonds for purchase of waterworks plant. *Dick v. Scarborough*, 73 S. C. 150, 153, 53 S. E. 86.

Act of March 9, 1896, is intended to apply to cities which already have waterworks system, but which desire to enlarge it, and at election for issue of bonds for enlarging system already installed there need not be elected Commissioners of Public Works. *Seegers v. Gibbs*, 72 S. C. 532, 542, 52 S. E. 586.

Town may issue bonds for school purpose running for longer time than corporate life of town, and if town afterward become incorporated under general law, that will not affect validity of bonds. *Black v. Fishburne*, 84 S. C. 453, 66 S. E. 681, 19 Am. & Eng. Ann. Cas. 1104.

Town incorporated under Act of 1896, 22 Stat. 67, has power under this section to issue bonds for erecting schoolhouse within municipality, although school be controlled by usual school authorities. *Allen v. Adams*, 66 S. C. 344, 352, 44 S. E. 938.

Herbert v. Griffith, Mayor, et al, 99 S. C. 1, 82 S. E. 986; *Paris Mountain Water Co. v. City of Greenville*, 110 S. C. 36, 96 S. E. 545; *Harby v. Jennings*, Mayor, et al, 112 S. C. 479, 101 S. E. 649.

(4474) § 96. Persons Entitled to Vote.—Such persons shall be entitled to vote at any such special election as are qualified under Section 13, Article II of the Constitution of 1895 of this State; and should a majority of those voting in said election vote in favor of said bond issue then the municipal authorities of said city or town shall be authorized to issue said bonds, which shall be of such denomination and run for such length of time and bear such rate of interest, not exceeding seven per centum per annum, as the said municipal authorities shall prescribe.

Civ. '12, § 3051; Civ. '02, § 2022; 1896, XXII, 88.

Black v. Fishburne, 84 S. C. 453, 66 S. E. 681, 19 Am. & Eng. Ann. Cas. 1104; Seegers v. Gibbes, 72 S. C. 542, 52 S. E. 586.

(4475) § 97. Municipality May Collect Additional Tax—Bonds—Sinking Fund Limited.—That the City or Town Council of any city or town issuing bonds under the provisions of Section 95 be, and it is hereby, authorized to assess, levy and collect, in addition to the annual tax, which it is authorized to levy for other purposes, a sufficient annual tax from the taxable property of such city or town to meet the interest to become due upon said bonds, and also to provide such part of the sinking fund in aid of the retirement and payment of said bonds, as it is advisable or necessary to provide annually therefor; said tax to be assessed, levied and collected in the same manner as other taxes in said city or town: *Provided*, The amount set apart as a sinking fund annually shall not exceed the necessary fractional amount to provide for an aggregate sum sufficient for the retirement of the said bonds on their maturity, and the tax levy therefor shall conform to this provision.

1915, XXIX, 151.

(4476) § 98. Bonds of Municipal Corporations to Fund Past Indebtedness—Maturity.—Every city and town in this State is hereby authorized to issue its bonds for the purpose of funding or extending the time of payment of any indebtedness of such city or town now outstanding, incurred for corporate or municipal purposes: *Provided, however*, That this Section shall not be construed as authorizing the funding of an indebtedness incurred in violation of the provisions of the Constitution of South Carolina, or incurred for the current expenses of the fiscal year in which the date of approval of this Section by the Governor shall fall. Bonds issued under this Act shall be issued in the manner provided by Section 87 of this Article, except that the bonds shall not run for more than twenty (20) years.

1920, XXXI, 901.

(4477) § 99. Municipal Corporations May Issue Certificates of Stock for Coupon Bonds.—The city authorities of any incorporated city or town of this State shall be, and are hereby, authorized and empowered to exchange certificates of stock for any coupon bonds which have heretofore been issued by said cities or towns, or which they may hereafter issue, by virtue of Sections 52, 87, 95 and 96, for the like amount on cancellation of said bonds with like amount, rate of interest, time of maturity with legal validity and liability when issued by said cities and towns, as said coupon bonds, and said cities and towns be authorized and empowered to

issue certificates of stock when desired by the purchasers of coupon bonds, in lieu of said coupon bonds, and register all such certificates of stock in the names of the holders in a book or books kept for the purpose, and on such terms as said corporate authorities may require, not inconsistent with law.

Civ. '12, § 3052; 1908, XXV, 1025.

(4478) § 100. Causes of Action for Damages from Defects in Streets, Mismanagement, Etc.—Any person who shall receive bodily injury, or damages in his person or property, through a defect in any street, causeway, bridge or public way, or by reason of defect or mismanagement of anything under control of the corporation within the limits of any town or city, may recover, in an action against the same, the amount of actual damages sustained by him by reason thereof. If any such defect in a street, causeway or bridge existed before such injury or damage occurred, such damage shall not be recovered by the person so injured if his load exceed the ordinary weight: *Provided*, The said corporation shall not be liable unless such defect was occasioned by its neglect or mismanagement: *Provided, further*, Such person has not in any way brought about any such injury or damage by his or her own negligent act or negligently contributed thereto.

Civ. '12, § 3053; Civ. '02, § 2023; R. S. 1582; 1892, XX, 91, 102; 1901, XXIII, 657.

Ancrum v. Water Co., 82 S. C. 292, 64 S. E. 151, 21 L. R. A., N. S., 1029.

This Act was prior to the amendment of 1901, XXIII, 645, similar to G. S. 1087; R. S. 1169; § (2948) of this Code, in reference to the liability of Counties, so far as injuries from defects in streets are concerned; but broader in its scope, in that it includes not only injuries arising from defects in streets, etc., but also injuries arising from the mismanagement of anything under control of the corporation, as of a steam roller. *Barksdale v. Laurens*, 58 S. C. 418, 36 S. E. 66; *Dunn v. Barnwell*, 43 S. C. 398, 21 S. E. 315. See, also, cases cited under § (2948).

This section makes municipalities liable for damages resulting from failure to place safeguards at ditch at which sidewalk ends. *Hutchison v. Summerville*, 66 S. C. 442, 45 S. E. 8.

Liability for damages caused by negligent construction of drainage pipes. Proximate cause of injury for jury in this case; charge. *Mayrant v. Columbia*, 77 S. C. 281, 283, 57 S. E. 857, 10 L. R. A., N. S., 1094.

Measure of damages for injury to horse. *Sullivan v. City of Anderson*, 81 S. C. 478, 480, 62 S. E. 862.

The evidence not held to conclusively show contributory negligence and that load exceeded ordinary weight. *Sullivan v. City of Anderson*, 81 S. C. 478, 480, 62 S. E. 862.

Sufficiency of evidence of negligence. *Sullivan v. City of Anderson*, 81 S. C. 478, 480, 62 S. E. 862.

Stone v. City of Florence, 94 S. C. 375, 78 S. E. 23; *McLendon v. City of Columbia*, 101 S. C. 48, 85 S. E. 234; *Strait v. City of Rock Hill*, 104 S. C. 116, 88 S. E. 469; *Creps et al v. City of Columbia*, 104 S. C. 371, 89 S. E. 316; *Caston v. City of Rock Hill*, 107 S. C. 124, 92 S. E. 191; *Triplett v. City of Columbia*, 111 S. C. 7, 96 S. E. 675.

(4479) § 101. Laying Certain Pipes for Water Supply—Approval of County Authorities—Repair.—Any municipal corporation of this State having power to construct and operate a plant for water supply, or any individual or private corporation contemplating the laying of pipes for supplying water to municipal corporations or to a community of citizens, shall have authority to lay water pipes for the purpose of carrying water on or under the bed of any nontidal navigable stream of this State, and, with the approval of the county authorities in any county, on or under any highway of such county; such pipes to be so laid as not to interfere with the free use of such highway or the navigation of such streams by boats to the same extent that they would be navigable if such pipes were not laid.

It shall be the duty of every such municipality, private corporation or person, having laid such pipes, to keep the same in repair.

Civ. '12, § 3054; 1903, XXIV, 77.

(4480) § 102. **Public Libraries—Tax Levied.**—That any county, township or municipal corporation in the State of South Carolina may acquire, own, or operate a public library or public libraries, and a tax or taxes not exceeding two mills may be levied and collected for the support or acquisition of the same as hereinafter provided.

Civ. '12, § 3055; 1903, XXIV, 77; 1915, XXIX, 181.

(4481) § 103. **Petition — Election — Thirty Days' Notice — Ballots.**—Whenever one-fourth of the qualified electors of any county or of any township of any county shall file with the Clerk of the Circuit Court of such county a petition praying for an election to be held in such county or township on the question of acquiring or establishing a public library or public libraries in such county or township, as the case may be, and levying a tax not exceeding two mills for the acquisition or support of the same, it shall be the duty of said Clerk within ten days to make an order thereon and serve the same on the Commissioners of Election of the county requiring such Commissioners of Election to hold an election, after giving at least thirty days' notice thereof in the newspapers of such county or township, as the case may be, upon the questions stated in said petition not later than sixty days thereafter nor earlier than forty days thereafter: *Provided*, If there be no newspaper published in said county or township, as the case may be, then notice may be given by posting the same on the Court House door of the county and in two other public places in the county or township, as the case may be. Said petition shall be accompanied by a certificate of the Board of Supervisors of Registration of the county that the names appearing on the petition constitute one-fourth of the qualified registered electors of said county or township, as the case may be. Such question shall be submitted to the electors in this form: Each ballot shall have printed or written on it the proposition desired to be submitted by said petition, and upon this question the electors shall vote "Yes" or "No."

Civ. '12, § 3056; 1903, XXIV, 77; 1915, XXIX, 181.

(4482) § 104. **Library Trustees—Appointment—Number—Terms—Tax for Support—Collection.**—In the event a majority of the qualified electors voting at the election provided for in Section 103 of this Article shall vote "Yes" upon such question, within ten days after such result may be determined, the County Board of Education shall appoint five competent citizens of the county or township, as the case may be, who shall be known as the County or Township Library Trustees. One of said Trustees shall hold office for the term of two years, one for the term of four years, one for the term of six years, one for the term of eight years, and one for the term of ten years, or until their successors shall be duly appointed and qualified. At the time of the appointment of said five Trustees, they shall determine their respective terms of office by lot. Such Library Trustees, after their appointment as aforesaid, shall furnish the County Auditor with a statement of the amount of the taxes, not exceeding two mills, they consider necessary to be levied for the purposes provided in the said election, and the Auditor shall enter the same in the tax duplicates and he shall thereafter annually enter said amount in the tax duplicates until the same

is increased, decreased or repealed by the qualified electors at an election called for the purpose, and he is notified that the same has been increased, decreased or repealed, and if increased or decreased, he shall annually enter it as before, according to said increase or decrease. Said election upon increasing, decreasing or repealing said tax or taxes shall be called and notice given in the same way and manner as is provided for the election authorized in Section 103 of this Article, and it shall be the duty of the County Treasurer to collect the tax or taxes herein provided for as other county and State taxes. Such levy shall be a lien on the property in said county or township, as the case may be, and said property shall be subject thereto in case of default of payment as in the case of other taxes. Such taxes shall be paid out by the County Treasurer upon warrant drawn by the Library Trustees of the county or township, as the case may be.

1915, XXIX, 181.

(4483) § 105. Trustees May Take Over Public Libraries—Support.—That the said County or Township Trustees, as the case may be, are authorized and empowered to accept or establish upon such terms as they deem right in the exercise of their discretion, any public library or public libraries, and, if accepted, to support and maintain the same from the funds arising from the taxes hereinbefore provided for or any other funds that may come into their hands from any other source, and having been accepted or established, said library or libraries shall be managed or controlled by said County or Township Library Trustees, as the case may be, and it shall be lawful, and authority is hereby given, that any library or libraries in the State of South Carolina supported in whole or in part by public taxation be turned over and placed under the control of the Library Trustees provided for in Section 104 of this Article.

1915, XXIX, 181.

(4484) § 106. Municipal Library Election—Notice—Ballots.—Whenever one-fourth of the freeholders of any municipal corporation in the State of South Carolina shall file with the Town or City Council of such municipal corporation a petition praying for an election to be held in said municipal corporation on the question of establishing or acquiring and operating a public library or public libraries in such municipal corporation and levying a tax not exceeding two mills for the support or acquisition of the same, it shall be the duty of said Town or City Council within ten days thereafter to order an election, after first giving at least thirty days' notice thereof in some newspaper published in said municipal corporation, upon the question stated in said petition not later than sixty days thereafter nor earlier than forty days thereafter: *Provided*, If no newspaper be published in said municipal corporation that notice may be given by posting the same in three public places in said municipal corporation: *Provided, further*, That before ordering said election it shall be the duty of the Town or City Council to ascertain to their satisfaction that said petition actually does contain the names of one-fourth of the freeholders of said municipal corporation. Said question shall be submitted to the electors in this form: Each ballot shall have printed or written on it the proposition desired to be

submitted by the said petition, and upon this question the electors shall vote "Yes" or "No."

1915, XXIX, 181.

(4485) § 107. If Favorable—Trustees Named—Council to Levy Tax—Collection—Disbursement.—In the event that a majority of the qualified electors voting at the election provided for in Section 106 of this Article shall vote "Yes" upon such question, within ten days after the ascertainment of said result, it shall be the duty of the said Town or City Council to name five competent persons, citizens of said town or city, to be the Town or City Library Trustees. The term of office of such Trustees to be the same and to be determined in the same manner as is hereinbefore provided for County or Township Library Trustees. Within ten days after the appointment and qualification of said Trustees it shall be their duty to give notice to the Town or City Council of the amount of taxes, not exceeding two mills, they consider necessary to be levied for the purposes herein provided. And it shall be the duty of said Town or City Council to annually each year thereafter to have levied and collected said tax or taxes until the same is increased, decreased or repealed by the qualified electors at an election called for that purpose, and if increased or decreased, they shall annually thereafter levy and collect said increased or decreased tax or taxes in the same manner as the original tax, which election shall be called and notice given in the same way and manner as is provided for the election mentioned in Section 106 of this Article. Such tax or taxes shall be collected in the same manner as other town or city taxes; shall be a lien on property in the same manner as other town or city taxes, and said property shall be subject thereto in case of default of payment as is the case with other town or city taxes. Said taxes so collected shall be paid out by the Town or City Treasurer, or such other officer as may be thereto authorized by the Town or City Council, upon warrants drawn by the Town or City Library Trustees.

1915, XXIX, 181.

(4486) § 108. Public Libraries Turned Over to Trustees—Support.—That the said Town or City Library Trustees provided for in Section 107 of this Article are authorized and empowered to accept or establish upon such terms as they deem right, in their discretion, any public library or public libraries, and, if accepted, to support and maintain the same from the tax or taxes provided for in Section 107 of this Article, or any other funds which may come into their hands from any other source, and having been accepted or established, said library or libraries shall be maintained and controlled by said Town or City Library Trustees, and it shall be lawful, and authority is hereby given, that any library or libraries in the State of South Carolina, supported in whole or in part by public taxation, be turned over and placed under the control of the Library Trustees provided for in Section 107 of this Article.

1915, XXIX, 181.

(4487) § 109. Additional Tax.—That the tax or taxes provided for in Section 107 of this Article may be levied and collected, in addition to the

tax or taxes at present authorized in municipal corporations under the laws of the State of South Carolina.

1915, XXIX, 181.

(4488) § 110. Location of Library.—That no library or libraries established, operated or maintained under the provisions of this Article shall be located outside of the county, township or municipal corporation, as the case may be, in which the same has been authorized.

1915, XXIX, 181.

(4489) § 111. Election Once in Twelve Months.—That no election provided for in any Section of this Article be held oftener than once in twelve months, and in said elections none but qualified electors shall be allowed to vote.

1915, XXIX, 181.

(4490) § 112. School Trustees Not Eligible.—No school trustee shall be appointed Library Trustee hereunder, but no person holding any other office in this State shall be thereby disqualified to serve as Library Trustee.

1915, XXIX, 181.

(4491) § 113. Municipal Corporations May Own and Operate Rock Quarries—Police Jurisdiction.—All incorporated towns and cities are hereby authorized and empowered, in addition to the powers now conferred upon them by law, to own and operate rock quarries, for the purpose of improving roads, highways and streets within their respective jurisdictions, and to work convicts in operating said rock quarries.

The police jurisdiction and authority of such towns and cities shall extend over all prisoners in transit between said rock quarries and said cities and towns.

Civ. '12, § 3057; 1903, XXIV, 78.

(4492) § 114. Cities and Towns May Pass Ordinances for Vaccination.—The City or Town Council of every incorporated city or town in this State may provide by ordinance for the vaccination and revaccination with fresh bovine virus under the direction of the health authorities of said cities or towns, or of some competent physician appointed for that purpose, of all the citizens and residents of such cities and towns, excepting such persons as obtained the certificate of a reputable physician that vaccination would be dangerous to health. Such ordinances shall establish the periods of time, satisfactory to the State Board of Health, within which vaccination and revaccination shall be required; shall provide for vaccination and revaccination of indigent and pauper individuals at the expense of the city or town; and shall establish and provide penalties by quarantine and otherwise of such persons as are convicted of neglect or refusal to obey the provisions of such ordinances.

Civ. '12, § 3058; 1905, XXIV, 869.

(4493) § 115. Board of Health to Have General Supervision.—The State Board of Health shall have general direction and supervision of vaccination and revaccination in all cities and towns, and shall in case of threat-

ened epidemic of smallpox in any such community, and of insufficient ordinances therein, request the passage of the City or Town Council of a new ordinance framed in accordance with the provisions of Section 114. The State Board of Health shall have full and absolute control in matters of vaccination and revaccination of all persons within this State, who do not reside within the limits or jurisdiction of any incorporated city or town, and shall promulgate rules and regulations which shall have the force and effect of law for vaccination and revaccination of such persons under the supervision and direction of agents appointed by the said Board, and which shall contain provisions similar to those of Section 114 applying to ordinances, but such requirements may be modified by the State Board of Health in case of sparsely settled communities so as only to apply during apprehended danger of an epidemic of smallpox; and the necessary expense of such vaccination or revaccination shall be paid by the County Commissioners of the county within which the persons treated reside, and a bill or certificate of the services performed endorsed and approved by the State Board of Health shall be *prima facie* evidence of the existence and value of such services. The State Board of Health shall at all times keep in stock a supply of fresh bovine virus and supply the same to cities, towns and individuals without cost, that the charge for each vaccination under this Section shall not exceed ten cents.

Civ. '12, § 3059; 1905, XXIV, 869.

County is only liable for ten cents per capita for all persons vaccinated by county agents and assistants, and agents cannot collect of county five cents per capita extra for each person vaccinated by them or their assistants as provided in rules of State Board of Health. *Mathias v. Lexington County*, 79 S. C. 402, 60 S. E. 970.

(4494) § 116. On Neglect of Cities, Board of Health May Pass Rules for Vaccination.—If the City or Town Council of any incorporated city or town shall neglect or refuse to pass an ordinance in accordance with the provisions of Section 114, it shall be the duty of the State Board of Health to promulgate rules and regulations for the vaccination of the citizens and residents of such incorporated city or town, which rules and regulations shall have the force of an ordinance, and the State Board of Health shall have the power, and it is hereby made its duty, to enforce obedience to such rules and regulations by the promulgation and enforcement of proper quarantine regulations whenever the said Board shall deem it necessary for the preservation of the public health from possible danger of a threatened epidemic of smallpox, at the cost and expense of such incorporated city or town. In case such incorporated city or town shall refuse or neglect to reimburse the State Board of Health for all of the costs, charges and expenses incurred under this Section, including the cost of any necessary quarantine, then the State Board of Health is hereby empowered to collect the same by suit in any Court of the State having jurisdiction, from such incorporated city or town, and a statement of such costs and expenses by the State Board of Health shall be *prima facie* evidence of the amount of said costs and expenses.

Civ. '12, § 3060; 1905, XXIV, 869.

(4495) § 117. Pupils to Be Vaccinated.—No superintendent of any institution of learning, and no School Board, or principal of any school in this State shall admit as a pupil any child or person who cannot pro-

duce satisfactory evidence of having been vaccinated so often as the ordinance of the city or town in which the school is located, or if not located within the city or town, so often as the rules and regulations of the State Board of Health may direct.

Civ. '12, § 3061; 1905, XXIV, 869.

(4496) § 118. Parents, Etc., to See That Children Are Vaccinated.—It is hereby made the duty of every parent, guardian or other person, charged with the care of or responsibility for any child, to see that such child is vaccinated so often as may be directed by ordinance of the incorporated city or town in which such child resides, or if not a resident of an incorporated city or town, so often as the rules and regulations of the State Board of Health may direct.

Civ. '12, § 3062; 1905, XXIV, 869.

Baird v. Weatherford et al, 100 S. C. 490, 85 S. E. 59.

(4497) § 119. Police May Arrest Within One Mile of Corporate Limits.—The police authorities of all towns and cities of this State are hereby authorized and empowered to make arrests of all offenders against the municipal ordinances and statutes of this State committed within the corporate limits at any place within a radius of one mile of the corporate limits, with or without a warrant, when such police authorities are in pursuit of such offender.

Civ. '12, § 3063; 1908, XXV, 1089.

(4498) § 120. Cities and Towns May Require Certain Articles Weighed on Public Scales.—The municipal authorities of cities and towns of this State be, and they are hereby, empowered to require all dealers and sellers of coal, coke, unbaled hay, cattle, cotton seed, or other articles of like nature and character, sold in bulk, by weight, and sold within the limits of any city or town to have the same weighed upon the public scales within such city or town, and to impose a charge therefor of not more than ten cents for each draft, one-half to be paid by the seller, and one-half to be paid by the buyer. Said municipal authorities may enforce provisions of this Section by such fine and imprisonment as may now or hereafter be prescribed by law for the violation of the ordinance of the city or town: *Provided*, That the provisions of this Section shall apply only to Chester and Florence Counties.

Civ. '12, § 3064; 1910, XXVI, 620; 1917, XXX, 215.

Baird v. Weatherford et al, 100 S. C. 490, 85 S. E. 59.

(4499) § 121. Municipal Authorities May Purchase Land For Streets.—Whenever the Mayor and Aldermen of any city or the Intendant and Wardens of any town in this State shall think it expedient to widen, open, lay out, extend or establish any street, alley, road, court or lane, they shall have power to purchase the lot, lots or parts of lots of land necessary for such street, alley, lane, road or court, and the fee simple of said land shall be vested in said city or town for the use of the public from the day of the deed of sale.

Civ. '12, § 3065; Civ. '02, § 1396; R. S. 1181; 1884, XVIII, 781; 1905, XXIV, 964.

Commissioners v. Taylor, 2 Bay 282; McKenna v. Commissioners, Harp. 381; Commissioners v. Durant, 11 Rich. 440; Pope v. Commissioners, 12 Rich. 407.

(4500) § 122. Proceedings on Refusal of Owner to Sell—Commissioners—Deed—Appeal by Owner.—In case any owner or owners of said lot or lots of land as aforesaid shall refuse to sell the same, or shall demand what may be deemed by the said authorities an unreasonable price, then the said authorities shall nominate and appoint six freeholders, resident in said city or town, who shall meet an equal number to be named and appointed on the part of the owner or owners, to determine and fix upon the true and real value of such land, and any damage thereto, by reason of the opening, widening or extension of such highway; due regard being had, in assessing such damages, to any increased value of such lot, lots or parts of lots, by reason of the opening, widening or extension of such highway; with full power in the Commissioners appointed as aforesaid, in case of disagreement, to call in one other Commissioner. And on the payment of the full value of said lot or lots, or parts of lots, and such special damages aforesaid, ascertained and determined on in the manner above provided, the fee simple of the said lot, lots or parts of lots, shall be vested in such city or town for the use of the public, and the said owner shall execute his deed, without warranty therefor, according to said city or town. In case any owner shall be dissatisfied with the valuation of his lot or lots, or such special damages aforesaid, it shall and may be lawful for such owner to appeal from the same upon giving notice of such appeal to the Mayor and Aldermen, or Intendant and Wardens, of such city or town, within ten days from the time of his receiving a notification of such valuation and assessment of damages, to the Court of Common Pleas for the county in which said lands may be at the next session thereafter; and the said Court shall order a new valuation and assessment of damages, or either, in such particular case, to be made by a jury, who shall be charged therewith in the same or some subsequent term, and their verdict shall be final and conclusive unless a new trial be granted; and after final judgment in such case the fee simple of said lot or lots, or parts of lots, shall be vested in such city or town, upon the payment, or tender of payment, of the amount of such valuation and damages, and the said owner shall thereupon execute his quitclaim deed therefor accordingly to said city or town.

Civ. '12, § 3066; Civ. '02, § 1397; R. S. 1182, 1183; 1884, XVIII, 782.

(4501) § 123. Clerk of Court to Execute Deed When Owner Fails—Deeds and Proceedings Recorded.—In all cases where under the last preceding Section the owner is required to execute his deed to said city or town, and shall fail or neglect so to do, then the Clerk of the Court of Common Pleas for the county in which said city or town is situated shall on behalf of said owner execute a deed without warranty therefor to said city or town, which said deed shall as effectually bind said owner and his or her heirs and assigns as though executed by said owner. And said deed and all proceedings had in such matter, except proceedings in Court, shall be recorded by the Register of Mesne Conveyances of said county in the books wherein conveyances of real estate in said county are required by law to be recorded.

Civ. '12, § 3067; Civ. '02, § 1398; R. S. 1184; 1884, XVIII, 782.

(4502) § 124. Meeting of Owners to Appoint Commissioners—How Called—Failure to Appoint—Effect.—The Mayor or Intendant of such city or town shall call a meeting of the said owners at some proper time and place by the service of a notice, as summons are now required by law to be served, and the owners attending such meeting or their proxies, or a majority of them, shall appoint the Commissioners in their behalf mentioned in Section 122, and in case the owners at said meeting or adjournment thereof, within ten days shall neglect or refuse to appoint Commissioners, then the Commissioners appointed by said city or town on their behalf, or a majority of them, shall be, and they are hereby, authorized to proceed to the discharge of the duties herein prescribed, and their judgment in the matter shall be final and conclusive, except in the case of appeal as above prescribed.

Civ. '12, § 3068; Civ. '02, § 1399; R. S. 1185; 1884, XVIII, 782.

(4503) § 125. Service of Notice, Where Owners Are Infants, Lunatics, or Nonresidents.—When the owner, or any one of several owners, of the lands is an infant or *non compos mentis*, the required notice shall be served personally upon the trustee, guardian, or committee of such person, and personally on such owner; and if there be no such trustee, guardian or committee, the Clerk of the Court of Common Pleas shall have power, and is hereby authorized, to appoint for such person a guardian *ad litem*, upon whom the service shall be made, and who shall represent the interest of such infant or person *non compos mentis*. Said Clerk shall pursue in all respects the mode now provided by law for the appointment of guardians *ad litem* for infants and persons *non compos mentis*. If any owner of the lands shall reside beyond the State, or his or her place of residence be unknown, the service shall be made upon the agent of such owner in charge of such land, or if there be no such agent, then such owner shall be served by publication as in civil actions.

Civ. '12, § 3069; Civ. '02, § 1400; R. S. 1186; 1884, XVIII, 783.

(4504) § 126. Oath of Commissioners.—The aforesaid Commissioners, before proceeding to act in the premises, shall severally make oath, before some person authorized by law to administer oaths, that they will fairly, faithfully and impartially discharge the duties herein required of them.

Civ. '12, § 3070; Civ. '02, § 1401; R. S. 1187; 1884, XVIII, 783.

(4505) § 127. Twenty-five Hundred Dollar Licenses Authorized in Cities of Forty Thousand Inhabitants.—Cities of over forty thousand (40,000) inhabitants be, and they are hereby, authorized to require the payment of such sum or sums of money, not exceeding twenty-five hundred (\$2,500) dollars for license or licenses, as in their judgment be just and wise, by any person or persons or corporations engaged, or intended to engage, in any calling, business or profession, in whole or in part, within the limits of said cities, except those engaged in the calling or profession of teachers and ministers of the gospel: *Provided*, That whenever the amount of the license shall in any case exceed one thousand (\$1,000) dollars, the con-

currence of two-thirds of the whole Council and Mayor shall be necessary in the passage of any ordinance requiring the same.

Civ. '12, § 3071; 1904, XXIV, 396.

Enterprise Real Estate Co. v. City Council of Charleston et al, 107 S. C. 492, 93 S. E. 184.

(4506) § 128. Cities and Towns May Assess Abutting Property for Permanent Street Improvements.—That any or all incorporated cities and towns of this State are hereby authorized and empowered to provide by ordinance for the payment of the cost of the permanent improvements of their streets and sidewalks by levying upon the owners of property immediately abutting on the streets and sidewalks, or parts of either, so improved an assessment in proportion to the frontage only of such property on such streets or sidewalks, or parts of either, so improved of not exceeding in the aggregate one-half of the cost of such improvements: *Provided*, That no assessment shall be so laid upon the abutting property owners until such improvements have been ordered pursuant to such ordinance upon the written consent, signed and filed with the City or Town Clerk, of not less than two-thirds in number of the owners of the property abutting upon street, sidewalk, or part of either, proposed to be improved, and provision made for the payment by the corporate authorities of said city or town of not less than one-half of the costs of such improvement; times and terms of payment and rates of interest on deferred payments of assessments by such property owners shall be such as may be prescribed by ordinance.

1915, XXIX, 250; 1919, XXXI, 140.

(4507) § 129. Use of Funds.—That the amounts of money raised by such assessments, together with the amounts added thereto by the city or town authorities from the city or town treasury, shall constitute and be kept as a separate fund, to be used only for the purpose for which it was raised and appropriated.

1919, XXXI, 140.

(4508) § 130. Assessments a Lien—Enforcement and Collection.—That the assessments so laid shall constitute and be a lien upon the property so assessed, and payment thereof may be enforced as the payment of city or town taxes is enforced: *Provided*, Such assessments be entered in a book kept by the City or Town Clerk, to be entitled "Assessment Liens," stating the name of the owners, the location of the property and the amount of the assessment and the time or times of payment: *And provided, further*, That such lien shall continue from the date of entry on such book until the expiration of five years from the date when final payment is due and payable, unless sooner paid. Upon default in the payment of any installment or deferred portion of any assessments, at the time and in accordance with the terms and conditions fixed by ordinance, the total amount of any such assessment then unpaid (including deferred installments or payments and interest) shall immediately become due and collectible as city or town taxes are collected, and with such penalties and costs as are now provided for the payment of such taxes.

1919, XXXI, 140.

(4509) § 131. Entry of Satisfaction Upon Payment.—That it shall by ordinance be made the duty of the City or Town Clerk to make entry of satisfaction on such “Assessment Liens” book as soon as full payment is made, and the lien shall be thereby extinguished.

1919, XXXI, 140.

(4510) § 132. Issue, Sale and Pledge of Certificates of Indebtedness.—That the City or Town Councils of said cities and towns are authorized and empowered to issue certificates of indebtedness showing the amounts of money due to such cities or towns by property owners as deferred payments or installments upon such assessments, and to sell any of such certificates of indebtedness or to borrow money by pledging any of them as collateral security for the payment of such debt or debts, and in either event of sale or collateral pledge of such certificates, or any of them, to pledge the faith and credit of such cities or towns for the payment thereof, and to guarantee the payment of same for and in the name of such cities or towns.

1919, XXXI, 140.

(4511) § 133. Cities and Towns May Require Notice of Transfer of Property Under Lien.—That such cities or towns may, by ordinance, require the grantor and grantee, or grantors and grantees, of any property, or part of same, sold or transferred after such assessment has been laid thereon, and before such assessment lien has been extinguished, as provided herein, to file in writing with the City or Town Clerk, within ten (10) days after every such sale or transfer, the name of such grantor and grantee, or grantors and grantees, an accurate description of the property sold or transferred and the date of such sale or transfer.

1919, XXXI, 140.

(4512) § 134. Provided Not Effective in Any City or Town Until Adopted at Election.—That the provisions of Sections 128 to 133, both inclusive, shall not apply or become operative in any city or town until submitted to the qualified electors thereof by the City or Town Council for approval, and a majority of the qualified electors voting on the question of its approval vote in favor thereof at any general municipal election or at any special municipal election (whether called and held for that purpose only or not) when the question of the said approval of said Sections is submitted and voted on separately and the ballots thereon deposited in a separate box properly labeled and provided for that purpose.

1919, XXXI, 140.

(4513) § 135. Not to Apply to Certain Cities and Towns.—The provisions of Sections 128 to 134, inclusive, shall not apply to any city or incorporated town which has heretofore under special Constitutional amendment and Act in pursuance thereof provided for the issue of bonds and assessment of abutting property for permanent street improvement.

1919, XXXI, 140.

ARTICLE II.

Towns of Less Than One Thousand Inhabitants.

(4514) § 1. **Mode of Incorporation of Towns of Less Than One Thousand Inhabitants.**—The citizens of any proposed town of not less than one hundred (100) nor more than one thousand (1,000) inhabitants in this State, desiring to be incorporated, shall file their petitions for that purpose, setting out the corporate limits proposed for the town and the number of inhabitants therein, and signed by ten freehold electors thereof, who are freeholders in the precinct in which the proposed town is located, with the Secretary of State. The Secretary of State shall then issue to three or more persons of said town a commission authorizing them to provide for the registration of all electors within the proposed corporate limits of said town and to appoint three managers of the election; and at such election the said registered electors shall vote on the following questions: First, corporation; second, name of town; third, selection of Intendant and four Wardens. The managers shall certify the result of such election under oath to the Secretary of State, and if in favor of corporation, the Secretary of State shall issue to the Intendant and Wardens-elect a certificate of incorporation of said town, with the privilege, powers and immunities and subject to the limitations provided in this Article: *Provided*, That the corporate limits of towns of less than 1,000 inhabitants, incorporated under the provisions of this Article, shall not extend further than one mile from the center thereof: *Provided*, That whenever it shall appear that a town of less than 1,000 inhabitants has decreased in population since its incorporation to less than 100 inhabitants that then the charter of such town shall thereby become forfeited; and secondly, that whenever a majority of the qualified voters of any town of less than 300 inhabitants shall file with the Intendant or Wardens of such town a petition asking for an election on the question of surrendering the charter of such town that such Intendant or Wardens shall order an election to determine the question, at which all qualified voters of such town be permitted to vote, and if two-thirds of those voting shall vote in favor of the surrendering of such charter, that the Intendant or Wardens shall certify the result to the Secretary of State, who shall immediately thereupon cancel the charter theretofore issued to such town.

Civ. '12, § 2893; Civ. '02, § 1935; 1896, XXII, 76; 1898, XXII, 772; 1909, XXVI, 46.

Beattie et al v. City Council of City of Greenville et al, 113 S. C. 541, 102 S. E. 751.

(4515) § 2. **Officers, Election, Term of Office, Etc.**—The officers of such town shall be an Intendant and four Wardens, who shall be citizens of the United States, and shall have been residents of said town for four months immediately preceding said election. Said officers shall be elected annually and at such place in each town as the Intendant and Wardens shall designate, ten days' public notice being previously given. They shall hold their offices for a term of one year and until their successors shall have been elected and qualified: *Provided, however*, That in the town of Andrews, in the County of Georgetown, said officers shall be elected every two years, and their term of office shall be for two years and until their successors shall have been elected and qualified.

Civ. '12, § 2894; Civ. '02, § 1936; 1896, XXII, 76; 1898, XXII, 772; 1916, XXIX, 830.

(4516) § 3. Who Can Vote at Municipal Elections.—All inhabitants within the limits of said town who are qualified to vote under the laws and Constitution of this State at municipal elections, and have been duly registered, shall be entitled to vote and to be elected as Intendant and Wardens, and the election shall be held from 8 o'clock in the morning until 4 o'clock in the afternoon, when the polls shall be closed, and the managers shall count the votes and proclaim the election and give notice thereof to the persons elected.

Civ. '12, § 2895; Civ. '02, § 1937; 1896, XXII, 76; 1898, XXII, 772.

(4517) § 4. Oath of Intendant and Wardens.—The Intendant and Wardens, before entering upon the duties of their offices, shall take the oath prescribed by the Constitution of the State, and also the following oath, to wit: "As Intendant (or Warden) of the Town of I will equally and impartially, to the best of my skill and ability, exercise the trust reposed in me, and will use my best endeavors to preserve the peace and carry into effect, according to law, the purpose of my election. So help me, God."

Civ. '12, § 2896; Civ. '02, § 1938; 1896, XXII, 76; 1898, XXII, 772.

(4518) § 5. Officers to Hold Over Until Successors Are Elected.—In the event of any election as herein provided going by default from failure to give the notice required, the Intendant and Wardens in office shall continue so to act until due notice can be given and an election held as provided by this Article; and all their actions and ordinances as such officers are hereby confirmed until their successors are duly elected.

Civ. '12, § 2897; Civ. '02, § 1939; 1896, XXII, 76; 1898, XXII, 772.

(4519) § 6. Vacancies—How Filled.—In case a vacancy shall occur in the office of Intendant or any of the Wardens by death, resignation or removal from the State, or for any other cause, an election shall be held to fill such vacancy, and the Intendant and Warden (or Wardens, as the case may be) shall give ten days' previous public notice of such election: *Provided, however,* That should the vacancy occur within sixty days of the annual election, then the Town Council may, in its discretion, refuse to order an election to fill the vacancy. In case of sickness or temporary absence of the Intendant, the Wardens shall form a Council, which is empowered to elect one of their number to act as Intendant during such sickness or absence.

Civ. '12, § 2898; Civ. '02, § 1940; 1896, XXII, 77.

Upon refusal of members of Town Council to qualify, two wardens may order an election to fill vacancies. *State v. Rice*, 66 S. C. 1, 3, 44 S. E. 80.

(4520) § 7. When the Governor May Order Election of Officers of Town.—Whenever it shall happen that a sufficient number of the Board of Intendant and Wardens to constitute a quorum shall be prevented from discharging their duties and functions by reason of death, resignation or other disability, the Governor of the State is authorized and directed to order an election for Intendant and Wardens of said town, and to appoint all officers necessary for the holding and declaring of said election, who shall proceed to discharge their respective duties in the same manner and with the same

effect as though they had been appointed by the municipal authorities provided for in this Article.

Civ. '12, § 2899; Civ. '02, § 1941; 1900, XXIII, 385.

(4521) § 8. Town Council—Powers—Warden Summoned by Intendant—Imposition of Fines, Etc.—The Intendants duly elected and qualified shall, during their terms of office, have the same power which a Magistrate now has to compel the attendance of witnesses and require them to give evidence upon the trial before them of any person for the violation of the laws or the ordinances of the town.

The Intendant shall, as often as the occasion may require, summons the Wardens to meet him in Council, a majority of whom shall constitute a quorum for the transaction of business, and shall be known by the name of the Town Council of the said town; and they and their successors in office shall have a common seal, and shall have power to appoint from time to time such and so many proper persons to act as Marshals or Constables as they shall deem expedient or proper, which officers shall have all the powers, privileges and be subject to all the duties, penalties and regulations provided by the laws of the State for the office of Constable, and such compensation as the Town Council may prescribe; and the said Town Council shall have the power and authority under their corporate seal to ordain and establish all such rules and by-laws and ordinances respecting the streets, ways, public wells and springs or fountains of water, market and police of said town, and for preserving health, peace, order and good government within the same, as they may deem expedient and proper, not repugnant to the laws of this State; and all such by-laws and ordinances shall at all times be subject to revision and repeal by the General Assembly of the State: *Provided*, That no monopoly be granted to such incorporated towns in the sale of meats or breadstuffs.

And the said Intendant or Council may impose fines for offenses against such by-laws and ordinances and appropriate the same to the use of the corporation, but no fines shall exceed one hundred dollars; and said Intendants or Town Council shall have power to issue execution to the Sheriff of the county for the collection of all fines imposed by it.

Civ. '12, § 2900; Civ. '02, § 1942; 1896, XXII, 77; 1897, XXII, 500.

(4522) § 9. Power of Council to Abate Nuisances, Etc.—Said Town Council shall have power to abate and remove nuisances within the limits of said town, and classify and arrange the inhabitants liable to police duty, and require them to perform such duty as occasion may require and to enforce performance thereof under the same penalties as are now or may hereafter be established by law. The said Town Council shall have power to compound with persons liable to perform such duty upon such terms as they shall by ordinance establish.

Civ. '12, § 2901; Civ. '02, § 1943; 1896, XXII, 78.

(4523) § 10. Jurisdiction of Council Over Streets.—It shall be the duty of the Town Council to keep all streets and ways which may be necessary for public use within the limits of said town open and in good repair, and for that purpose they are hereby invested with the powers, rights and priv-

ileges granted by law to the County Board of Commissioners within the limits of said town, and for neglect of duty they shall be liable to the pains and penalties imposed by law upon Commissioners of Roads for like neglect; and said Intendant and Wardens shall be exempt from the performance of road and police duty within the limits of said corporation.

Civ. '12, § 2902; Civ. '02, § 1944; 1896, XXII, 78.

(4524) § 11. Street Tax.—The said Town Council shall have power to compound with the persons liable to work on said streets and ways, and to release such persons as may desire it upon the payment of such sums of money as they may by ordinance fix as a fair equivalent therefor, to be applied by them to the use of said corporation.

Civ. '12, § 2903; Civ. '02, § 1945; 1896, XXII, 78.

(4525) § 12. Council May Own Property.—The said Town Council may own and hold real and personal property not exceeding twenty thousand dollars in value.

Civ. '12, § 2904; Civ. '02, § 1946; 1896, XXII, 78.

(4526) § 13. Council May Impose Tax.—The said Town Council shall also have power by ordinance to impose an annual tax on all real and personal property within the corporate limits of said town, but such tax must not exceed one dollar and fifty cents on the one hundred dollars; and it shall also have power by ordinance to levy an annual tax upon any business or occupation conducted within the corporate limits, but such taxation must be uniform with respect to all of the classes taxed. The taxes so levied shall constitute a lien upon the property upon which it is levied paramount to all other liens except the lien for State and county taxes. For the purpose of collecting the same, said Town Council shall be, and is hereby, empowered to issue executions against all property on which the taxes have not been paid, and place the execution in the hands of some officer for collection, who shall have all the rights as now conferred upon Sheriffs for the enforcement of tax executions.

Civ. '12, § 2905; Civ. '02, § 1947; 1896, XXII, 78; 1913, XXVIII, 53; 1917, XXX, 332; 1920, XXXI, 815.

(4527) § 14. Auctions and Auctioneers.—The said Town Council shall have power to regulate sales at auction within the limits of said town, and to grant licenses to auctioneers: *Provided*, That nothing herein shall extend to sales by or for the Sheriff, Clerk of Court, Judge of Probate, Coroners, executors and administrators, assignees, or by any other person under the order of any Court, Magistrate or other inferior Court, or by the owner or owners of the property sold.

Civ. '12, § 2906; Civ. '02, § 1948; 1896, XXII, 78.

(4528) § 15. Sidewalks.—The Town Council of said town shall have the power and authority by ordinance to require all persons owning a lot or lots in said town or keep in repair the sidewalks adjacent to their lots, respectively, and for default in this matter shall have power and authority to impose a fine not exceeding fifteen dollars.

Civ. '12, § 2907; Civ. '02, § 1949; 1896, XXII, 78.

(4529) § 16. **Intendant or Town Council May Arrest, Fine and Commit Disorderly Persons—Assistance.**—The said Intendants or Town Council shall have power to arrest and, upon conviction, to commit to the town guardhouse, for a space of time not exceeding thirty days, and to fine not exceeding one hundred dollars, any person or persons who may be guilty of disorderly conduct in said town to the annoyance of the citizens thereof; and it shall be the duty of the Marshal of the town to make such arrest, and to call to his assistance the *posse comitatus*, if necessary, and upon failure to perform the said duty he shall be fined in a sum not exceeding one hundred dollars for each and every offense.

Civ. '12, § 2908; Civ. '02, § 1950; 1896, XXII, 78; 1897, XXII, 501.

(4530) § 17. **Marshals and Constables May Be Required to Arrest Persons—Commitment.**—The said Intendant and Wardens, in person, or any of them, may authorize and require any Marshal or Constable especially appointed for that purpose to arrest, and, upon conviction before the Intendants or Town Council, to commit to the guardhouse, which said Intendants or Town Council is authorized to establish, or to the County Jail or to the county chaingang, for a term not exceeding thirty days, any person or persons who, within the corporate limits of said town, may be engaged in a breach of the peace, any riotous or disorderly conduct, open obscenity, public drunkenness, or any conduct grossly indecent or dangerous to the citizens of said town, or any of them: *Provided*, That if the offender be committed to jail it shall be done at the expense of the said town: *Provided*, This Article shall not be construed to prevent by jury.

Civ. '12, § 2909; Civ. '02, § 1951; 1896, XXII, 78; 1897, XXII, 501.

(4531) § 18. **Records.**—Said Town Council shall keep a record of all its official acts and ordinances.

Civ. '12, § 2910; Civ. '02, § 1952; 1896, XXII, 78.

(4532) § 19. **Charter Fee.**—Before the issue of the commission herein provided for, by the Secretary of State, he shall require the corporators to produce a receipt of the Treasurer of the State for a fee of ten dollars, which receipt shall be filed with the applications in his office.

Civ. '12, § 2911; Civ. '02, § 1953; 1896, XXII, 78.

(4533) § 20. **Term of Charter.**—Such charter shall continue from its date for a period of thirty years.

Civ. '12, § 2912; Civ. '02, § 1954; 1896, XXII, 78.

(4534) § 21. **Towns May Surrender Charter and Be Incorporated Under This Article—Mode and Effect.**—Any town of less than one thousand inhabitants, already chartered, which is desirous of surrendering its charter and accepting incorporation under this Article, or whose charter is about to expire, may be incorporated under this Article. The Town Council of such town may submit the question to a vote of the qualified electors at an election ordered on twenty days' notice. If the election results in favor of surrendering the old charter and accepting a charter under this Article the Town Council shall certify such results, accompanied by the sworn return of the managers of said election, to the Secretary of State, who shall

thereupon issue to said Council a certificate of incorporation of said town with the privileges, powers and immunities and subject to the limitations prescribed in this Article.

Every such certificate of incorporation shall continue from its date for a period of thirty years.

Civ. '12, § 2913; Civ. '02, § 1955; 1896, XXII, 78.

(4535) § 22. Powers Enumerated Conferred on Certain Towns Heretofore Created.—All municipal corporations of this State having a population of not less than two hundred and not more than one thousand inhabitants are hereby empowered with the powers enumerated in this Article. The powers hereby conferred are in addition to those already enjoyed by said corporations under their respective charters.

Civ. '12, § 2914; Civ. '02, § 1956; 1897, XXII, 469; 1899, XXIII, 54.

Hill v. Abbeville, 59 S. C. 426, 38 S. E. 11.

(4536) § 23. Powers of Certain Towns to Equip and Control Fire Departments.—Hereafter, the Town Council of every town in this State between one hundred and one thousand inhabitants shall have the power and authority to equip and control a fire department for the protection of said town in such way as they may deem necessary, and by ordinance to establish fire limits and provide for building permits in said town, and to prescribe and designate the kind and character of material to be used in erecting and repairing buildings or structures within and upon that portion of said town included within such fire limits. All buildings or structures erected within such fire limits contrary to the ordinance of said town, and without such permits, may be abated and removed by said Town Council as a public nuisance.

Civ. '12, § 2915; Civ. '02, § 1957; 1899, XXIII, 54; 1906, XXV, 10.

Town of Seneca v. Cochran, 84 S. C. 281, 66 S. E. 288, 26 L. R. A., N. S., 124n.

(4537) § 24. When No Election Is Held, Officer May Order Another Election.—Whenever any election in any such town shall fail of its purpose because of a tie vote or otherwise, or whenever any such election shall fail to be held for any reason, the officers of such town charged with holding of such election shall, whenever such failure appears, proceed forthwith to appoint a day and advertise for and hold another election, and so continue to do until the purpose of such election has been attained.

Civ. '12, § 2916; 1905, XXIV, 943.

ARTICLE III.

Provisions Common to Towns and Cities Containing Over One Thousand Inhabitants.

(4538) § 1. Municipal Elections.—All elections shall be held in some convenient public places in said city or town; the polls shall be open from 8 o'clock in the forenoon to 4 o'clock in the afternoon, and shall be conducted by managers who shall be appointed as hereinafter provided for.

Civ. '12, § 2940; Civ. '02, § 1976; 1896, XXII, 67; 1901, XXIII, 649.

(4539) § 2. **Voters.**—All male inhabitants residing within the corporate limits of the said city or town, and qualified to vote according to the provisions of the Constitution of this State, who have been duly registered, shall be entitled to vote at the election provided for in this Article.

Civ. '12, § 2941; Civ. '02, § 1977; 1896, XXII, 67; 1901, XXIII, 649.

(4540) § 3. **Vacancies in Offices.**—In case a vacancy occurs in the office of Mayor or Alderman, by death, resignation or otherwise, all elections to fill such vacancies shall be held in the same manner and after the same notice as hereinbefore provided in Articles IV and V, respectively. Should the vacancy occur within sixty days of the regular election it shall be left to the discretion of the Council whether or not they shall order an election to fill the vacancy. In case of a contest or protest as to any municipal or special election held under Articles IV and V of this Chapter, shall be determined in the manner now provided by the law of this State.

Civ. '12, § 2942; Civ. '02, § 1978; 1896, XXII, 67; 1901, XXIII, 649.

Vacancies by resignation; when created; when resignation is complete. *Jernigan v. Stickley*, 80 S. C. 70, 61 S. E. 211.

(4541) § 4. **Mayor Pro Tem—Powers, Duties and Liabilities.**—The City or Town Council of such city or town shall have power to elect one of its Aldermen Mayor *pro tempore*, who shall be vested with all powers, duties, responsibilities attached to the office of Mayor during the temporary absence or disability of the Mayor, or when the office of Mayor shall be and become vacated by reason of death, resignation, removal or permanent disability of the Mayor until a new Mayor shall have been elected and qualified. The said Mayor shall have the power and authority to speedily try all offenders against the ordinances of said city in a summary manner without a jury, unless demanded by the accused, unless such person enter into good and sufficient recognizance, to be approved by said Mayor, or in the case provided, the Mayor *pro tempore*, to appear for trial within four days after such arrest, or at such other time as may be agreed upon, in which event the trial shall be deferred until that time.

Civ. '12, § 2943; Civ. '02, § 1979; 1896, XXII, 67; 1901, XXIII, 649.

(4542) § 5. **Council Meetings.**—The Mayor shall have authority to summon the Aldermen to meet in council for the transaction of business pertaining to the corporation whenever in his judgment it may be necessary.

Civ. '12, § 2944; Civ. '02, § 1980; 1896, XXII, 67; 1901, XXIII, 649.

(4543) § 6. **Corporate Powers.**—The corporate name of every city or town incorporated under this Article shall be "the city (or town) of," and by such corporate name said city or town may sue and be sued, plead and be impleaded in any Court of law or equity in this State, and may purchase, hold, enjoy and possess, for the use of said city or town in perpetuity or for the term of years any estate, either real or personal, or mixed, and sell, alien and convey the same at will. The said city or town shall have and keep a common seal, which shall be affixed to all ordinances passed by the Mayor and the Aldermen thereof.

Civ. '12, § 2945; Civ. '02, § 1981; 1896, XXII, 67; 1901, XXIII, 649.

Trustees of University of South Carolina v. City of Columbia, 108 S. C. 244, 93 S. E. 934.

(4544) § 7. **Police Powers.**—And the said City or Town Council shall have full power to make, ordain and establish all such rules, by-laws, regulations and ordinances respecting its roads, streets, markets, police, health and order of said city or town as shall appear to them necessary and proper for the security, welfare and convenience of the said city or town, or for preserving the health, peace, order and good government within the same: *Provided*, That no monopoly shall be granted in such incorporated cities or towns for the sale of breadstuffs or meats. And the City or Town Council may fix by ordinance and impose fines and penalties for the violation of the said rules, by-laws, regulations and ordinances not to exceed the sum of one hundred dollars, or imprisonment for not more than thirty days, and shall appropriate all revenues arising therefrom to the use of the said corporation: *Provided*, Such ordinances, rules and by-laws or regulations be not contrary to the laws of the State. Every person sentenced to imprisonment, either directly or in consequence of a failure to pay a fine imposed, shall be subject to work upon the public roads of said city or town, or of the county in which such city or town is situate, during the term of such imprisonment.

Civ. '12, § 2946; Civ. '02, § 1982; 1896, XXII, 67; 1901, XXIII, 649.

Bailey Liquor Co. v. Austin, 82 Fed. 786.

(4545) § 8. **Licenses.**—Said City or Town Council may, and they are hereby authorized annually to require by ordinance the payment of such reasonable sums of money as a license by any person or persons, corporation or corporations, engaged or intending to engage in any calling, business, occupation or profession, in whole or in part, within the limits of said cities or towns, except those engaged in the calling or profession of teachers or ministers of the gospel: *Provided*, That said license shall be graduated according to the gross income of the persons, firms or corporations required to pay such license, or upon the amount of capital invested in said business. They shall have power to collect license or taxes from all persons representing publicly within the limits of said city or town, for gain or reward, any plays or shows of whatever nature or kind soever; and said City or Town Council are hereby authorized and empowered to give full force and effect to this Section and to punish delinquents thereunder.

Civ. '12, § 2947; Civ. '02, § 1983; 1896, XXII, 67; 1901, XXIII, 649; 1911, XXVII, 28.

Hill v. Abbeville, 59 S. C. 426, 38 S. E. 11; F. C. & P. Ry. Co. v. Columbia, 54 S. C. 266, 32 S. E. 408.

Cannot license nuisances on streets. Spencer v. Mahon, 75 S. C. 232, 55 S. E. 321.

Carroll v. Town of York et al, 109 S. C. 1, 95 S. E. 121.

(4546) § 9. **Twenty-Five Hundred Dollars License in Certain Cases in Cities of Forty Thousand.**—Cities of over forty thousand (40,000) inhabitants be, and they are hereby, authorized to require the payment of such sum or sums of money, not exceeding twenty-five hundred (\$2,500) dollars, for license or licenses, as in their judgment be just and wise, by any person or persons or corporations engaged, or intended to engage, in any calling, business or profession, in whole or in part, within the limits of said cities, except those engaged in the calling or profession of teachers and ministers of the gospel: *Provided*, That whenever the amount of the license shall in any case exceed one thousand (\$1,000) dollars the concurrence of two-thirds

of the whole Council and the Mayor shall be necessary in the passage of any ordinance requiring the same.

Civ. '12, § 2948; 1904, XXIV, 396.

(4547) § 10. Municipalities May Not Levy License Tax on Fire Insurance Companies or Agents Except on Percentage of Premiums Collected—Amount—Proviso as to Certain Cities.—No municipality shall charge a license fee to fire insurance companies or their agents licensed by the Insurance Commissioner in any other manner than on a percentage of the premiums collected in such municipality, such license fee not to exceed two per cent. of the premiums collected in such municipality; except in cities of fifty thousand inhabitants or more, where not exceeding five per cent. may be charged.

1917, XXX, 361.

(4548) § 11. Municipal License on Railroads Limited.—The maximum amount of privilege or license tax which the several municipalities within this State may annually assess and collect of persons, firms or corporations operating railroads in this State as common carriers for the privilege of doing intrastate business within the limits of such municipalities, whether such companies are incorporated under the laws of this State or any other State, or whether incorporated at all or not, is hereby prescribed and fixed as follows: In municipalities having a population of not exceeding two hundred and fifty inhabitants, ten dollars; in municipalities having a population of more than two hundred and fifty inhabitants and not exceeding five hundred inhabitants, fifteen dollars; in municipalities having a population of more than five thousand inhabitants and not exceeding seven hundred and fifty inhabitants, twenty dollars; in municipalities having seven hundred and fifty to one thousand inhabitants, twenty-five dollars; in municipalities having a population of more than one thousand inhabitants and not exceeding five thousand inhabitants, twenty-five dollars for the first one thousand inhabitants and twenty-five dollars for each additional one thousand inhabitants or a majority fraction thereof; in municipalities having a population of more than five thousand inhabitants and not exceeding ten thousand inhabitants, twenty-five dollars for the first one thousand inhabitants and thirty dollars for each additional one thousand inhabitants or majority fraction thereof; in municipalities having a population of more than ten thousand inhabitants, twenty-five dollars for the first one thousand inhabitants and thirty-five dollars for each additional one thousand inhabitants or majority fraction thereof; but in no case shall any municipality assess or collect such a privilege or license tax exceeding two thousand dollars. In arriving at the amount of privilege or license tax which may be assessed and collected under the provisions of this Section the population of the several cities and towns shall be computed and based upon the Federal census next preceding the year for which such license tax is assessed from year to year.

1920, XXXI, 921.

(4549) § 12. Municipal Tax Levy — Penalty — Tax Executions.—The Town Council of all towns and cities containing one thousand and up to

five thousand inhabitants shall have power to impose by ordinance, published at least twenty days, an annual tax in such amount as in the discretion of the said Town Council may be necessary for corporate purposes, not exceeding, however, two (2) per cent. of the assessed value thereof, on all real estate lying within the corporate limits of said city or town, and all personal property within the same, including bonds and stocks of banks and insurance companies and other corporations, the real estate of churches and school associations from which such churches and school associations draw a revenue or which are intended to be rented out for such purpose, except such as is exempt from taxation under the Constitution and laws of this State. Such tax shall be levied by the town authorities on the property within the corporate limits as assessed for taxation for county and State purposes. The taxes so levied shall constitute a lien upon the property upon which it is levied until paid, paramount to all other liens, except the lien for county and State taxes, and for the purpose of collecting the same. The said City or Town Council shall have the power to enforce the payment of all taxes levied under authority of this Article against the property of defaulters, to the same extent and in the same manner as is provided by law for the collection of State and county taxes, except that the executions to enforce the payment of the taxes due the said city or town shall be issued under the seal of the corporation by the Clerk thereof, and directed to the Chief of Police, or any other officer designated by the City or Town Council for that purpose. In addition to the annual tax authorized under this Section, the City Council shall have the right to levy such further annual tax as may be necessary to pay the interest on all outstanding bonds issued by said city or town and to create the necessary sinking funds for the redemption of said bonds at their respective maturities. All such additional taxes as have heretofore been levied for the purpose of paying interest on bonds and creating sinking funds are hereby validated in all respects: *Provided*, That the Town of Bamberg shall include the levy for the health and drainage district in the per cent. allowed under the provisions of this Section.

Civ. '12, § 2950; Civ. '02, § 1984; 1896, XXII, 67; 1901, XXIII, 649; 1908, XXV, 1046; 1912, XXVII, 635; 1919, XXXI, 148; 1920, XXXI, 730, 801, 867.

(4550) § 13. City Council to Keep in Repair Streets, Ways and Bridges—May Require Road Duty.—The said City or Town Council shall have power, and it shall be their duty, to keep in good repair all the streets, ways and bridges within the limits of said city; and for such purpose they are invested with all the powers, rights and privileges within the limits of said city that are now given, or that may hereafter be given, to the County Board of Commissioners of the several counties of this State as to the public roads. In addition thereto, the said City or Town Council are hereby authorized and empowered to require all male inhabitants of said city, between the ages of eighteen and fifty years (active firemen and persons exempt by law from road duty excepted), to work upon the roads, streets and ways of said city not exceeding four days in each and every year, or, in lieu of such work, the said City or Town Council may compound with persons so liable to work in any amount not exceeding three dollars (\$3.00)

per annum, to be applied to the use of said city or town; and any person failing or refusing to perform such work, or to compound as above provided, upon conviction thereof before the Mayor or acting Mayor, Intendant or acting Intendant (who may bring such persons before him by warrant), be fined not exceeding ten dollars (\$10.00), or be imprisoned in the City, Town or County Jail for a period not exceeding thirty (30) days. And in the towns of less than 5,000 inhabitants, incorporated under the provisions of Article IV of this Chapter, the said Town Council shall likewise have power, and such power is hereby expressly delegated to it, in its discretion, to authorize the erection of poles, posts and any other obstruction which, without legislative sanction, either mediately or immediately given, would constitute nuisances in, upon or under the highways, streets and roads of said town.

Civ. '12, § 2951; Civ. '02, § 1985; 1896, XXII, 67; 1901, XXIII, 649; 1908, XXV, 1023.

Whitlock v. Town of Jonesville, 111 S. C. 391, 98 S. E. 142.

(4551) § 14. Fire Department.—The said Council shall have power and authority to equip and control a fire department for the protection of said city in such way as they may deem necessary and by ordinance to establish fire limits in said city, and to prescribe and designate the kind and character of material to be used in erecting and repairing buildings or structures within and upon that portion of said city included within such fire limits, all buildings or structures erected within such fire limit contrary to the ordinance of said city may be abated and removed by said City Council as a public nuisance.

Civ. '12, § 2952; Civ. '02, § 1986; 1896, XXII, 67; 1901, XXIII, 649.

(4552) § 15. Policemen.—The said Council shall have authority to appoint or elect as many policemen, regular or special, as may be necessary for the proper government of said city, to fix their salaries and prescribe their duties. They shall be sworn in and vested with all the powers now conferred by law upon Constables, in addition to the special duties imposed upon them by Council: *Provided*, Such powers shall not be exercised beyond the limits of said city or town: *Provided*, That in cities where Boards of Police Commissioners have been established by law the election or appointment of the police officers and men of such cities shall be governed by the provisions of law pertaining to said Board of Police Commissioners for such city.

Civ. '12, § 2953; Civ. '02, § 1987; 1896, XXII, 67; 1901, XXIII, 649.

(4553) § 16. Guardhouse.—The said Council shall have authority to establish a guardhouse or houses and prescribe suitable rules and regulations for the government of the same. They may by ordinance, or the Mayor and Aldermen, or any one of them, in person, may authorize any policeman of said city to arrest and commit to said guardhouse, for a period not exceeding twenty-four hours before trial, unless such arrest be made on Saturday, in which case it shall not exceed forty-eight hours before trial, any person or persons who, in view of any officer within the said corporate limits, shall be engaged in a breach of peace, riotous or disorderly conduct, open obscenity, public drunkenness, or any conduct grossly indecent; and it shall be the duty of the policemen of said city to arrest and commit all

such offenders, when required by any ordinance or any member of said Council so to do, and they shall have power to call to their assistance the *posse comitatus* if necessary in making such arrests; and upon failure of such policeman to perform his duty he shall be liable to such fines and penalties as said Council may fix by ordinance: *Provided*, That the imprisonment provided for in this Section shall not deprive the party so imprisoned of his right to trial as hereinbefore provided.

Civ. '12, § 2954; Civ. '02, § 1988; 1896, XXII, 67; 1901, XXIII, 649.

(4554) § 17. Powers of Council of Cities or Towns.—The said Council shall have full power to abate all nuisances within the corporate limits of said city or town, to appoint a Board of Health for said city, and pass all such ordinances as may be necessary to define the duties of said Board. Said Council shall have power to borrow money for corporate purposes and to issue from time to time, as occasion may require, bonds of the corporation for the payment of the principal, for which said city shall be at all times liable: *Provided*, The property of the inhabitants of said city or town shall be bound for the payment of any sum so borrowed, and the interest thereon, in no other way than by the imposition of an annual tax: *Provided, further*, That no such bonded debt shall in any instance exceed the maximum limits prescribed in the Constitution of this State, and that no bonded debt shall be created or increased except upon the vote of the citizens of the municipality as provided in the Constitution: *Provided, further*, That in the anticipation of the collection of taxes in any fiscal year said City or Town Council, whether such city or town be chartered by special Act of the General Assembly or under the general law, may from time to time, as occasion may require, borrow money for corporate purposes on its note or notes, and pledge the taxes levied, or to be levied, in said year for corporate purposes, for the payment of such note or notes and the discount or interest thereon, and such note or notes it is hereby authorized to discount generally, if desired, without responsibility to the person or corporation advancing money on said security, to see to the application of the funds realized thereon.

Civ. '12, § 2955; Civ. '02, § 1989; 1896, XXII, 67; 1901, XXIII, 649; 1908, XXV, 1017; 1909, XXVI, 80; 1910, XXVI, 623.

Luther v. Wheeler, 73 S. C. 98, 52 S. E. 874.

(4555) § 18. Reports of Council.—The members of each Council shall, within thirty days after the expiration of their term of office, and at the time of the qualifying of the members of the new Council, make and deliver to the members of such new Council a full and accurate account of their receipts and expenditures during the term for which they were elected. And they shall likewise publish at the end of each year, after the beginning of their term of office, a full statement of their receipts and expenditures during the preceding year. At the expiration of the term of any Council it shall be their duty to pay over to their successors any money in their hands or under their control at the time of making such returns belonging to said corporation, and likewise to deliver up promptly at the end of their term all books, records or other property incident to their said offices to their successors; and on failure so to do they shall be liable to the punishment prescribed in the following Section.

Civ. '12, § 2956; Civ. '02, § 1990; 1896, XXII, 67; 1901, XXIII, 649.

(4556) § 19. **Negligence of Officer.**—For any willful violation or neglect of duty, malpractice, abuse or oppression, the Mayor or Aldermen so offending shall be liable to punishment by a fine not exceeding one hundred dollars or imprisonment not exceeding thirty days, besides being liable for damages to any person injured by such neglect, malpractice, abuse or oppression.

Civ. '12, § 2957; Civ. '02, § 1991; 1896, XXII, 67; 1901, XXIII, 649.

ARTICLE IV.

Towns of Less Than Five Thousand and More Than One Thousand Inhabitants.

(4557) § 1. **Proceedings for Incorporation.**—Citizens of any proposed town of this State of not less than one thousand nor more than five thousand inhabitants desiring to be incorporated shall present to the Secretary of State a petition for that purpose, setting forth the proposed corporate limits and number of inhabitants therein, signed by at least fifty freehold voters of such town or a majority of the resident freeholders within the said proposed corporate limits. The Secretary of State shall then issue a commission to not more than ten Commissioners, citizens of said proposed town, empowering them to procure the proper registration of the electors of the town within the proposed corporate limits, and to advertise an election for twenty (20) days and to appoint managers to conduct the same, which election shall be conducted as all other municipal elections, and at such election the electors shall vote on the following questions: (1) Corporation. (2) Name. (3) Mayor and not less than six nor more than eight Aldermen. The Managers of Elections shall make a sworn return of the result of said election on said questions to said Commissioners, who shall thereupon make a return to the Secretary of State, attaching said Manager's return. Thereupon the Secretary of State shall issue to the Mayor and Aldermen-elect a certificate of incorporation of said town under this Section. Said town shall have all the powers, privileges and immunities, and be subject to all the liabilities and limitations, prescribed in this Article.

Civ. '12, § 2917; Civ. '02, § 1958; 1896, XXII, 67; 1902, XXIII, 1047.

Allen v. Adams, 66 S. C. 352, 44 S. E. 938.

(4558) § 2. **Town Government—Election of Officers—Term—Special Provision for Blacksburg.**—Said town shall be governed by a Mayor and six Aldermen, or, in case of municipalities being divided into wards, one Warden from each ward, who is a qualified elector thereof, who shall be citizens of the United States, and who shall be electors who actually reside in the corporate limits of said town, and have so resided at least six months immediately preceding the day of election. The Mayor and Aldermen shall be, and be known as, the Town Council of said town, and shall be elected every two years, on such days, and at such places in said town as shall be designated by the Town Council of said town, ten days' public notice thereof being previously given. They shall hold their

office for two years and until successors shall have been elected and qualified: *Provided*, The Town of Blacksburg shall have a Mayor and four (4) Aldermen, who shall be elected from the qualified voters of the town at large.

Civ. '12, § 2918; Civ. '02, § 1959; 1896, XXII, 67; 1913, XXVIII, 48; 1915, XXIX, 105.

(4559) § 3. Election for Mayor and Aldermen—Oath of Office.—In all cases of towns incorporated under this Article, three Managers of Election shall be appointed by the Town Council of such town at least ten days before the day fixed for the holding of an election for Mayor and Aldermen, or either of them, and the names of such Managers shall be published at the same time and in the same place as the notice of such election hereinafter provided for.

The Managers shall be sworn by the Mayor, or, in his absence, or in case of disability, by one of the Aldermen of said town, or in case there is no Mayor or Aldermen, then by any officer authorized to administer oaths, fairly and impartially to conduct such election according to law, and make a true return of the result thereof. Immediately upon the closing of the polls, the Managers shall proceed to count publicly the votes cast, and shall continue such count until the same is completed, and make a statement of the whole number of votes cast in such election, together with the number cast for each person voted for, for Mayor and Aldermen, upon the completion of which they shall transmit such statement to the Town Council of such town, and in case there be no Town Council they shall proclaim the election and transmit a copy of such statement to the Clerk of the Court of the county wherein such town is situated, and notify the parties elected of their election; and the said Mayor or Clerk of Court shall, immediately upon the receipt of such statement or report of the Managers, open and publish the same by announcing the whole number of votes cast for each person voted for as Mayor or Aldermen. The person securing the highest number of votes for Mayor shall be declared duly elected to that office, and the person receiving the highest number of votes for Aldermen, in number equal to the number of Aldermen to be chosen, shall be declared duly elected to that office. Such Mayor and Aldermen, before entering upon the duties of their respective offices, shall take the oath prescribed by the Constitution and also the following oath, to wit: "As Mayor (or Alderman) of the town of, I will equally, fairly and impartially, to the best of my ability and skill, exercise the trust reposed in me, and will use my best endeavors to preserve the peace and carry into effect according to law the purposes for which I have been elected. So help me, God."

Civ. '12, § 2919; Civ. '02, § 1960; 1896, XXII, 67.

(4560) § 4. Charter Fee.—Before any commission authorized in this Article is delivered by the Secretary of State, he shall require the production of a receipt from the State Treasurer for twenty dollars as charter fee, which receipt shall be filed with the papers in office.

Civ. '12, § 2920; Civ. '02, § 1961; 1896, XXII, 67.

(4561) § 5. Clerk and Treasurer.—Said Town Council shall have the power to elect a Clerk and Treasurer, who shall execute such bond for faithful performance of his duties as fixed by said Town Council, and his salary shall be fixed before election; also, said Council shall have the power, if in their judgment it is necessary, to elect a Recorder for such town, and fix the salary for same.

Civ. '12, § 2921; Civ. '02, § 1962; 1896, XXII, 67; 1911, XXVII, 22.

(4562) § 6. How Towns Already Chartered May Procure Charter Under This Article—Duration.—Any town of more than one thousand and less than five thousand inhabitants already chartered which is desirous of surrendering its charter and accepting incorporation under this Article, or whose charter is about to expire, may be incorporated under this Article. The Town Council of such town may submit the question to a vote of the qualified electors at an election ordered on twenty days' notice. If the election results in favor of surrendering the old charter and accepting a charter under this Article, the Town Council shall certify such results, accompanied by the sworn return of the managers of said election, to the Secretary of State, who shall thereupon issue to said Council a certificate of incorporation of said town, with the privileges, powers and immunities and subject to the limitations prescribed in this Article: *Provided*, That for the purpose of holding the first election of officers under the new charter given under this Section, the Town Council, under the old charter, shall have full power and authority to appoint the Managers of Election, and to certify the result to the officers so elected and to supervise said election in the same manner as the election for Intendant and Wardens under the charter surrendered was conducted. Every certificate of incorporation shall continue of force from its date for a period of fifty years.

Civ. '12, § 2922; Civ. '02, § 1963; 1896, XXII, 75.

Black v. Fishburne, 84 S. C. 454, 66 S. E. 681, 19 Am. & Eng. Ann. Cas. 1104; *Hill v. Abbeville*, 59 S. C. 426, 38 S. E. 11.

(4563) § 7. Powers Conferred on Certain Municipalities.—All municipal corporations of this State having a population of not less than one thousand and not more than ten thousand inhabitants are hereby endowed with the powers conferred on municipal corporations in this Article, and in Article III. The powers hereby conferred are in addition to those already enjoyed by said corporations under their respective charters.

Civ. '12, § 2923; Civ. '02, § 1964; 1897, XXII, 469; 1899, XXIII, 53.

Hill v. Abbeville, 59 S. C. 426, 38 S. E. 11.

State v. Tidwell, 100 S. C. 248, 84 S. E. 778.

(4564) § 8. Jury Box in Cities and Towns of Less Than 5,000 Inhabitants.—That the Mayor and Aldermen or Councilmen in any city or town in this State containing, by the last census, less than 5,000 inhabitants are hereby declared to be the Jury Commissioners of the Municipal Court of said city or town, and they shall, on or before the first day of May of each year, prepare a box to be known as the "Jury Box," which said box shall contain two apartments designated as A and B, respectively, and shall prepare and place within said time in Apartment A of said

box the names of not less than 75 per cent. of the qualified electors of such city or town of good moral character and eligible to jury duty, and after so placing such names in Apartment A the Mayor or presiding officer of said Court shall lock the box and keep the same in a place of safety.

1918, XXX, 794.

(4565) § 9. Drawing of Jury List.—In all criminal cases in such Court in which a jury may be demanded, either by the city or town or the defendant, such jury shall be selected in the following manner: The presiding officer of said Court shall have drawn out of Apartment A of the jury box referred to herein 18 ballots, each containing the name of an eligible juror and list the said 18 names in duplicate, delivering one copy of the same to the attorney for the city or town and one copy to the attorney for the defendant.

1918, XXX, 794.

(4566) § 10. Drawing of Jury.—The person appointed by the presiding officer shall place the eighteen ballots so drawn out in some box or hat and shall draw out one, and the person so drawn out shall be one of the jury, unless challenged by either party, and the person appointed by the presiding officer shall then proceed until he shall have drawn six, who shall not have been challenged. Neither party being allowed more than six challenges, but if the first twelve drawn shall be challenged and the parties do not agree to a choice, the last six shall be the jury, and when any of the six jurors so drawn cannot be found, or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the person appointed by the presiding officer shall proceed to draw out of the said jury box ballots for three times the number of those deficient, which shall be disposed of and be drawn as herein provided.

1918, XXX, 794.

(4567) § 11. Names Not to Be Used Again Until Box Exhausted.—After a jury has been drawn in the manner herein provided, it shall be the duty of the presiding officer, or person appointed by him, to place all ballots so drawn out of Apartment A of said box in Apartment B thereof, and the same shall remain in said apartment until all the names have been exhausted in drawing juries from Apartment A, at which time all the names in Apartment B shall be returned to Apartment A, and thereafter juries shall be continued to be drawn therefrom in the manner herein provided: *Provided*, The provisions of the three preceding Sections shall not apply to cities and towns operating under the commission form of government.

1918, XXX, 794.

ARTICLE V.**Towns of More Than Five Thousand Inhabitants.**

(4568) § 1. **Incorporation of Cities of More Than Five Thousand Inhabitants—Mode—Government—Powers.**—Whenever one hundred citizens of any proposed city of this State, containing more than 5,000 inhabitants, shall desire that the said city shall become incorporated, they may present to the Secretary of State a petition for that purpose, setting forth the name of the proposed city, the proposed corporate limits and the number of inhabitants thereof, signed by at least one hundred freehold voters of said proposed city, the Secretary of State shall then issue a commission to not more than ten, or less than five, Commissioners, citizens of said proposed city, empowering them to proceed to the proper registration of the electors within the proposed corporate limits of the proposed city, and to advertise an election for twenty (20) consecutive days in the newspapers published within the proposed corporate limits of the proposed city, and if there be no newspaper published therein, then to advertise by posting a notice of such election, for twenty consecutive days, in not less than three public places within such proposed corporate limits, and to appoint Managers to conduct the same, which election shall be conducted as all other municipal elections, and at which the electors shall vote on the following questions: (1) Corporation. (2) Name. (3) Mayor and Aldermen, voting for one Alderman from each ward, and if said proposed city be not divided into wards, then for six Aldermen from the proposed city at large. The Managers of such election shall make their sworn returns of the result of said election to the said Commissioners, who shall certify the same to the Secretary of State, which return shall show the number of those voting in said election, together with the number of those voting on each of said questions. If a majority of those voting in such election shall vote in favor of such proposed territory being incorporated, then the Secretary of State shall issue a certificate of incorporation of said proposed city, under this Article, which certificate shall state the name of the proposed city, and those receiving the highest number of votes for Mayor and Aldermen, respectively, in the election hereinbefore provided for shall be the Mayor and Aldermen of said city until their successors shall have been elected as hereinafter provided for.

Said city shall be governed by a Mayor and Aldermen, or, in case of municipalities being divided into wards, one Alderman from each ward, who shall be known as the City Council of said city. Said Mayor and Aldermen shall be qualified electors of this State and of the county in which said city is situated, and they shall have resided in the corporate limits of said city at least six months immediately preceding the day of election. If a city be divided into wards, the Alderman from each ward shall be a qualified elector thereof, and shall be elected by the qualified electors thereof. The said Mayor and Aldermen shall be elected every two years, on such days and at such places in said city as shall be designated by the City Council of said city, ten days' public notice thereof being previously given. They shall hold their offices for a term of two years and until their successors shall have been elected and qualified.

All cities and towns in this State that have, or may hereafter receive, a certificate of incorporation under the general laws of the State from the Secretary of State of the State of South Carolina, are hereby declared to be bodies politic and corporate, and entitled to exercise all the powers and privileges and subject to all the limitations and liabilities provided for municipal corporations in this State within the respective classes to which they may severally belong, as provided by law; and every such certificate of incorporation, and the incorporation thereof, is hereby confirmed, validated and ratified, any irregularity, error or omission in the proceedings on which the certificate is issued to the contrary notwithstanding; and the incorporation or corporate capacity of any such city or town shall not be attacked in any Court in this State except on permission of the General Assembly of this State granted by special Act for that purpose.

Civ. '12, § 2924; Civ. '02, § 1965; 1901, XXIII, 648.

State ex rel. Culp et al v. City Council of Union. In re Holding Election for Alderman in Ward 1, in City of Union, 95 S. C. 131, 78 S. E. 738.

(4569) § 2. Managers of Election—Conduct of Elections.—In all cases of cities incorporated under this Article, the Managers of Elections shall be appointed by the City Council of such city for each polling precinct at least ten days before the day fixed for the holding of any election for Mayor and Alderman, or either of them. The names of such Managers shall be published at the same time and in the same place as the notice of elections hereinafter provided for.

In all elections provided for in this Article the Managers shall be sworn by the Mayor, or, in his absence or in case of disability, by one of the Aldermen of said city, or by any officer authorized to administer oaths, fairly and impartially to conduct such elections according to law, and make a true return of the result thereof. Immediately upon the closing of the polls, the Managers shall proceed to count publicly the votes cast, and shall continue such count until the same is completed, and make a statement of the whole number of votes cast in such election, together with the number of votes cast for each person voted for Mayor and Alderman, upon the completion of which they shall transmit such statement to the City Council of such city, who shall notify the parties elected of their election; and the said City Council shall immediately, upon receipt of such statement or report of the Managers, open and publish the same by announcing the whole number of votes cast for each person voted for as Mayor or Alderman. The person securing the highest number of votes for Mayor shall be declared duly elected to that office, and the person receiving the highest number of votes for Alderman, in number equal to the number of Aldermen to be chosen, shall be declared duly elected to that office. Such Mayor and Aldermen, before entering upon the duties of their respective offices, shall take the oath prescribed by the Constitution, and also the following oath, to wit: "As Mayor (or Alderman) of the City of, I will equally, fairly and impartially, to the best of my ability and skill, exercise the trust reposed in me, and will use my best endeavors to preserve the peace and carry into effect

according to law the purposes for which I have been elected. So help me, God.'"

Civ. '12, § 2925; Civ. '02, § 1966; 1901, XXIII, 648.

(4570) § 3. Streets—How Opened.—The said City Council shall have, and is hereby given, the further authority to lay out and open new streets in said city, and to close up, widen, or to otherwise alter those now in use, or those which may hereafter be established, whenever, in their judgment, the same may be necessary for the improvement or convenience of said city: *Provided*, That they shall first pay damages, should any be claimed, to the landowner or owners through whose premises such streets may run, said damages to be fixed and determined by five freeholders of said city, two of whom shall be chosen by the said City Council, two by the said landowner or owners, and the fifth by the person so chosen, and who, before assessing said damages, shall be sworn to do impartial justice between the said city and said landowner or owners, taking into consideration the damages that may accrue to him or them thereby: *And provided, further*, That should such landowner or owners refuse or neglect, after ten days' notice from said City Council, to nominate, in writing, two freeholders for the purpose above indicated, then the City Council may appoint the same, who shall proceed as if appointed by said landowner or owners. Either of the parties shall have the right to appeal from the award of the said Commissioners to the Court of Common Pleas, and on such appeal to have the questions at issue tried *de novo* before a jury in said Court: *Provided, further*, That said appeal shall not operate to delay the opening, widening or altering of any said street, but the City Council may take possession of said lands, and proceed upon the said work, on depositing with the Clerk of Court of Common Pleas the amount fixed by said Commissioners.

Civ. '12, § 2926; Civ. '02, § 1967; 1901, XXIII, 648.

Liability in damages to abutting owner for altering grade of sidewalk. *Bramlett v. Laurens*, 58 S. C. 60, 36 S. E. 445; *Wilkins v. Gaffney City*, 54 S. C. 199, 32 S. E. 299; *Paris Mountain Water Company v. Greenville*, 53 S. C. 82, 30 S. E. 699. The method appointed in the Statute for ascertaining damages is exclusive. *Garraux v. Greenville*, 53 S. C. 575, 31 S. E. 597.

Stone v. City of Greenville, 111 S. C. 78, 96 S. E. 520.

(4571) § 4. Liability for Damages for Wrongful Acts of Officers.—The said city shall be liable for all damages done to the property of any citizen thereof, or property holder therein, by any of the officers, agents or servants under and by virtue of any authority or orders of said City Council.

Civ. '12, § 2927; Civ. '02, § 1968; 1901, XXIII, 657.

In the absence of such Statute a municipal corporation is not liable for a tort sustained by the act of its officers. *Parks v. Greenville*, 44 S. C. 168, 21 S. E. 540; *Young v. Charleston*, 20 S. C. 118; *Gibbes v. Beaufort*, 20 S. C. 218.

(4572) § 5. Charter Fees.—Before any commission authorized in this Article is delivered by the Secretary of State, he shall require the production of a receipt from the State Treasurer for twenty dollars as charter fee, which receipt shall be filed with the papers in office.

Civ. '12, § 2928; Civ. '02, § 1969; 1901, XXIII, 657.

(4573) § 6. City Officers.—The said City Council shall have the power to elect a Clerk, Treasurer, Auditor, City Attorney, who shall not be an

officer of the corporation, Building Inspector, Sewerage and Plumbing Inspector, and any and all other officers that the said City Council may from time to time find it necessary or proper to have in the administration of the affairs of the said city; and the said City Council shall give bond to such sum as may be fixed by said City Council for the faithful performance of their duties.

Civ. '12, § 2929; Civ. '02, § 1970; 1901, XXIII, 657.

(4574) § 7. Trial by Jury.—Any person entitled to a trial by jury may demand a jury, and such jury, when demanded, shall be drawn from the qualified electors of the city in the manner hereinafter prescribed.

Civ. '12, § 2930; Civ. '02, § 1971; 1901, XXIII, 657.

(4575) § 8. Jury Commissioners in Certain Cities—Jury Boxes.—That the Mayor and Aldermen or Councilmen in any city or town in the State of South Carolina containing, by the last census, five thousand inhabitants or more are hereby declared to be the Jury Commissioners for the Municipal Court for said city, and shall, within the first ten days of each year, prepare a box to be known as the Jury Box, which box shall contain two apartments, designated as "A" and "B," respectively; and shall prepare and place within said times in Apartment "A" of said box the names of not less than three hundred residents, qualified electors of such city, of good moral character and eligible to jury duty; and after so placing such names in Apartment "A" of said box, shall lock the box and place it in the custody of the City Clerk of such city: *Provided, further,* That in the City of Anderson said box shall be prepared and said names of not less than three hundred (300) residents placed in said Apartment "A" thereof on or before the first day of April in each year.

1916, XXIX, 811; 1918, XXX, 793; 1919, XXXI, 72; 1920, XXXI, 898.

State v. Stewart, 108 S. C. 401, 94 S. E. 874.

(4576) § 9. How Jury Selected.—In all criminal cases in any of said Municipal Courts, in which a jury may be demanded by either the city or the defendant, such jury shall be selected in the following manner: The City Clerk, or if said Clerk cannot be had, any other person appointed by the Recorder of said city, or presiding officer of said Court, shall draw out of Apartment "A" of the jury referred to in Section 8 of this Article eighteen ballots, each containing the names of an eligible juror, and list the said eighteen names in duplicate, delivering one copy of same to the attorney for the city and one copy to the attorney for defendant.

1916, XXIX, 811.

State v. Stewart, 108 S. C. 401, 94 S. E. 874.

(4577) § 10. How Jury Drawn and Composed.—The City Clerk or person so appointed as aforesaid shall place the eighteen ballots so drawn out in some box or hat and shall draw out one, and the person so drawn out shall be one of the jury, unless challenged by either party; and the City Clerk or person so appointed as aforesaid shall then proceed until he shall have drawn six who shall not have been challenged. Neither party being allowed more than six challenges, but if the first twelve drawn shall be challenged and the parties do not agree to a choice, the last six

shall be the jury, and when any of the six jurors so drawn cannot be had or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the City Clerk or person so appointed as aforesaid shall proceed to draw out of said jury box ballots for three times the number thus deficient, which shall be disposed of and be drawn as above provided.

1916, XXIX, 811.

State v. Stewart, 108 S. C. 401, 94 S. E. 874.

(4578) § 11. Disposition of Ballots Drawn.—After a jury has been drawn in the manner hereinabove provided, it shall be the duty of the City Clerk or person so appointed as above provided to place all ballots so drawn out of Apartment "A" of said box in Apartment "B" thereof and the same shall remain in said apartment until all the names have been exhausted in drawing juries from Apartment "A," at which time all the names in Apartment "B" shall be returned to Apartment "A," and thereafter juries shall be continued to be drawn therefrom in the manner hereinabove provided.

1916, XXIX, 811.

State v. Stewart, 108 S. C. 401, 94 S. E. 874.

(4579) § 12. How Charters May Be Obtained to Cities Already Incorporated.—Any city of more than 5,000 inhabitants, already chartered, whether by special Act or under a general law, which is desirous of surrendering its charter and accepting incorporation under this Article, or whose charter is about to expire, may become incorporated under this Article in the following manner, to wit: Upon the application to it of one hundred freeholders of said city, the City Council shall, at a special meeting called for that purpose, of which meeting ten days' public notice shall be given, consider the question of surrendering its charter and becoming incorporated under this Article; and in case a majority of the said Council shall decide upon such surrender and incorporation, they shall order an election upon such questions in the manner hereinbefore provided, and if a majority of the qualified electors vote in favor of such surrender and incorporation, they shall certify the result to the Secretary of State, who shall thereupon issue to said Council the certificate of the incorporation of said city with the privileges, powers and immunities, and subject to the limitations herein prescribed: *Provided*, That in a city of over twenty-five thousand inhabitants such election shall not be ordered except upon the written application of one thousand freeholders and after a decision in favor thereof by three-fourths of said Council, and two-thirds of the qualified voters must vote in favor of such surrender and incorporation before any certificate of incorporation under this Article shall be issued.

Civ. '12, § 2931; Civ. '02, § 1972; 1901, XXIII, 657.

(4580) § 13. Officers of City Surrendering Charter for Incorporation Under General Laws Shall Continue in Office.—When any city, already incorporated, shall surrender its charter for the purpose of becoming incorporated under general laws, its Mayor and Aldermen shall continue

in office until the term for which they were elected shall expire; and in the event of the death, removal or resignation of the Mayor, or any Alderman, the remaining members of the City Council shall elect a successor, who shall serve during the unexpired portion of said term. At least twenty days before the expiration of their said term the said Council so holding over shall order the first election for officers under the new charter, and shall have full power and authority to supervise and direct the election, appoint the managers, canvass the votes, declare the result of the election, and within twenty days thereafter install those who have been elected.

Civ. '12, § 2932; 1907, XXV, 618.

(4581) § 14. Liability of Reincorporated Cities for Prior Indebtedness.—All cities that have heretofore been, or shall hereafter be, incorporated under the provisions of Section 1, because of the expiration or the surrender of a previous charter, shall be and become, and are hereby made, liable for any and all indebtedness, whether bonded or otherwise, and all contracts of the said previously incorporated city existing at the time of the surrender or expiration of such previous charter, and shall make provision by issuing bonds or otherwise carrying out all such contracts, and for the payment of such indebtedness and interest thereon.

Civ. '12, § 2933; 1901, XXIII, 657.

(4582) § 15. Duration of Charters.—All charters heretofore or hereafter acquired under the provisions of this Article shall be perpetual.

Civ. '12, § 2934; 1901, XXIII, 657.

(4583) § 16. Road Duty on Streets—Commutation Tax.—The said City Council are hereby authorized and empowered to require all male inhabitants of said city between the ages of eighteen and fifty years (active firemen and persons exempt by law from road duty excepted) to work upon the roads, streets and ways of said city not exceeding four days in each and every year, or in lieu of such work the City Council may compound with persons so liable to work in any amount not exceeding three dollars per annum, to be applied to the use of said city; and any person failing or refusing to perform such work or to compound as above provided, upon conviction thereof before the Mayor or Acting Mayor (who may bring any such person before him by warrant) be fined not exceeding ten dollars or be imprisoned in the County Jail for a period not exceeding thirty days.

Civ. '12, § 2935; Civ. '02, § 1974; 1901, XXIII, 659.

(4584) § 17. Rights Acquired Under Previous Charters Unaffected.—The provisions of this Article shall not affect the rights and liabilities acquired by any city under a charter heretofore granted and obtained.

Civ. '12, § 2936; Civ. '02, § 1975; 1901, XXIII, 659.

(4585) § 18. Annual Tax Authorized for Expenses and Liabilities.—All municipal corporations containing more than five thousand inhabitants shall have the power to impose by ordinance an annual tax sufficient

to meet all expenses of the municipality, including current expenses, any school tax provided by law, fixed charges in the way of interest and sinking fund on bond, and any other matter for which such municipality may be now or hereafter liable: *Provided*, That ten days' public notice thereof shall be given, setting forth the amount levied for the several purposes for which levy may be made.

Civ. '12, § 2937; 1908, XXV, 1053; 1915, XXIX, 71; 1916, XXIX, 736; 1918, XXX, 851; 1919, XXXI, 273.

(4586) § 19. City of Chester May Borrow Against Taxes for Each Calendar Year — Amount. — That the City of Chester be, and hereby is, authorized and empowered, during each calendar year, to borrow money for the current expenses of said city, and to pledge for the payment of any moneys so borrowed the taxes becoming payable during each calendar year: *Provided*, That the amount so borrowed shall not in any year exceed the sum of forty thousand dollars: *Provided, further*, That no sale or pledge of certificates of indebtedness for street paving assessments, and no money borrowed thereon, shall be included in the amount above authorized, but shall be in addition thereto, as provided by an Act to authorize the City of Chester to sell or pledge certificates of indebtedness for street paving assessments, and to guarantee the payment thereof and to borrow money thereon.

1920, XXXI, 1107.

(4587) § 20. Establishment of Slaughter Pens. — Municipal corporations in this State containing five thousand inhabitants or more, may establish, or permit or require the establishment of, slaughter pens without and beyond their corporate limits, and may prescribe regulations for the establishment, maintenance and conduct of the same, and shall have the right to enforce all such regulations as if the same were established and conducted within the corporate limits. The police jurisdiction of any municipality that may establish, or permit the establishment of, a slaughter pen, or slaughter pens, shall extend to and cover the same, and all land and property necessarily used in connection therewith, not exceeding five acres, for the purpose of protecting and preserving the health of the people in the inspection and slaughtering of animals for food, and in the protection and use of any such slaughter pen and grounds and of the property therein or thereon, and in the transportation of meats from the pens to such city, and in preserving peace and order at said pens and on said grounds.

Civ. '12, § 2939; 1910, XXVI, 588.

(4588) § 21. City Councils in Cities of Between 5,000 and 10,000 Inhabitants May Appoint City Improvement Commission. — That any municipal corporation in the State of South Carolina of more than five thousand inhabitants and less than ten thousand inhabitants, which has issued or is about to issue coupon bonds for the purpose of purchasing, repairing or improving of City or Town Hall or park or grounds therefor, markets and guardhouse, enlarging, extending or establishing electric light plants or other lights, or waterworks or sewerage, or improve-

ments of streets and sidewalks or the establishing of a gas plant or system, or other public improvement may by its City Council elect or appoint not less than five or more than seven citizens of such municipality who shall be freeholders therein, as a City Improvement Commission, which shall be known and designated as the City Improvement Commission of such municipal corporation, which shall continue as such for a term of two years, and until their successors are elected and qualified, or until the improvements proposed or contemplated and for which such bonds have been or are about to be issued are fully completed, as contemplated under the laws and ordinances providing therefor: *Provided*, That any vacancy occurring in said Commission shall be filled by election or appointment of such City Council, and any number thereof may be removed for cause by any such City Council, and the members of such Commission, before entering upon their duties, shall take the same oaths required of the members of the body electing or appointing them.

1920, XXXI, 893.

(4589) § 22. Duties of Commission—Powers—Records—Use of Funds—Contracts.—It shall be the duty of such City Improvement Commission, subject to the approval of the City Council of such municipal corporation, to advertise for bids for the work to be done and for material to be used therein, with the right to reject any and all bids and to enter into contracts with the lowest responsible bidders therein, and to secure competent persons, if deemed advisable, to superintend the construction thereof and counsel and advise in matters relating thereto. Such Commission shall be vested with the authority to build, erect, establish, repair, extend, purchase or maintain, or contract for the building, erecting, establishing, repairing, extending, purchasing or maintaining of streets, sidewalks, waterworks, lighting plants, sewerage system, gas plant or system, fire department, City Hall or guardhouse of such city, or for any or either of such improvements as may be contemplated or proposed at the time of such appointment or election of said Commission, subject to the approval of City Council, and shall organize by electing one of its members as Chairman thereof and a Secretary, which may be the same person as the Clerk of such City Council. A permanent record shall be made and kept by the said Commission of all its proceedings, contracts and other matters done and performed by it, including an accurate plan of the work done, showing the situation of the sewerage pipes, manholes, water flushes and all other things relating thereto that should be shown, and such records shall be open at all times to the inspection of any citizen of such corporation, and to the City Council thereof, and shall be turned over to such City Council as a permanent record thereof, with all convenient speed, on the completion of its works. No such Commission shall expend more money than the amounts derived from the sale or sales of bonds, and such amounts must be expended for the purposes for which they were authorized, out of funds other than the funds derived from the sale of bonds, and all payments for materials furnished, work performed and work and materials given out by contracts, shall be made by the Treasurer of such city on warrants issued by such Commission and approved by such

City Council. No member of any such Commission shall be permitted to enter into any contract with such Commission for furnishing materials or for the construction of any work connected with the improvements contemplated.

1920, XXXI, 898.

Regulations for the Prevention of Fire Waste and Safety of Life, Regulating the Erecting and Repairing of Buildings, Providing for Inspections of Buildings and Premises, and Fixing the Punishment for Violation Thereof, in Towns of Over Five Thousand Inhabitants.

(4590) § 1. Chief of Fire Department to Be Appointed—Duty of Municipality and Insurance Commissioner—Chief May Hold Two Positions—Appeal from Orders.—It shall be the duty of the City Council or governing body of every city and incorporated town, where there is no Chief of Fire Department, to appoint said officer at once, and to see that said officer is reasonably remunerated by said city or town for the services required of him by law. It shall be the duty of the Insurance Commissioner, where said governing body fails or neglects to perform either of said duties, to call it to their attention, and, if necessary, bring the matter before the proper Court. Nothing herein shall prevent any person appointed hereunder from holding some other position in the government of said city or town. The City Council shall at all times have the right to review, reverse, modify or affirm any action or order given by the Inspector.

1917, XXX, 77.

(4591) § 2. Chiefs to Be Inspectors of Buildings—Duties—Reports—Proviso—In Case of Appointment of Separate Inspector.—The Chiefs of Fire Departments, hereinbefore provided for, shall also be local Inspectors of Buildings for the cities or towns for which they are appointed, and shall perform the duties required herein and shall make all reports required by the State law, or city or town ordinances, or by the Insurance Commissioner, and shall make all inspections and perform such duties as may be required by the said Insurance Commissioner: *Provided, however,* That any city or town may appoint and reasonably remunerate a local Inspector of Buildings, in which case the Chief of Fire Department shall be relieved of the duties herein imposed.

1917, XXX, 77.

(4592) § 3. Electrical Inspector—Duties.—The City Council of any incorporated city or town may, in their discretion, appoint an Electrical Inspector in addition to the Building Inspector, and when said Electrical Inspector is so appointed, he shall do and perform all things herein set out for the Building Inspector to do and perform in regard to electrical wiring and certificates for same, and in such cases the Building Inspector shall be relieved of such duties.

1917, XXX, 77.

(4593) § 4. **Deputy May Be Appointed.**—All duties imposed by this Article upon the Building Inspector may be performed by a Deputy, duly appointed and approved by the City Council or governing body of the town.

1917, XXX, 77.

(4594) § 5. **Building Permit—Inspections—Certificate—To Report to Insurance Commissioner Neglect to Secure Permits—Removal of Buildings.**—Before a building is begun the owner of the property shall apply to the Inspector for a permit to build. This permit shall be given in writing and shall contain a provision that the building shall be constructed according to the requirements of this Article. This shall not prevent cities or towns requiring submission of plans to the City Engineer. As the building progresses the Inspector shall make as many inspections as may be necessary to satisfy him that the building is being constructed according to the provisions of this Article. As soon as the building is completed, the owner shall notify the Inspector, who shall proceed at once to inspect the said building and determine whether or not the flues and the building are properly constructed in accordance with this Article. If the building meets the requirements of this Article, the Inspector shall then issue to the owner of the building a certificate, which shall state that he has complied with the requirements of the Article as to that particular building, giving description and locality and street number, if numbered. The Inspector shall report to the Insurance Commissioner every person neglecting to secure such permit and certificate, and also bring the matter before the Mayor, Recorder of Municipal Court for their attention and action. No building shall be moved until a permit has been obtained from the Inspector, and such official shall not issue such permit if in his judgment the proposed new location of the building would seriously increase the fire hazard of the surrounding buildings.

1917, XXX, 77.

(4595) § 6. **Inspection of Premises — Reports to Insurance Commissioner.**—Once in every three months the Inspector, or his Deputy, shall make a personal inspection of every building and premises within the fire limits, and shall especially inspect the basement and garret, and he shall make such other inspections as may be required by the Insurance Commissioner, and shall report to the City Council and to the Insurance Commissioner all defects found by him in any building and all dangerous conditions on premises, upon a blank furnished by the Insurance Commissioner. The said Inspector shall notify the owner or occupant of buildings of any defects and notify them to correct the same within a reasonable time.

1917, XXX, 77.

(4596) § 7. **General Inspections — Right to Enter — Notification to Owner of Defects.**—At least once in each and every year the Inspector, or his Deputy, shall make a general inspection of all buildings in the corporate limits and ascertain if the provisions of this ordinance are com-

plied with, and the local Inspector alone, or with the Insurance Commissioner, or his Deputy, shall at all times have the right to enter any dwelling, store or other building and premises to inspect the same, without molestation from any one. It shall be the duty of the local Inspector to notify the occupant and owner of all premises of any defects found in this general inspection, and see that they are properly corrected, and that dangerous inflammable conditions on premises are removed.

1917, XXX, 77.

(4597) § 8. Record to Be Kept by Inspector.—The Inspector shall keep the following record: A book indexed and kept so that it will show readily by reference all such buildings as are approved; that is, name and residence of owner, location of building, how it is or is to be occupied, date of inspection, what defects found and when remedied, and date of building certificate; also a record which shall show the date of every general inspection, defects discovered and when remedied; also a record which shall show the date, circumstances and origin of every fire that occurs, name of owner and occupant of the building in which fire originates, the kind and value of property destroyed or damaged; also a record of inspection of electrical wiring and certificate issued.

1917, XXX, 77.

(4598) § 9. Number and Date of Reports by Inspector.—The Inspector shall report before the 15th of February of each and every year the number and dates of general and quarterly inspections during the year ending the 31st day of December, upon blanks furnished by the Insurance Commissioner, and furnish such other information and make such other reports as shall be called for by the Insurance Commissioner.

1917, XXX, 77.

(4599) § 10. Fees.—For every new building or old building repaired or altered, inspected, the following fees shall be charged: Two dollars for each mercantile storeroom, livery stable or building for manufacturing of one story, and fifty cents per room: *Provided*, The inspection fee shall in no cases exceed five dollars. Before issuing the building permit, the fees above stated shall be paid to the City Treasurer. The Building Inspector shall be paid adequate compensation by the city or town for inspections made under the terms of this Article.

1917, XXX, 77.

(4600) § 11. Procedure in Case of Defective or Illegal Construction—Owner to Remedy—Appeal.—Whenever the Inspector finds any defects in any new building, or finds that said building is not being constructed or has not been constructed in accordance with the provisions of this law, or that an old building, because of its condition, is dangerous and likely to cause fire, it shall be his duty to notify the owner of said building of the defects or the failure to comply with this law, and the said owner or builder shall immediately remedy the defect and make the said building comply with the law. The owner or builder may appeal from the decision of the Inspector to the City Council.

1917, XXX, 77.

(4601) § 12. Unsafe Buildings—Notice to Be Affixed—Notice to Owner—Alterations and Repairs to Be Passed on by Inspector.—Every building which shall appear to the Inspector to be dangerous to life or limb, or because of its liability to fire, or by reason of bad condition of walls, overloaded floors, defective construction, decay or other causes, shall be held to be unsafe, and the Inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building and shall give immediate notice to the owner or agent, fixing a reasonable time under the circumstances for the correction of the same. No building now or hereafter built shall be altered, repaired or moved until it has been examined and approved by the Inspector as being in a good and safe condition to be altered as proposed, and the alteration, repair or change so made shall conform to the provisions of this Article.

1917, XXX, 77.

(4602) § 13. Failure of Inspector to Do Duty a Misdemeanor—Penalties.—If the Inspector shall fail to perform the duties required of him by law, or shall give a certificate of inspection without first making the inspection required by law, or shall improperly give a certificate of inspection, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding fifty dollars, or may be discharged from office.

1917, XXX, 77.

(4603) § 14. Failure of Owner or Builder to Correct Defects a Misdemeanor—Penalties.—If the owner or builder erecting any new building, upon notice from the Inspector, shall fail or refuse to comply with the terms of the notice by correcting the defects pointed out in such notice, as to make such building comply with the law as regards new buildings, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars. Every twenty days during which any defect in the building is wilfully allowed to remain, after notice from the Inspector, shall constitute a separate and distinct offense.

1917, XXX, 77.

(4604) § 15. Removal of Notice a Misdemeanor—Penalty.—If any person shall remove any notice which has been affixed to any building by the Inspector of any city or town, which notice shall state the dangerous character of the building, he shall be guilty of a misdemeanor, and be fined not less than ten nor more than fifty dollars for each offense.

1917, XXX, 77.

(4605) § 16. Penalty Where Owner of Unsafe Building Allows It to Remain Unremedied.—If the owner of any building which has been condemned as unsafe and dangerous by any local Inspector, after being notified by the Inspector in writing of the unsafe and dangerous character of such building, shall permit the same to stand or continue in that condition, he shall forfeit and pay a fine of not less than five dollars nor more than twenty-five dollars for each day such building continues after such notice.

1917, XXX, 77.

(4606) § 17. **Municipalities Must Pass Fire Limit Ordinances.**—The City Council or governing body of all incorporated cities and towns shall pass ordinances establishing and defining fire limits, which shall include the principal business portion of the cities and towns.

1917, XXX, 77.

(4607) § 18. **How Buildings in Fire Limits to Be Constructed.**—Every building hereafter erected or enlarged within the fire limits shall be enclosed on all sides with walls constructed wholly of stone, well burned brick, terra cotta, concrete, or other equivalent incombustible materials; and shall have the roof, also the roof top and sides of all roof structures, including dormer windows, covered with incombustible material. All cornices shall be of incombustible material.

1917, XXX, 77.

(4608) § 19. **No Frame or Wooden Structures in Fire Limits—Roof to Be Incombustible—Exceptions—No Removals Allowable.**—No frame or wood structure shall hereafter be built within the fire limits as given herein, or as they may hereafter be established, except the following, and all roofs placed upon such buildings or structures shall have an incombustible covering: (a) Temporary one-story frame buildings for the use of builders. (b) Wooden fences not over eight (8) feet high. No frame building shall be moved from without to within fire limits.

1917, XXX, 77.

(4609) § 20. **When Damaged Buildings Shall Be Removed—Repairs to Roofs.**—Any existing frame building within the fire limits, which may hereafter be damaged by fire, decay or otherwise, to an amount greater than one-half of its present value, exclusive of the foundation, shall not be repaired or rebuilt, but shall be removed. But all repairs to roofs shall be by the use of incombustible materials.

1917, XXX, 77.

(4610) § 21. **Construction of Certain Extra Hazardous Buildings in Fire Limits.**—No building shall hereafter be built for a public garage, coffee roaster, bakery, dry cleaning establishment or steam laundry within the fire limits, unless it be of slow-burning construction with exterior walls and roof of incombustible material.

1917, XXX, 77.

(4611) § 22. **Height of Buildings in Fire Limits — Floor Area.**—No building hereafter erected or altered shall exceed four stories or fifty-five (55) feet in height, unless it be of fireproof construction, when it shall not exceed fifteen stories or one hundred and ninety (190) feet. Except as specified in Section 49, no building hereafter erected having walls of hollow terra cotta or concrete blocks shall exceed three stories or forty (40) feet in height. The floor area between fire walls of non-fireproof buildings shall not exceed the following: When fronting on one street, 5,000 square feet; when fronting on two streets, 6,000 square feet, and when fronting on three streets, 7,500 square feet. These area limits may be increased under the following conditions as indicated: For non-fireproof buildings, fully

equipped with approved automatic sprinklers, 50 per cent. For fireproof buildings, not exceeding 125 feet in height, 50 per cent. For fireproof buildings, not exceeding 125 feet in height, fully equipped with approved automatic sprinklers, 100 per cent: *Provided*, That the limitations as to the height of buildings of fireproof construction in the City of Greenville shall be seventeen stories or two hundred (200) feet.

1917, XXX, 77; 1921, XXXII, 101.

(4612) § 23. Schedule of Dimensions for Walls—When and How Thickness in Walls May Be Decreased.—The walls of the warehouses, stores, factories, livery stables, hotels or other brick or stone buildings for business purposes in cities or towns where this ordinance applies, except fireproof buildings, where the framework is of steel, shall conform to the following schedules:

Height of Building	Minimum Thickness in Inches of Wall.				
	1st.	2d.	3d.	4th.	5th.
One-story building	13				
Two-story building	17	13			
Three-story building	17	17	13		
Four-story building	22	17	17	13	
Five-story building	26	22	17	17	13

The walls of dwelling houses, apartment houses and tenements, no part of which are to be used for stores, shops, factories, warehouses, hotels or other business purposes, except fireproof buildings where the structural frame is of steel or reinforced concrete, shall conform to the following schedule:

Height of building:	1st	2nd	3rd	4th	5th
One story building.....	12"				
Two story building.....	12"	12"			
Three story building.....	12"	12"	12"		
Four story building.....	16"	12"	12"	12"	
Five story building.....	16"	16"	12"	12"	12"

The walls of all brick or stone buildings over five stories high shall be thirteen inches thick for the top story and increasing four inches in thickness for each story below to the ground, the increased thickness of each story to be utilized for beam and girder ledges. All top story walls must extend through and eighteen inches above the roof in parapets not less than thirteen inches thick and coped with terra cotta, stone, cast iron or cement. Upon written application, approved by the Inspector, the Insurance Commissioner may, where he deems it advisable, allow decreased thickness in walls of concrete, or in the brick walls where such thickness is compensated for by pilasters. The roof of all buildings named in this Section shall be of metal, slate or tile or gravel or other standard fireproof roofing. Reinforced stone or gravel concrete walls, with the steel reinforcement running both horizontally and vertically and weighing not less than one-half pound per square foot of wall, may have a thickness four (4) inches less than that prescribed for brick walls.

1917, XXX, 77; 1921, XXXII, 221.

(4613) § 24. **Specifications as to Foundations.**—In all buildings mentioned in the preceding Section there shall be prepared a proper and substantial foundation, and no foundation shall be less than one foot below the exposed surface of the ground, and no foundation shall rest on any filling or made ground, and the breadth of the foundation of the several parts of any building shall be proportioned so that, as near as practicable, the pressure shall be equal on each square foot of the foundation, and cement mortar shall be used in the masonry of all foundations exposed to dampness

1917, XXX, 77.

(4614) § 25. **Specifications as to Openings in Walls—Standard Fire Doors, Etc.**—No opening in any interior masonry wall shall exceed 8 feet by 10 feet. If the opening be in a party or fire wall, it shall have a standard automatic fire door on each side of the wall. If an opening in a fire wall is made to serve as an emergency exit, it shall not exceed 48 square feet in area, and a self-closing fire door shall be substituted for one of the automatic fire doors. The total openings in a fire wall shall not exceed 25 per cent. in lineal length of the wall. Every building within the fire limits, except churches, dwellings, tenement houses, dormitories and lodging houses, shall have standard fire doors, shutters, or wired glass in incombustible frames and sash on every exterior opening above the first story, except when fronting on a street not less than 35 feet wide, or where no other building is within 35 feet of such opening. The wall of a building in the same plane as that in which the opening is situated, shall not be considered as coming within the intent of this rule. All openings in the side and rear walls of the first story, except show windows, shall be protected as prescribed in this Section when within 35 feet of another building. All windows, more than 75 feet above the curb, shall have incombustible frames and sash glazed with wired glass. Occupants of buildings shall close all exterior and interior fire doors, shutters and windows at the close of business of each day.

1917, XXX, 77.

(4615) § 26. **Buildings to Have Standpipes—Connections to Be Free.**—All business buildings hereafter erected, being more than fifty-six (56) feet high, covering an area of more than five thousand superficial feet, also all buildings exceeding eighty (80) feet in height, shall have a four-inch or larger metallic standpipe within or near the front wall, extending above the roof and arranged so that engine hose can be attached from the street, such riser to have two and one-half inch hose coupling on each floor. The Inspector may, with the approval of the Insurance Commissioner, allow two or more standpipes of smaller size and proper hose couplings, provided they are of such sizes and number as to be at least equivalent in service to the large standpipe required. All hose couplings shall conform to the size and pattern adopted by the fire department: *Provided*, That free connection and service with the city water mains shall be furnished by the municipal authorities.

1917, XXX, 77.

(4616) § 27. **Specifications as to Joists and Timbers.**—The end of joists or beams entering a brick wall shall be cut not less than three-inch bevel, so as not to disturb the brickwork by any deflection or breaking of the joists or beams. All such joists or timbers entering a party or division wall from opposite sides shall have at least four inches of solid brickwork between the ends of such timbers or joists.

1917, XXX, 77.

(4617) § 28. **Specifications as to Structures Around Chimneys, Fireplaces, Etc.**—No wooden beams or joists shall be placed within two inches of the outside face of a chimney or flue, whether the same be for smoke, air or any other purpose. No woodwork shall be within four inches of the back wall of any fireplace. All spaces between the chimney and the wooden beams shall be solidly filled with mortar, mineral wool or other incombustible material. The header beam, carrying the tail beams of a floor, and supporting the timber arch in front of a fireplace, shall be not less than 20 inches from the chimney breast. No wooden furring or studding shall be placed against any chimney; the plastering shall be directly on the masonry or on metal lathing. Woodwork fastened to plaster which is against the masonry of a chimney, shall have a layer of asbestos board at least one-eighth inch thick placed between the woodwork and the plaster.

1917, XXX, 77.

(4618) § 29. **Regulations as to Construction of Fireplaces and Chimneys.**—All fireplaces and chimneys in stone or brick walls in any building hereafter erected, and any chimneys or flues hereafter altered or repaired, shall have the joints struck smooth on the inside, and the firebacks of all fireplaces hereafter erected shall be not less than eight inches in thickness of solid masonry, the chimney walls to be not less than four inches thick, the top of the chimney to extend not less than five feet above the roof for flat roofs and two feet above the ridge of any pitched roof. No woodwork or timber shall be placed under any fireplace or under the brickwork of any chimney. All floor beams, joists and headers shall be kept at least two inches clear of any wall enclosing a fire flue or chimney breast.

1917, XXX, 77.

(4619) § 30. **Further Regulations as to Chimneys.**—No chimney shall be started or built upon a beam or wood or floor, the brick work in all cases to start from the ground with proper foundation. In no case shall a chimney be corbeled out more than three inches from the wall, and in all cases corbeling shall consist of at least five courses of brick, the corbeling to start at least three feet below the bottom of the flue.

1917, XXX, 77.

(4620) § 31. **Construction of Flues.**—All flues shall extend at least three feet above the roof and always above the comb of the roof, and shall be coped with well-burnt terra cotta, stone, cast-iron or cement. In all buildings hereafter erected, the stone or brickwork of all flues and the chimney shafts of all furnaces, boilers, bakers' ovens, large cooking ranges and laundry stoves, and all flues used for similar purposes shall be at

least eight inches in thickness, with the exception of smoke flues, which are lined with fire-clay lining or cast-iron. These may be four inches in thickness, but this shall not apply to metal stacks or boiler houses, where properly constructed and arranged at a safe distance from wood or other inflammable material. All buildings hereafter erected shall have smoke flues constructed, either in walls of eight inches thickness, or with smoke flues lined with cast-iron or fire-clay lining, the walls of which may be four inches in thickness, the lining to commence at the bottom of the flue or at the throat of the fireplace and be carried up continuously the entire height of the flue. All joints shall be closely fitted and the lining shall be built in as the flue or flues are carried up. All chimneys which shall be dangerous in any manner whatever shall be repaired and made safe, or taken down.

1917, XXX, 77.

(4621) § 32. Specifications as to Hanging Flues.—Hanging flues (that is, for the reception of stovepipes built otherwise than from the ground) shall be allowed only when built according to the following specifications: The flue shall be built four inches thick, of the best hard brick, laid on flat side, never on edge, extending at least three feet above the roof and always above the comb of the roof, lined on the inside with cast-iron or fire-clay flue lining from the bottom of the flue to the extreme height of the flue, and ends of all such lining pipes being made to fit close together and the lining pipe being built in as the flue is carried up. If the flue starts at the ceiling and receives the stovepipe vertically, it shall be hung on iron stirrups, bent to come flush with the bottom of ceiling joints. All flues shall have a proper and sufficient support at their base, and in no case shall they be supported even partially by contact in passing through partitions, ceilings or roofs. Flues not lined as above shall be built from the ground eight inches thick, of the best hard brick, with the joints struck smooth on the inside. The flues of every building shall be properly cleaned and all rubbish removed and the flues left smooth on the inside upon the completion of the building.

1917, XXX, 77.

(4622) § 33. Regulations as to Stovepipe Construction — Procedure Where Chimney Flue, or Heating Apparatus, Endangers Premises—Penalty Where Owner Fails to Remedy Defect.—No stovepipe shall pass through any roof, window or weatherboarding, and no stovepipe in any building with wood or combustible floors, ceilings or partitions, shall enter any flue unless such pipe shall be at least twelve inches from such floors, ceilings or partitions, unless same is properly protected by metal shield, in which case the distance shall not be less than six inches. In all cases where stovepipes pass through wooden partitions of any kind, or other woodwork, they shall be guarded by either a double collar of metal, with at least three inches air space and holes for ventilation, or by a soapstone or burnt-clay ring not less than one inch in thickness extending through the partition or other woodwork. If any chimney, flue or heating apparatus on any premises shall, in the opinion of the Inspector, endanger the premises, the Inspector shall at once notify in writing the owner or agent

of said premises. If such owner or agent or occupant fails, for a period of five days after the service of said notice upon him, to make such chimney, flue or heating apparatus safe, he shall be liable to a fine of not less than ten dollars nor more than fifty dollars for each day that the condition remains uncorrected.

1917, XXX, 77.

(4623) § 34. Foundry Chimneys.—Iron cupola or other chimneys of foundries, shall extend at least ten feet above the highest point of any roof within a radius of fifty feet of such cupola or chimney.

1917, XXX, 77.

(4624) § 35. Construction of Steam Pipes.—No steam pipes shall be placed within two inches of any timber or woodwork unless the timber or woodwork is protected by a metal shield; then, the distance shall not be less than one inch. All steam pipes passing through floors and ceilings or laths and plastered partitions shall be protected by a metal tube one inch larger in diameter than the pipe, and the space shall be filled in with mineral wool, asbestos or other incombustible material.

1917, XXX, 77.

(4625) § 36. Construction of Heater Pipes—Hot Air Furnace to Have Certain Register—Cold Air Ducts.—All heater pipes from hot air furnaces, where passing through combustible partitions or floors, must be doubled in tin pipes with at least one inch air space between them. Horizontal hot air pipes leading from furnace shall not be less than six (6) inches from any woodwork, unless the woodwork be covered with loose fitting tin, or the pipe be covered with at least half inch of corrugated asbestos, in which latter cases the distance from the woodwork may be reduced to not less than three (3) inches. No hot air pipe shall be placed in a wooden stud partition, or any wooden enclosure, unless it be at least eight (8) feet horizontal distance from the furnace. Hot air pipes contained in combustible partitions shall be placed inside another pipe arranged to maintain half inch air space between the two on all sides, or be securely covered with half inch of corrugated asbestos. Neither the outer pipe nor the covering shall be within one inch of wooden studding, and no wooden lath shall be used to cover the portion of the partition in which the hot air pipe is located. Hot air pipes in closets shall be double, with a space of at least one inch between them on all sides. Every hot air furnace shall have at least one register without valve or louvres. A register box placed in the floor over a portable furnace shall have an open space around it of not less than four inches on all sides, and be supported by an incombustible border. Hot air registers placed in any woodwork or combustible floors shall be surrounded with borders of incombustible material, not less than two inches wide, securely set in place. The register boxes shall be of metal, and be double; the distance between the two shall be not less than one inch; or they may be single, if covered with asbestos, not less than one-eighth inch in thickness, and if all woodwork within two inches be covered with tin. Cold air ducts for hot air furnaces shall be made of incombustible material.

1917, XXX, 77.

(4626) § 37. **Regulations as to Ranges—Protection of Combustible Floors.**—No kitchen range or stove in any building shall be placed less than three feet from any woodwork or wooden lath and plaster partition, unless the woodwork or partition is properly protected by metal shields, in which case the distance shall be not less than eighteen inches. Metal shields shall be loosely attached, thus preserving an air space behind them. Hotel and restaurant ranges shall be provided with a metal hood, placed at least nine inches below any wooden lath and plaster or wooden ceiling, and have an individual pipe outlet connected with a good, thick flue. The pipe shall be protected by at least one inch of asbestos covering, or its equivalent.

Combustible floors under coal ranges and similar appliances without legs, such as mentioned in Section 38, in which hot fires are maintained, shall be protected by a sheet of metal, or a one-eighth inch layer of asbestos building lumber, which shall be covered with not less than four inches of masonry set in cement mortar. Such masonry shall consist of one course of four-inch hollow terra cotta, at least one of which shall be hollowed and be laid to preserve a free circulation of air throughout the whole course. Concrete may be substituted for a course of solid brick if desired. The masonry work shall be covered by sheet metal of not less than No. 26 gage, so arranged as not to obstruct the ventilating passages beneath. Such hearths shall extend at least twenty-four inches in front and twelve inches on the sides and back of the range or similar heating appliance. All coal stoves or ranges, with legs, shall be set on incombustible material, which shall extend at least twelve inches in front.

1917, XXX, 77.

(4627) § 38. **Protection of Woodwork Near Boilers, Furnaces, Etc.**—Any woodwork, wooden lath and plaster partition or ceiling within four feet of the sides or back, or six feet from the front of any heating boiler, furnace, bakery oven, coffee roaster, fire heated candy kettle, laundry stove, or other similar appliance, shall be covered with metal to a height of at least four feet above the floor. This covering shall extend the full length of the boiler, furnace, or heating appliance, and to at least five feet in front of it. Metal shields shall be loosely attached, thus preserving an air space behind them. In no case shall such combustible construction be permitted within two feet of the sides or back of the heating appliance, or five feet in front of same. No furnace, boiler, range or other heating appliance shall be placed against a wall furred with wood. Heating boilers shall be encased on sides and top by an incombustible protective covering not less than one and one-half inches thick.

1917, XXX, 77.

(4628) § 39. **Regulations as to Gas, Gasoline, Oil or Charcoal Stoves or Heating Devices.**—All gas, gasoline, oil or charcoal burning stoves or heating devices shall be placed on iron stands at least six inches above combustible supports, unless the burners are at least five inches above the base, with metal guard placed four inches below the burners. No open

flame heating or lighting device shall be used in any room where gasoline or other volatile inflammable fluids are stored or handled.

1917, XXX, 77.

(4629) § 40. Regulations as to Gas Connections.—Gas connections to stoves and similar heating devices and lighting devices shall be made by rigid metal pipes. For small portable gas heating devices, flexible metal or rubber tubing may be used, when there is no valve or other shut-off on the device.

1917, XXX, 77.

(4630) § 41. Electrical Wiring or Lighting—Inspection of Wiring—By Whom Made—Permit for Alterations.—The electrical wiring of houses or buildings for lighting or other purposes shall conform to the regulations prescribed by the organization known as the National Board of Fire Underwriters. It shall be unlawful for any person, firm or corporation controlling same to allow any electrical current for lighting or other purposes to be turned on in any building without first having had an inspection of the wiring made and a certificate of the same issued by the Inspector. Such inspection shall be made by the City Electrician, who shall certify the same to the Inspector in writing, who may, thereupon, issue the certificate. No alterations shall be made in the wiring of any building unless a certificate shall be obtained from the Inspector approving the same.

1917, XXX, 77.

(4631) § 42. Regulations as to Stair and Elevator Shafts and Partitions—Door Openings.—In all buildings hereafter erected, except private dwellings, which are used above the first floor for business purposes or for public assemblages, or for any purpose whatever if over three stories high, the stair shafts shall be separately and continuously enclosed by incombustible partitions, unless such buildings are provided with outside fire escapes. Elevator shafts in all buildings hereafter erected shall be enclosed in the same manner. The partitions shall be constructed of brick or other fire resistive material, approved by the Inspector or other designated official, and all mortar used in the construction shall be cement mortar. No such hollow partition shall be less than six inches thick; no brick partition less than eight inches thick, and no other solid partition less than four inches thick. Except as herein stated, the stair, elevator or hoistway shafts in all existing buildings over two stories high, of the class described in this Section, shall be separately enclosed by incombustible partitions as above specified, or the shafts may be enclosed by approved hollow or solid partition blocks not less than three inches thick, set in Portland cement mortar; or by four-inch stud partitions covered on each side with not less than three-quarter inch of Portland cement plaster on metal lath, or by two-inch solid metal lath and Portland cement plaster partitions. The metal frame work of such partitions shall be securely fastened to both floor and ceiling. All lath used for such partitions shall be of galvanized steel, weighing not less than fifty-four ounces per square

yard. Wire lath shall not be less than No. 20 gage, and sheet metal lath not less than No. 24 gage. All such partitions erected in existing buildings shall be firestopped with incombustible material the full depth of the floor beams at each floor level. All door openings in stair and elevator enclosures shall be protected by fire doors mounted with wrought iron or steel hardware, and shall be securely attached to the wall or partition, or to substantial incombustible frames anchored thereto. If glass panels be used in such doors, they shall be of wired glass not exceeding 720 square inches in area. Interior shaft windows shall not be permitted. Doors opening into stairway shafts shall swing in the direction of exit travel; shall be self-closing, and shall be at least 36 inches wide. The enclosure walls for all elevator shafts shall extend at least three feet above the roof, and at least three-fourths of area shall be covered with a skylight constructed as specified in Section 43. If in the opinion of the Inspector, or other designated official, it is necessary to preserve an open elevator or hoistway in an existing building, the floor opening through which it passes shall be equipped with automatically closing trap doors not less than one and one-half inches thick, made of two thicknesses of matched boards, covered on the under side with tin; the trap doors, when closed, shall extend beyond the openings on all sides. Such trap doors shall be protected by a substantial guard or gate, which shall be kept closed at all times, except when in actual use.

1917, XXX, 77.

(4632) § 43. Construction of Certain Skylights.—Where a stairway, elevator, or dumb-waiter shaft extends through the roof and is covered with skylight, the skylight shall be constructed with incombustible frame and sash, glazed with ordinary thin glass, and shall be protected by a galvanized steel wire screen with a mesh not exceeding one inch, and the wire not smaller than No. 12 gage. The screen shall have metal supports and shall be placed not less than six inches above the skylight. Instead of a skylight, a window may be placed in the side of the shaft above the roof which is furthest removed from a property line. The window shall have incombustible frame and sash and be glazed with thin glass.

1917, XXX, 77.

(4633) § 44. Construction of Interior Light or Vent Shafts.—In every building hereafter erected or altered, except frame buildings, all walls or partitions forming interior light or vent shafts shall be built in accordance with the requirements for stair and elevator shafts in new buildings as specified in Section 42. The walls of dumb-waiter shafts, except those in dwellings which extend only one story above the basement or cellar, shall be of fire-resistive construction, and shall be not less than three inches thick, if constructed of brick, hollow or solid blocks, or of steel studding and metal lath with three-quarter-inch of Portland cement plaster on each side, or a two-inch solid metal lath and Portland cement plaster wall may be permitted, if securely anchored at each floor. The material and method of construction to be as specified for stair and elevator shafts in existing buildings in Section 42. In frame buildings, outside

the fire limits, the enclosure partitions of all such shafts may be constructed as provided in Section 42 for stair and elevator shafts in existing buildings. Where a dumb-waiter shaft does not extend through the roof, the top of the shaft shall be of fire-resistive construction of the same thickness as the walls of the shaft. All openings in dumb-waiter shafts shall be protected by fire doors mounted in incombustible frames securely anchored to the walls. The walls of all light and vent shafts hereafter erected shall extend not less than three feet above the roof level, except that when a shaft is covered by an incombustible ventilating skylight the walls need not extend more than two feet above the roof. Masonry walls shall be properly coped. When metal louvres are used for ventilating purposes, the louvres or slats shall be riveted to the metal frame.

1917, XXX, 77.

(4634) § 45. Restrictions as to Certain Openings in Roof.—All openings in roofs for the admission of light or air, other than those provided for in Sections 29 and 31, shall have incombustible frames and sash glazed with wired glass, or ordinary glass may be used, if protected above and below by galvanized steel wire screens with a mesh not exceeding one inch, and the wire not smaller than No. 12 gage. the top screen shall be installed as specified in Section 43.

1917, XXX, 77.

(4635) § 46. Definition of Floor Area—Means of Egress—Width of Stairways—Incombustible Stairways in Certain Public Buildings.—The term, floor area, as used in this Section, shall mean the entire floor space between exterior walls and fire walls. In every building hereafter erected, except in private dwellings, each floor area above the first shall be provided with at least two means of egress, remote from each other, one of which shall be an enclosed stairway as provided by Section 42, or outside iron fire escape, or a doorway in a fire wall leading to another floor area separately provided with adequate stairs, or other independent means of exit. Such doorway serving as an emergency exit in a fire wall shall be protected by an automatic and self-closing fire door. No portion of any floor area shall be more than 100 feet from a place of egress. Elevators shall not be considered as a means of egress as specified in this Section. Except in dwellings, no required stairway shall be less than 44 inches wide, and the total width of exit doorways leading therefrom shall at least be equal to the total width of the stairways which they serve. The total width of stairway, interior and exterior, provided for the occupancy of each floor and those above, shall be not less than 44 inches for the first 50 persons, and 12 inches for each additional 50 persons to be accommodated thereby. The stair treads shall be not less than nine and one-half inches wide, and the risers not more than seven and three-fourths inches high. Windows in such required stairway are prohibited. Every school, hospital and theatre, over one story high, shall have at least two stairways constructed entirely of incombustible material, located remote from each other and continuous from grade line to the topmost story, or outside iron

fire escapes of approved design. All exit doors in schools, hospitals, theatres, and other places of public assemblage shall open outwards.

1917, XXX, 77.

(4636) § 47. Fire Stopping Construction on Floor Levels.—At each floor level, in all buildings hereafter erected, all stud walls, partitions, furrings, and spaces between joists, where they rest on division walls or partitions, shall be fire stopped with incombustible material in a manner to completely cut off communication by fire through concealed spaces. Such fire stopping shall extend the full depth of the joists and at least four inches above each floor level. Stair carriages shall be fire stopped at least once in the middle portion of each run.

1917, XXX, 77.

(4637) § 48. Construction of Areaways.—All areaways shall be guarded with suitable railings, or be protected by incombustible covers or gratings. If gratings be used, they shall have a wire screen of not more than one-half inch mesh securely attached to the underside.

1917, XXX, 77.

(4638) § 49. Height of Frame Buildings—Walls and Partitions—When Act May Be Modified Outside of Fire Limits.—No frame building, hereafter erected or altered, shall exceed two stories, or 30 feet in height, except that private dwellings may be three stories, or 40 feet high. In rows of frame houses, the dividing walls or partitions between houses shall be built of brick, terra cotta, concrete, or other incombustible material; or they may be built with four-inch studs, filled solidly with brickwork laid in mortar, or with other incombustible material. If lath be used on such partitions, it shall be metal lath. Such dividing partitions shall rest on masonry walls and shall extend to underside of roof boards. A flush mortar joint shall be made between the roof boards and the wall or partition. In rows of more than three houses, every alternate division wall or partition shall be constructed of solid brickwork not less than eight inches in thickness. Buildings with wooden framework, clad with sheet metal, or veneered with brick, shall be classed as frame buildings. Outside the fire limits, when any building is to be erected of brick, stone, hollow block or concrete that could under this Article be constructed of wood, the Inspector or other designated official is hereby authorized and directed to allow reasonable modifications of this Article relating to brick buildings, in consideration of the use of incombustible material instead of wood. Such modifications, however, shall not permit variations from the requirements of Sections 27, 28, 42 and 46 of this Article.

1917, XXX, 77.

(4639) § 50. Removal of Ashes—Regulations as to Rags, Waste, Unslaked Lime and Stoves.—Ashes shall be removed in metal vessels, and unless moved by city drays, shall be stored in brick, stone, or metal receptacle or removed by owner to a place not less than fifteen feet from any wooden building or fence. Oily rags and waste shall be kept in closed metal vessels and shall be removed from building daily. Unslacked lime

shall not be left exposed to the weather in or near a building. Stoves or ranges shall not be nearer to unprotected woodwork than two feet, and the floors under them shall be protected by metal or sand box.

1917, XXX, 77.

(4640) § 51. **What Amount of Explosives, Etc., May Be Kept.**—Explosives, inflammable liquids and matches may be kept within the incorporate limits only in such quantities and in such manner as shall not cause an increase in the insurance rate on any property affected thereby.

1917, XXX, 77.

(4641) § 52. **Construction Not Provided for Herein.**—The construction of any or all buildings not provided for in this Article shall be in accord with the construction required by some recognized authority approved by the Insurance Commissioner.

1917, XXX, 77.

(4642) § 53. **Article Not to Apply to Towns of Less Than 5,000 Inhabitants.**—This Article shall not apply to towns of less than five thousand inhabitants: *Provided*, They may adopt it by ordinance, if they so desire.

1917, XXX, 77.

ARTICLE VI.

Special Provisions as to Cities Containing More Than Ten Thousand Inhabitants.

(4643) § 1. **Cities of Over Forty-five Thousand Inhabitants May Hold Land for Certain Purposes.**—The City or Town Council of any city or town of more than 45,000 inhabitants is vested with power to have, hold and possess in fee simple, through purchase or otherwise, such lands already acquired, or hereafter to be acquired, as it shall deem proper, to be used as hospital or quarantine sites, or as parks, or for other municipal purposes: *Provided*, That such lands as are not or may not be acquired or held for the purpose of establishing a system of waterworks, or in connection therewith, shall be situated within a radius of twelve miles from the site of the city or town hall in such city or town.

Civ. '12, § 2958; Civ. '02, § 1992; 1899, XXIII, 51.

Trustees of University of South Carolina v. City of Columbia, 108 S. C. 244, 93 S. E. 934.

(4644) § 2. **Conditions Requisite to Creating Debts, Etc., Beyond Municipal Income of Current Year.**—It shall not be lawful for the City or Town Council of any city or town of over 45,000 inhabitants to create any debt beyond the municipal income of the current year, or to endorse or guarantee the notes, bonds or obligations, or accept the drafts of any company, corporation, person or persons, for any purpose whatsoever, unless the following terms and conditions be first observed and complied with: First. A resolution declaring the intention of the said City or Town Council to create such indebtedness, or incur such liability, and specifying the amount thereof, shall first be passed at a regular meeting of the

said City or Town Council by a vote of two-thirds of the whole body. Second. That the proposition, after being adopted in such manner by the said City or Town Council, shall be submitted to the qualified voters of the said city or town at an election to be held under resolution of the said City or Town Council, after ninety days' notice thereof; and should two-thirds of the number of qualified voters voting at the preceding municipal election vote affirmatively at the said election, the proposition shall then be submitted to the General Assembly of the State of South Carolina for approval; and should the proposition be approved by the said General Assembly, the said City or Town Council shall have the authority to create the debt or incur the liability: *Provided, however*, That nothing in this Section contained shall apply to any debt contracted, or to any note, bond, draft or obligation executed, indorsed or guaranteed by the City or Town Council of such city or town, and approved and confirmed by a two-thirds vote of the whole of the said City or Town Council, at a regular meeting thereof, for the purpose of the establishment of a sewerage system, or for the purpose of securing a supply of water or light for its public use, by contract, or for the purpose of a lease, purchase, construction or operation by the said City or Town Council of any plant or plants, for waterworks or lighting purposes, one or both; and for any of such purposes the City or Town Council or cities or towns of over 45,000 inhabitants are expressly authorized and empowered to create debts and incur liabilities beyond the municipal income of the current year, upon the same being approved and confirmed by a two-thirds vote of the whole of the said City or Town Council at a regular meeting thereof: *Provided*, That no purchase or construction of said plant or plants for waterworks or lighting purposes shall be made by the said City or Town Council, except upon a majority vote of the electors in such cities or towns, who are qualified to vote on the bonded indebtedness of the said cities or towns.

Civ. '12, § 2959; Civ. '02, § 1993; 1899, XXIII, 51.

(4645) § 3. Boundaries of Wards and Provisions as to Municipal Elections in Charleston.—(1) The City of Charleston is hereby divided into twelve wards, as follows: Ward number (1) one shall embrace all that portion of said city lying south of Broad Street and east of King Street; Ward number (2) two shall embrace all that portion of the said city lying south of Broad Street and west of King Street; Ward number (3) three shall embrace all that portion of the city lying north of Broad Street, south of Hasel Street, and east of King Street; Ward number (4) four shall embrace all that portion of the said city lying north of Broad Street, south of Wentworth and west of King Street; Ward number (5) five shall embrace all that portion of the said city lying north of Hasel Street, south of Calhoun Street and east of King Street; Ward number (6) six shall embrace all that portion of the said city lying north of Wentworth Street, south of Calhoun Street, and west of King Street; Ward number (7) seven shall embrace all that portion of the said city lying north of Calhoun Street, south of Mary Street, and east of King Street; Ward number (8) eight shall embrace all that portion of the said city lying north of Calhoun Street, south of Radcliffe and Bee Streets and West of King

Street; Ward number (9) nine shall embrace all that portion of the said city lying north of Mary Street to the city boundary, east of Nassau Street up to its intersection with Amherst Street, east of Hanover Street; Ward number (10) ten shall embrace all that portion of the said city lying north of Mary Street, west of Nassau Street up to its intersection with Amherst Street, west of Hanover Street to the city boundary, and east of King Street; Ward number (11) eleven shall embrace all that portion of the said city lying west of King Street, east of Rutledge Avenue, and north of Radcliffe Street to the city boundary; Ward number (12) twelve shall embrace all that portion of the said city lying north of Bee Street to the city boundary, and west of Rutledge Avenue.

Civ. '02, § 1994; 1901, XXIII, 810.

2. NUMBER OF ALDERMEN.—Each ward shall be represented in the City Council by two Aldermen.

1901, XXIII, 810.

3. ELECTION OF MAYOR.—The Mayor shall be elected by the qualified voters of the said city at the times and for the term of office now prescribed by law. And the person possessing the qualification now required by law for said office, who shall receive the highest number of votes cast at such election, shall be such Mayor.

1901, XXIII, 810.

4. ONE ALDERMAN ELECTED BY EACH WARD.—One Alderman for each ward shall be elected by the qualified voters thereof, at the times and for the term now prescribed by law for Alderman of said city. Each Alderman so elected must be, and during his term of office must remain, a resident of the ward for which he is elected.

1901, XXIII, 810.

5. TWELVE ALDERMEN ELECTED AT LARGE.—The other twelve Aldermen shall be elected on a general ticket by the qualified voters of the said city, at the times and for the term now prescribed by law for the Aldermen of the said city. Each Alderman so elected on such general ticket shall be, and during his term of office shall remain, a resident of the ward for which he is elected.

1901, XXIII, 810.

6. POLLING PRECINCTS.—There shall be at least one polling precinct in each ward

1901, XXIII, 810.

7. REGISTRATION OF VOTERS—CONDUCT OF ELECTION.—The Commissioners and Managers of Election shall be appointed in the same mode and shall be invested with the same powers and duties now prescribed by law. The voters shall be registered, and the election shall be conducted in the same manner as now prescribed by law, save and except as is provided in the following Sections.

1901, XXIII, 810.

8. NUMBER OF BALLOT BOXES.—For each election the Commissioners of Election shall provide at least three ballot boxes, in one of which shall be

deposited the ballots for Mayor and Aldermen on the general ticket, in one of which shall be deposited the votes for Alderman of the ward, in one of which shall be deposited the votes for School Commissioner; and if any question or questions be submitted to the people of said city, under an Act, Joint Resolution or ordinance, one other box, in which the votes on such question or questions shall be deposited. The ballot boxes shall be constructed and the polling precincts be guarded as is provided in State elections.

1901, XXIII, §10.

9. FORM OF BALLOTS.—The voting shall be by ballot, which shall be of plain white paper, two and a half inches wide by five inches long, clear and even cut, without ornament, designation, mutilation, symbol or mark of any kind whatever; except the name or names of the person or persons voted for: and the office for which such person or persons are intended to be chosen, which name or names, and office or offices, shall be written or printed, or partly written, or partly printed thereon, in black ink across such ballot in plain Roman type, and such shall be so folded as to conceal the name or names thereon, and so folded shall be deposited in a box, to be constructed in the same manner as the ballot boxes for State elections. And no ballot of any other description found in an election box shall be counted nor shall it be lawful to count any ballot upon which there shall appear the name of any officer, or the name of any person, in connection with any office other than the office for which the box in which such ballot is found is provided.

1901, XXIII, §10.

10. VACANCY IN OFFICE OF MAYOR.—In case of a vacancy in the office of Mayor, caused by the death, resignation, refusal to serve, inability, or any disability of the person elected to be Mayor, the City Council shall forthwith proceed to fill such vacancy by electing one of their own number to act as Mayor for the unexpired term, but such election shall not create a vacancy in the office of Alderman in the place of the Alderman thus elected Mayor. Nothing herein contained to prevent the selection, as heretofore, of a Mayor *pro tempore* in case of the temporary absence or inability of the Mayor.

1901, XXIII, §10.

11. VACANCY IN OFFICE OF ALDERMEN.—In case of any vacancy in the office of Alderman, by reason of the death, resignation, refusal to serve, removal from the ward, inability or any other disability of the person elected as Alderman therein, it shall be the duty of the Mayor, within ten days after such vacancy has occurred, to order an election to fill the same; and in case the Mayor shall not, for any reason, order such election, it shall be the duty of the City Council to do so at its first meeting next after the expiration of the same ten days. The time of notice of such election, and the mode of conducting the same, shall in every respect conform to those prescribed for the general election of Mayor and Aldermen of the city: *Provided, however,* That whenever such vacancy shall occur in the office of an Alderman who has been elected on a general ticket as provided in Subdivision 5 of this Section and known as an Alderman at large, then in

such case the ward Alderman shall serve for and during such unexpired term as Alderman at large, and the vacancy filled by the election of a ward Alderman as provided in Subdivision 4 of this Section.

Civ. '12, § 2960; 1901, XXIII, 810.

(4646) § 4. Division of City of Columbia Into Eight Wards.—It shall be the duty of the Mayor and Councilmen of the City of Columbia, as soon as practicable, to divide the said city into eight wards, as follows: All that portion of the city included in the area bounded by Blossom, Harden and Gervais Streets to constitute Ward One; all that portion of the city included in the area bounded by Gervais, Harden and Hampton Streets to constitute Ward Two; all that portion of the city included in the area bounded by Hampton, Harden and Laurel Streets to constitute Ward Three; all that portion of the city included in the area bounded by Laurel Street, Harden Street, and what was formerly the northern boundary, established in 1878, to constitute Ward Four; all that portion of the city included in the area bounded by Blossom Street, Harden Street, and the southern boundary of the city, to constitute Ward Five; all that portion of the city which was formerly the Town of Shandon to constitute Ward Six; all that portion of the city east of Harden Street, and north of what was formerly the Town of Shandon, to constitute Ward Seven; all that portion of the city north of what was formerly the northern boundary of said city, established in 1878, to constitute Ward Eight.

1914, XXVIII, 620.

(4647) § 5. Voting Precincts.—In addition to the voting precincts now established by law in the territory included in the present limits of the City of Columbia, a voting precinct is hereby established in that portion of said city as will constitute Ward Eight.

1914, XXVIII, 620.

(4648) § 6. Ward Eight.—All electors, who shall be residing within the territory included in Ward Eight, when so established, and holding registration certificate issued by the Board of Registration for Richland County entitling them to vote at any certain precinct in said county which heretofore included the territory in said Ward Eight, if otherwise qualified, shall be entitled to vote at said election precinct so established in Section 5 hereof.

1914, XXVIII, 620.

(4649) § 7. Cities of Ten Thousand Authorized to Require Coal Weighed on Public Scales—Penalty.—The municipal authorities of the cities and towns of this State of not less than ten thousand inhabitants be, and they are hereby, empowered to require all dealers of coal to weigh all coal sold within the limits of such cities and towns upon the public scales of such cities and towns and to impose a charge therefor of not more than ten cents for each draft. Said municipal authorities may enforce the provisions of the foregoing paragraph by such fine and imprisonment as may be now or hereafter prescribed by law for the violation of the ordinances of such cities or towns.

Civ. '12, § 2961; Civ. '02, § 1995; 1896, XXII, 92.

(4650) § 8. **Hours of Employment of Firemen in Certain Cities Regulated.**—It shall be unlawful for any Mayor, Intendant, Councilman, Alderman, Commissioner or member of any Council of any city or town having a population of ten thousand (10,000) and less than fifty-five thousand (55,000) inhabitants, except the City of Greenville, as fixed by the Federal census of 1910, or any subsequent census, to require or cause to direct any fireman employed in the Fire Department of any such city or town to work more than twelve hours during any day of the week, or more than eighty-four hours during any week: *Provided*, This Section shall not be construed as preventing any fireman or person employed by any city or town Fire Department from rendering services in cases of emergency.

1919, XXXI, 648; 1920, XXXI, 784.

(4651) § 9. **Violation a Misdemeanor—Penalty.**—Any Mayor, Alderman, Intendant, Commissioner or member of any City or Town Council who violates the terms of Section 8 above shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of not less than one hundred (\$100.00) dollars, nor more than five hundred (\$500.00) dollars, or shall be imprisoned not less than thirty (30) days nor more than six (6) months.

1919, XXXI, 648; 1920, XXXI, 784.

ARTICLE VII

Special Provisions as to Cities of More Than Twenty Thousand Inhabitants.

(4652) § 1. **Police Commissioners May Be Established in Certain Cities—Election of Mayor—No Compensation.**—The Mayor and Aldermen of any city of not less than twenty and not more than fifty thousand inhabitants shall have full power and authority to establish in such city a Board of Police Commissioners, which shall consist of five members including the Mayor, a majority of whom shall be a quorum for the transaction of business. With the exception of the Mayor no member of said Board shall be a member of the City Council. The first election may be held at the first meeting of the Mayor and Aldermen elected to succeed the present Mayor and Aldermen of any city of not less than twenty thousand inhabitants, and as often thereafter as may be necessary. At such election one member of the Board shall be elected to serve one year, one to serve two years, one to serve three years, and one to serve four years, and thereafter one member of said Board shall be elected annually to serve for four years. The Mayor shall serve on said Board a term coequal with his term of office, unless his office is sooner vacated by him, and until his successor is elected and qualified. Should a vacancy occur in the Board from any other cause than the expiration of a regular term, an election to fill it shall be held by the City Council as soon thereafter as practicable, and the member elected shall hold for the unexpired term and until his successor

is elected and qualified. The members of the Board shall serve without compensation.

Civ. '12, § 2962; 1902, XXIII, 1050.

(4653) § 2. Power to Elect Police Officers, Control and Manage Same.—

The Board of Police Commissioners thus established under this Article shall have the exclusive power, and it shall be their duty to elect a Chief of Police, and such other police officers as is or may be prescribed by the ordinance of such city. This power extends to unexpired as well as regular terms. Said Board shall also have the power, and it shall be its duty to provide temporary police officers and policemen as occasion requires, such temporary police officers and policemen to be paid as may be prescribed by ordinance. The said Board shall have full and exclusive control and management of the police force of such city; shall have the power to discharge, suspend, or fine the officers and members of the police force, and to make and enforce rules and regulations for its government.

Civ. '12, § 2963; 1902, XXIII, 1050.

(4654) § 3. Charges Against Policemen—Proceedings.—The mode of preferring accusations against the officers and members of the police force, and of their trial, shall be prescribed by city ordinance. The City Council shall also prescribe the manner of suspending until trial the Chief of Police or any other police officer or policeman, when the accusation is brought; and in all such cases the Board of Commissioners of Police may make appointments to the office in place of the suspended person, such appointment to hold during suspension.

Civ. '12, § 2964; 1902, XXIII, 1050.

(4655) § 4. Attendance of Witnesses.—When any person resident of any city that establishes a Board of Police Commissioners under this Article, shall be required to attend as a witness the trial of any officer or member of the police force before said Board, it shall be the duty of the Secretary of said Board, upon application, to issue a subpoena directed to such person, stating the cause and time appointed for the trial; and if any witness thus subpoenaed fails to appear, he or she may be attached by the Board for contempt. The attachment shall be directed to some one of the police force of such city, and made returnable before said Board at some stated time, and the said Board may punish said witness by fine not exceeding ten dollars, or imprisonment not exceeding thirty days, unless he or she show good cause for not obeying said subpoena.

Civ. '12, § 2965; 1902, XXIII, 1050.

(4656) § 5. Monthly Meetings.—Such Board of Police Commissioners shall hold a stated meeting each month, and such other meetings as the public interest may from time to time require. At its first meeting the said Board shall elect one of the members of the Board Secretary thereof, who shall keep a record of the proceedings.

Civ. '12, § 2966; 1902, XXIII, 1050.

(4657) § 6. Further Duties.—The City Council of the cities establishing Boards of Police Commissioners under this Article shall have power, from

time to time, by ordinance, to devolve such further duties upon said Board and to prescribe such further rules and regulations for the government of said Boards as are no inconsistent with the provisions of Sections 1, 2, 3, 4, 5 and 6.

Civ. '12, § 2967; 1902, XXIII, 1050.

(4658) § 7. Pension Funds for Firemen.—In all cities of twenty thousand inhabitants or more in this State having Fire Departments, as heretofore stated, the City Council thereof is hereby authorized and empowered to form a pension fund, create a Board of Trustees to manage said fund, and to raise funds for the pensioning of disabled and retired firemen of said cities.

Civ. '12, § 2968; 1904, XXIV, 490.

See *Ætna Fire Ins. Co. v. Jones*, 78 S. C. 445, 50 S. E. 148.

(4659) § 8. Board of Trustees for Firemen's Pension Fund.—The Board of Trustees shall consist of five members, as follows: The Chairman of the Board of Fire Commissioners or Five Masters, the City Treasurer, the Chief of the Fire Department, and two citizens, to be appointed by the Mayor and confirmed by City Council, to hold for such time as City Council may elect. In cities having no Board of Fire Commissioners, the Mayor shall be a member of the Board of Trustees of the pension fund. Said Board shall select from their number a President and Secretary. The City Treasurer shall be Treasurer of said Board and custodian of said pension fund.

Civ. '12, § 2969; 1904, XXIV, 490.

(4660) § 9. How Pension Funds Are Raised.—The funds for such pension fund shall be raised as follows: 1. The City Council of all cities having Boards of Trustees under this Act shall levy and collect annually one (1) per cent. of all gross receipts for premiums received by foreign fire insurance companies or their agents doing business in said cities, such amounts to be paid into the said pension fund by the Treasurer of the said cities respectively. 2. All forfeitures and fines imposed upon any member of the Fire Department for cause by way of discipline shall be paid into said pension fund. 3. All proceeds from sales from condemned horses and other personal property in use in said departments may be paid into said pension fund. 4. The Board of Trustees may take by gift, devise or bequest, any money, real estate, personal property, or other valuable things so obtained, and pay the same into the pension fund, and same to be treated as part thereof.

Civ. '12, § 2970; 1904, XXIV, 490.

(4661) § 10. Investment of Pension Funds.—Said Board of Trustees shall have power to invest said pension funds in the name of the "Board of Trustees of the Firemen's Pension Fund," in interest bearing bonds of the United States, of the State of South Carolina, or of the city in which such Board of Trustees is in operation. All such securities shall be deposited by the Treasurer, with other securities of such city, and shall be subject to the order of the said Board of Trustees.

Civ. '12, § 2971; 1904, XXIV, 490.

(4662) § 11. **Money Paid on Order of Board of Trustees.**—All moneys ordered to be paid by said Board of Trustees shall be paid by the Treasurer only upon warrants signed by the President of the Board and countersigned by the Secretary thereof, or in the absence of either one or both of said officers by the President and Secretary *pro tem.*, as may be appointed by the Board of Trustees at a meeting called for that purpose, and no warrant shall be drawn except by order of the Board, duly entered in the records of the proceedings of the Board.

Civ. '12, § 2972; 1904, XXIV, 490.

(4663) § 12. **Deposits of Pension Fund.**—In case the said pension fund, or any part thereof, shall, by order of said Board or otherwise, be deposited in any bank or banks, all interest or money which may be paid or agreed to be paid on account of such sums or deposit shall belong, paid or agreed to be paid, on account to, and constitute a part of said fund: *Provided*, That nothing herein contained shall be construed as authorizing said Treasurer to deposit said funds or any part thereof unless so authorized by the Board.

Civ. '12, § 2973; 1904, XXIV, 490.

(4664) § 13. **Same.**—Upon the organization of a Board of Trustees of Firemen's Pension Fund under this Article, said Board shall, at its first meeting, select a bank or banks in such city in which all moneys shall be deposited by the Treasurer of such Board.

Civ. '12, § 2974; 1904, XXIV, 490.

(4665) § 14. **Report as to Pension.**—The Board of Trustees shall make report to the City Council of the said city of the condition of said pension fund at the first meeting of City Council in January of each and every year.

Civ. '12, § 2975; 1904, XXIV, 490.

(4666) § 15. **Payments to Firemen's Pension Fund—Collection of Assessments.**—City Councils of cities having a Board of Trustees of Firemen's Pension Funds, under this Article shall ordain and order that the City Treasurer pay into the said pension fund, semiannually, at such dates as may be adopted by said City Council, the amounts as levied, said Treasurer to report same to the Secretary of the Board of Trustees to be entered on the records of said Board at its next meeting.

The collection of the assessments under this Article shall be liable to enforcement the same as any other taxes under the laws of this State.

Civ. '12, § 2976; 1904, XXIV, 490.

(4667) § 16. **City Attorney to Act in Matters Pertaining to Pension Fund.**—It shall be the duty of the City Attorney or Corporation Counsel to give advice to said Board of Trustees in all matters pertaining to their duties and the management of said Firemen's Pension Fund whenever thereunto requested, and he shall represent and defend said Board as its attorney in all suits or actions at law or in equity that may be brought

against it, and bring all suits and actions in its behalf that may be required or determined upon by said Board.

Civ. '12, § 2977; 1904, XXIV, 490.

(4668) § 17. **Rules as to Firemen's Pension Fund.**—The Board of Trustees of the Firemen's Pension Fund shall make all needful rules and regulations for its government in the discharge of its duties, and shall hear and decide all applications for pensions hereunder, and its decisions on such applications shall be final and conclusive, and not subject to review or reversal except by the Board. The Board shall cause to be kept a record of all its meetings and proceedings.

Civ. '12, § 2978; 1904, XXIV, 490.

(4669) § 18. **Pensions—How Paid.**—Pensions shall be allowed and paid as follows:

1. Any member of the fire department of said cities having pension funds, who shall, while in the performance of his duties in said fire department, and while responding to alarms of fire, become and be found, upon examination by the physician, to be appointed by City Council of said city, to be physically or mentally disabled by reason of such service in said fire department, said Board of Trustees of the Firemen's Pension Fund shall, upon the certificate of said physician and by a majority vote, retire such disabled member from service in said fire department: *Provided*, No such retirement on account of disability shall occur, unless said member has contracted said disability while in the service and in the performance of his duty. Upon such retirement the said Board of Trustees shall order the payment to such disabled or retired member of such fire department monthly from said pension fund a sum equal to one-half the monthly compensation allowed to such member as salary at the date of such retirement.

2. **RIGHT OF FIREMEN TO RETIRE.**—The Board of Trustees, by a majority vote of its members, and with the approval of said physician appointed by the City Council, shall have power to retire from service in the fire department any member thereof who has become disabled by age or other causes, and who has performed faithful service in the department for a period of not less than twenty (20) years, twelve (12) of which having been consecutive, and he shall in such case place the member so retired upon the pension roll, such retired member shall receive from the pension fund monthly an amount equal to one-half the monthly compensation allowed to such member as salary at the date of such retirement.

3. **FIREMEN KILLED IN LINE OF DUTY.**—In case any member of such fire department is killed, or dies while in the performance of his duties as a fireman, the Board of Trustees shall pay the amount of one hundred (\$100) dollars from said pension fund for funeral expenses to the nearest relative of said fireman.

4. **PERSONS ENTITLED TO PENSION.**—No person shall be entitled to receive any pension from said fund except a regularly retired member, or a regular member doing fire duty in said fire department.

5. **PENSION EXEMPT FROM EXECUTION, ETC.**—No portion of said pension fund shall, either before or after its order of distribution by said Board to

such disabled and pensioned member of said fire department, be held, taken, subjected to, or retained, or levied on by virtue of any attachment, execution, injunction, writ, interlocutory or other order or decree, or any process or proceeding whatever issued out or by any Court of this State, for the payment or satisfaction in whole or in part of any debt, damage claim, demand, or judgment against any member, but the said fund shall be sacredly held, kept, secured and distributed for the purpose of pensioning the persons, or the payment of funeral expenses, as named in this Article, and for no other purpose whatsoever.

Civ. '12, § 2979; 1904, XXIV, 490.

(4670) § 19. List of Retired Firemen.—There shall be kept in the office of the Board of Trustees by the Secretary a book to be known as the list of retired firemen. This book shall give a full and complete history and record of all the actions of the Board of Trustees in retiring any and all persons hereunder, such records shall give names, date of joining the department, date of retirement and the reason thereof, of any and all persons retired.

Civ. '12, § 2980; 1904, XXIV, 490.

(4671) § 20. No Levy of Taxes Where Pension Fund is Sufficient.—When the pension fund of any city shall have reached an amount of such proportions that the interest thereon is sufficient to pay all pensions and expenses, no further taxes shall be levied for the benefit of the pension fund until such interest is not any more sufficient to pay such pensions and expenses.

Civ. '12, § 2981; 1904, XXIV, 490.

(4672) § 21. Payment of Pensions When Funds Are Insufficient.—If at any time, from any unforeseen cause, there shall not be sufficient money in said pension fund to pay each person entitled to the benefit thereof, the full amount per month as herein provided, then, an equal percentage of such monthly payment shall be made to each beneficiary until the said fund shall be replenished sufficiently to warrant the presumption of payment thereafter of full pension pay to each of said beneficiaries.

Civ. '12, § 2982; 1904, XXIV, 490.

(4673) § 22. Limit to Fund.—No pensions shall be allowed or passed upon by said Board of Trustees until the amount of one thousand (\$1,000) dollars shall be on hand to the credit of the said pension fund, and such pension fund shall be exempt from any taxation whatsoever.

Civ. '12, § 2983; 1904, XXIV, 490.

(4674) § 23. Public Baths May Be Established in Certain Cities—Rates and Regulations.—All cities of more than twenty thousand population may establish and maintain such number of public baths as the local Board of Health may determine to be necessary; each bath shall be kept open not less than fourteen hours per day, and both hot and cold water shall be provided. The erection and maintenance of river or ocean baths shall not be deemed a compliance with the requirements of this Section.

Such cities may establish rates for the use of such baths, and appoint officers therefor, and may enact laws for the government of such officers and authorize them to make regulations for the management thereof.

Civ. '12, § 2984; 1908, XXV, 1079.

ARTICLE VIII.

Commission Form of Government in Cities Containing Not Less Than Four Thousand Inhabitants, and Provisions for Its Adoption by Cities of More Than Ten Thousand and Less Than Twenty Thousand Inhabitants, and by Cities of More Than Fifty Thousand and Less Than One Hundred Thousand Inhabitants.

(4675) § 1. **Commission Form of Government for Cities and Towns from Four to Ten Thousand.**—Any city or town, which by the last preceding United States census heretofore or hereafter made and published, may have not more than ten thousand and not less than four thousand inhabitants, may adopt the form of government known as the commission form of government, as provided for in Article IX herein, providing a form of government for cities of more than twenty thousand inhabitants and less than fifty thousand inhabitants, except such provisions of said Article as are herein changed, altered or excluded; and become organized under the provisions of said Article as a city, upon the adoption of such form of government by a special election ordered upon petition as provided therein and herein.

1912, XXVII, 814.

(4676) § 2. **Ballots.**—The question submitted by the proclamation of the Mayor on the election provided for in Section (4720) of this Code and the ballots provided by the Commissioners of Election as required in Section (4721) shall be substantially in the following form, to wit: "Shall the City (or Town of) (name of city or town) adopt the form of government provided in Article IX, Chapter LI of the Code of Laws of South Carolina, as modified and made applicable to cities and towns of not more than ten thousand inhabitants and not less than four thousand inhabitants? Yes, No." (Erase one answer.)

1912, XXVII, 814.

(4677) § 3. **City Officers.**—The city officers to be elected as provided in Sections (4722) and (4723) shall consist of a Mayor and two Councilmen, all of whom shall be elected for a term of four years.

1912, XXVII, 814.

(4678) § 4. **Publication of Names of Candidates.**—The publication of the names of the candidates in any primary election as provided in Section (4724) shall be in such newspapers as are published in the city in which said primary election is to be held.

1912, XXVII, 814.

(4679) § 5. Quorum, Motions, Measures, Etc.—All of Section (4727) shall be applicable, except that two members of the Council shall constitute a quorum, and the affirmative vote of two members of said Council shall be necessary to adopt any motion or pass any measure, and every ordinance or resolution passed by the Council shall be signed by two members and be recorded before the same shall be in force, and two members of said Council shall be sufficient to adopt any other action vested in said council in any other Section of said Article, and made applicable herein to cities of not more than ten thousand and not less than four thousand inhabitants.

1912, XXVII, 814.

(4680) § 6. Executive and Administrative Powers to Be Distributed Into Departments.—The executive and administrative powers and duties shall be by Council distributed among three departments, of which each of the members of Council shall be the Superintendent of one, and the assignments and reassignments shall be made by the Mayor or by a vote of the Council, if they deem it necessary; the Council shall have power to change or abolish any offices theretofore existing in said city and to establish such offices with such salaries as may seem desirable; to elect Policemen and fix their compensation, and, by a vote of two members, fill any office or remove any officer or employee; regular meetings of the Council shall be held at least once a month, and at such other times as may be provided for by ordinance, and all meetings, whether regular or special, at which any person not a city officer is admitted, shall be open to the public. In a city of more than seven thousand inhabitants, the salary of the Mayor shall be one thousand dollars, and the salary of each Councilman shall be five hundred dollars per annum; and in a city of less than seven thousand inhabitants the salary of the Mayor shall be six hundred dollars, and the salary of each Councilman shall be three hundred dollars per annum, payable in equal monthly or quarterly installments, as the Council may determine, and except as expressly stated in this Section, no other provision of Section (4729) of said Article shall be applicable.

1912, XXVII, 814.

(4681) § 7. Elections and Petitions.—The elections provided for in Sections (4732) and (4733) shall be upon the petition of twenty per centum of the entire votes cast in the regular election of the City Council, when no primary election was held to nominate such City Council.

1912, XXVII, 814.

(4682) § 8. Certain Provisions Not to Apply to Cities Under Ten Thousand.—The provisions of Sections (4745) and (4746) of this Code shall not apply to cities of less than ten thousand inhabitants.

1912, XXVII, 814.

(4683) § 9. Per Diem of Commissioners of Election.—The Board of Commissioners of Elections appointed by the Governor under Section (4747) in lieu of salaries shall be paid each a per diem of three dollars

per day for their services, not to exceed ten days in any one year: *Provided*, That the provisions of this Article shall not apply to the cities of Rock Hill, Sumter, Georgetown.

1912, XXVII, 814.

(4684) § 10. Compensation for Mayor and Councilmen in Certain With Commission Government.—When the commission form of government shall be hereafter or is now adopted in cities and towns of less than ten thousand and over four thousand inhabitants, the City Council shall have power and is hereby authorized to fix by ordinance a salary for the Mayor not exceeding one thousand dollars per annum and salary for each Councilman of not more than six hundred dollars per annum: *Provided*, That no salary of Mayor or Councilman shall be increased or reduced during the term of office of any incumbent without the unanimous vote of Council: *Provided, further*, That the provisions of this Section shall only apply to the City of Orangeburg.

1914, XXVIII, 651.

(4685) § 11. Registration for Elections in Cities of Over 4,000.—Before the election in any city of over four thousand inhabitants in this State on the adoption of the commission form of government shall be held, the books of registration of electors, both municipal and county in which said city is situate, shall be open for the registration of electors for three months in cities of more than ten thousand inhabitants, and for three weeks in cities of less than ten thousand inhabitants; each day of the week except Sundays, at least five hours per day, and shall be closed after said three months at least thirty days before said election.

1912, XXVII, 793.

(4686) § 12. Compensation of Supervisors of Registration.—That the County Supervisors of Registration be paid one hundred and fifty dollars each, in cities of more than ten thousand inhabitants and twenty-seven (\$27.00) dollars each in cities of less than ten thousand inhabitants, extra for holding said extra registration for the State and county registration.

1912, XXVII, 793.

(4687) § 13. Books of Registration to Be Opened.—When the petitions, which are the prerequisites to order such elections, are filed with the proper officers, on written notice of the same by any citizen of the municipality in which such election is to be held to the municipal and county registration officers, they shall immediately open the said books of registration and keep them open for the time herein prescribed.

1912, XXVII, 793.

(4688) § 14. Provisions for Commission Form of Government in Certain Cities.—Any city which, by the last preceding United States census heretofore or hereafter made and published, may have more than ten thousand inhabitants, and less than twenty thousand inhabitants, and any city which, by the last preceding United States census heretofore or hereafter made and published, may have more than fifty thousand inhabitants and

less than one hundred thousand inhabitants, may adopt the form of government, known as commission form of government, and become organized as a city under the provisions hereof retaining and exercising all the rights and powers, and remaining subject to all the duties and obligations heretofore otherwise granted or imposed by law not herein repealed specifically or by necessary implication.

1912, XXVII, 793.

(4689) § 15. Election on Question of Commission Form of Government.—

Upon the petition of registered electors, qualified to vote in such city, equal in number to twenty-five per centum of the votes cast for all candidates for Mayor at the last preceding city election of any such city, showing the residence and occupation of each petitioner, and verified as hereinafter required for other petitions, the Mayor shall, by proclamation, submit to a vote of the qualified registered electors of said city the question of adopting the form of government herein and organizing as a city under this Article at a special election to be held at a time specified in said proclamation, not later than six (6) months, and not earlier than four (4) months, after said petition is filed. If the plan of government herein provided for be not adopted by the majority vote cast at the said special election, the question of adopting said plan shall not be resubmitted to the voters of said city for adoption within four years thereafter, but at the expiration of four years, the same question may be resubmitted upon the presentation of a petition as hereinabove provided for. The question shall be submitted by the Mayor in his proclamation in the following form, to wit: "Shall the City of (name of city) adopt the form of government provided in Article VIII, Chapter LI of the Code of Laws of South Carolina (cities of more than ten thousand inhabitants and less than twenty thousand inhabitants, and cities of more than fifty thousand inhabitants and less than one hundred thousand inhabitants)?"

1912, XXVII, 793.

(4690) § 16. Ballots.—At such election there shall be provided by the Board of Commissioners of Elections ballots, upon which shall be written: "Shall the City of (name of city) adopt the form of government provided in Article VIII, Chapter LI of the Code of Laws of South Carolina (cities of more than ten thousand inhabitants and less than twenty thousand inhabitants, and cities of more than fifty thousand inhabitants and less than one hundred thousand inhabitants)? Yes. No." (Erase one answer.) Each qualified registered elector shall be allowed to vote one ballot; the said election being conducted and the vote canvassed and the result declared in the same manner as heretofore provided by law in respect to municipal elections, except as hereinafter provided. If the majority of the votes cast shall be "Yes" (the word "No" being erased), the Board Commissioners of Elections shall declare that the said city has adopted the form of government provided for herein. If there be not a majority of the ballots with the word "Yes" thereon, and the word "No" erased, the Board of Commissioners of Elections shall declare that the said form of government has been rejected. Immediately after the

result of said election is declared, if it be in favor of the adoption of the said form of government, the Mayor shall forthwith file with the Secretary of State a certificate stating the result of said vote, which certificate shall be recorded in the office of the Secretary of State, and shall be sufficient record and notice that the said city is thereafter operating under the said form of government: *Provided, however,* That the Mayor and Council and other officers then in office, shall continue and remain until their terms expire, and after their successors shall be elected and shall qualify as hereinafter provided; and all ordinances, resolutions, or other provisions theretofore of force and not inconsistent with the provisions of this Article shall remain until altered or repealed by the Council elected as hereinafter provided. For the election on the adoption of this form of government the registered electors entitled to vote shall be those on the latest list that may have been registered, as provided in this Article; then registration for any and every election thereafter shall be made by the Board of Commissioners of Election herein provided for, with the requirements herein provided.

1912, XXVII, 793.

(4691) § 17. Election for Mayor and Councilmen to Be Ordered.—After the filing of said certificate in the office of the Secretary of State, the Mayor shall, by proclamation published in the daily newspapers of said city, up to the day of said election, order an election for one Mayor and four Councilmen, said election to be held at the date when the next election for Mayor would be held, the Mayor and four Councilmen to be voted for at large, said election to be governed by the provisions hereinafter made with reference to regular elections for Mayor and Councilmen in such city, or as otherwise provided for by law: *Provided,* That the Board of Commissioners of Elections shall provide the ballots and shall put thereon the names of all candidates, of whom notice must have been given for at least two days: *Provided, further,* That no ballot shall be counted for any candidate for Councilman unless it be for the full number of Councilmen to be elected, and this rule shall apply to every election for Councilman.

1912, XXVII, 793.

(4692) § 18. Elected for Four Years.—In every such city there shall be a Mayor and four Councilmen elected for the term of four years: *Provided,* That of the four Councilmen elected at the first election, the two receiving the highest number of votes shall serve for four years, and the remaining two shall serve for two years. And thereafter every two years from the time of the first election an election shall be had for two Councilmen, and every four years from the time of the first election an election shall be had for a Mayor and two Councilmen, and the said Mayor and four Councilmen shall constitute the City Council of said city. If any vacancy occur in the City Council, the remaining members, or a majority thereof, shall appoint a person to serve during the unexpired term: *Provided,* That in the City of Florence, upon the expiration of the terms of office of the present Mayor and Councilmen, or in case the present Mayor

or one of the Councilmen is removed from office before the expiration of his term, or in case of a vacancy in any of the said offices, arising from any other cause, there shall be a Mayor and two Councilmen, who shall be elected and hold office for a term of two years. If any vacancy occur in the City Council, the same shall be filled by election: *Provided*, In case of a vacancy in the office of Mayor before the expiration of the term of the present Mayor, and there be no vacancy in the office of Councilman at the time, the three Councilmen shall designate one of their number as Mayor to fill the unexpired term, in which event no successor to the Councilman so appointed Mayor shall be made: *Provided*, That nothing in this Section, as amended, shall be construed as repealing or amending an Act approved February 4, 1915, with reference to the City of Spartanburg.

1912, XXVII, 793; 1915, XXIX, 57, 203; 1918, XXX, 681.

(4693) § 19. **Primary Elections.**—There shall be no party primary nominations of any person as a candidate for Mayor or Councilman, unless the said party primary election be conducted and the qualifications for suffrage therein be enforced as herein provided. The primary election of any party for nominating Mayor and Councilmen shall be held on the second Tuesday preceeding the municipal election, and shall be conducted by the duly appointed Board of Commissioners of Election and Board of Managers of Elections for the said municipal election, who shall be paid as for the holding of said municipal election, and shall conduct the primary elections at the same places and in the same manner and with the enforcement of the same requirements of registration for suffrage as in the municipal election, having a separate box for each organized political party in said city, and for any violation of the law governing the same shall be subject to the same punishment as in violation of the law governing other elections: *Provided, however*, That no person shall be allowed to vote in any party primary election unless he be a member of said party and make oath to that effect, as provided by the rules of said party: *Provided, further*, That no primary election shall be held for any political party unless the chief officer or officers in the city organization shall notify the Mayor and the Chairman of the Board of Commissioners of Elections for the municipal election at least five days before the time for the holding of the party primary election that the said political party desires a primary election, and at such primary election three members of such political party, duly appointed for the purpose by the proper officers of the party, shall have the right to be present at each polling precinct and advise the managers if any person offering to vote in said party primary be not a member of said party, and file protest as ground for legal contest in case such person be allowed to vote by the legal managers. No ballot cast in said primary election shall be counted for any person who shall not have filed with the Chairman of the Board of Commissioners of Elections the pledge as to corrupt practices and the itemized statement as to expenditures, as provided in an Act making certain offenses in primary elections misdemeanor and prescribing penalties therefor, approved March 6, 1905, Volume XXIV of the Statutes,

at page 949. The Board of Commissioners of Elections shall cause the names of all candidates in the primary election, classed according to their party affiliation, to be published in the daily newspapers of the city from the time that they have become qualified as candidates up to and including the day of the primary election; and the said Board shall provide the printed ballots to be used in the said primary elections, the names of candidates for Mayor, and also, separately, the names of the candidates for Councilmen, arranged alphabetically; the ballots in each case to bear the words: "Vote for (the number to be elected)." The candidate receiving the largest majority vote shall be declared elected. In case a primary election do not result in a majority and larger vote of the number of persons to be elected in the regular municipal election, a second primary shall be had on the seventh day after the first primary, in which second primary the ballot shall contain, for each position for which choice is to be made, the names of two persons—those receiving the highest vote at the preceding primary election.

1912, XXVII, 793.

(4694) § 20. Serving Interest of Candidates for Office, Etc., Prohibited.

—Any person who shall perform, or agree to perform, any service in the interest of any candidate for any office provided for in this Article (whether in connection with the primary election nomination or in connection with the municipal election, or in connection with the obtaining and filing of the petition required herein), in consideration of any money or other valuable thing, or of future support in obtaining office, shall be punished by a fine not exceeding five hundred (\$500) dollars, or imprisonment not exceeding one (1) year, and any candidate, or other person, who shall solicit or contract for, or otherwise seek or obtain, such services in the interest of or against a candidacy for Mayor or Councilman, or for or against any question that may be submitted to an election, or shall pay any money for said service or promise any valuable thing for such service, or to influence any elector in his vote, shall be punished in the same manner, and any person making false answers to any of the provisions of this Article relative to his qualifications to vote at any election herein provided for, any person wilfully voting or offering to vote at such election when not qualified as herein provided, and any person knowingly procuring, aiding or abetting any violation of any of the provisions herein shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding five hundred (\$500) dollars, or imprisoned not exceeding one (1) year, and other provisions of law now applying to bribery or corruption or other improper practices in connection with elections shall likewise apply to the elections herein referred to.

1912, XXVII, 793.

(4695) § 21. Expenses of Elections.—The expenses of each and every election provided for in this Article, including advertisement, provision of ballots and any other item, shall be paid out of the City Treasury, upon the warrant of the Chairman of the Board of Commissioners of Elections.

1912, XXVII, 793.

(4696) § 22. **City Council—Voting—Quorum—Yeas and Nays—Ordinances—Veto—City of Florence—City of Spartanburg.**—The Mayor and Councilmen chosen as herein provided shall constitute the City Council of such city, and each of them shall have the right to vote on all questions coming before the Council, three of them constituting a quorum; and the affirmative vote of three members of said Council shall be necessary to adopt any motion or pass any measure, other than with reference to meetings and adjournments. Upon every vote, the yeas and nays shall be called and recorded, and every ordinance or resolution shall be reduced to writing and read before the vote is taken thereon, and every ordinance or resolution passed by Council shall be signed by three members and be recorded before the same shall be in force. The Mayor, or, in his absence, one of the Councilmen chosen as Mayor *pro tem.*, shall preside at all meetings of the Council, but shall have no power to veto any measure: *Provided*, That in the City of Florence upon the expiration of the term of office of the present Mayor and Councilmen, or in case one of the present Councilmen is removed from office before the expiration of his term, or in case of a vacancy in any of said offices arising from any other cause, the City Council shall consist of a Mayor and two Councilmen, each of whom shall have the right to vote on all questions coming before Council, and two of whom shall constitute a quorum; and wherever it is hereinabove required that the action of three members of the Council shall be necessary for any purpose, in all similar cases in the City of Florence the action of two members of the Council shall be sufficient as and when the reduction of the City Council of said city from four to three members has become effective: *Provided*, That in the City of Spartanburg the Mayor and one Councilman shall constitute a quorum for the transaction of all business.

1912, XXVII, 793; 1915, XXIX, 203.

(4697) § 23. **Office Hours of Councilmen.**—The Council shall have, possess and exercise all executive, legislative and judicial powers and duties conferred upon such city, or theretofore belonging to it, with the power to establish such subordinate officers as they may see fit, and assign to them appropriate duties, subject to the Council. Each member of the Council shall give to the duties to his office all the time that may be needed for the most efficient conduct of the affairs of the city, and shall keep regular office hours of not less than two hours daily, except Sunday: *Provided*, That in the city of Florence the Mayor shall keep regular office hours of not less than one hour daily, except on Sundays and legal holidays, but the Councilmen shall not be required to keep regular office hours.

1912, XXVII, 793; 1915, XXIX, 203; 1918, XXX, 681.

(4698) § 24. **Duties and Salaries of Commission.**—The executive and administrative powers and duties shall be by said Council distributed among five departments, of which each of the members of Council shall be the superintendent of one, the Mayor making the assignment, and reassignments being made by a vote of Council, when deemed necessary. The Council shall have power to change or abolish any offices theretofore exist-

ing in said city, and to establish such offices with such salaries as may seem desirable, and shall, by a vote of three members, fill a position, or remove any officer, except certain civil service positions and officers hereinafter provided for: *Provided, however*, That in cities of not less than fifty thousand inhabitants and not more than one hundred thousand inhabitants all salaries of city officials holding office, either by election of the former City Council or by appointment by the Mayor at the time of the adoption of this form of government, and whose terms of office for which they have been elected or appointed shall not then have expired, shall continue to hold office without reduction of their then salaries for the balance of the unexpired term of their respective offices. In cities of over ten thousand (10,000) inhabitants and less than twenty thousand (20,000) inhabitants the Mayor shall be paid an annual salary of eighteen hundred (\$1,800) dollars, and each Councilman an annual salary of twelve hundred (\$1,200) dollars, payable in equal monthly installments: *Provided*, That in cities of over fifty thousand inhabitants and less than one hundred thousand inhabitants the Mayor shall receive an annual salary of five thousand (\$5,000) dollars, and each Councilman shall receive an annual salary of four thousand (\$4,000) dollars, payable in equal monthly installments. Regular meetings of the Council shall be held at such times as may be provided for by ordinance, and at least one a month, and all meetings, whether regular or special, at which any person not a city officer is admitted shall be open to the public: *Provided*, That in the City of Florence, upon reduction of the City Council from four to three members, the executive and administrative powers and duties shall be by said Council distributed among three departments, each of which shall have a member of the Council as the superintendent thereof, the assignment to be made in the manner hereinabove designated: *Provided, further*, That as and when the membership of the said City Council of Florence is reduced from four to three, as above provided, the Mayor shall be paid an annual salary not to exceed \$300.00, payable in equal monthly installments, and each Councilman, in lieu of all other salary, shall be paid the sum of \$5.00 for each meeting of the Council attended by such Councilman, not to exceed two meetings in any one month.

1912, XXVII, 793; 1915, XXIX, 203; 1918, XXX, 681.

(4699) § 25. Civil Service Commission—Not to Apply to City of Florence.—The City Council, immediately after organizing under this Article, shall by ordinance appoint three Civil Service Commissioners, who shall hold office for two, four and six years, the successors of each to be thereafter appointed for the term of six years, at the expiration of the preceding term of service; such Commissioners to be removable from office by Council only for cause, four Councilmen voting for such removal. Council shall have authority to fill any vacancy for the unexpired term. The said Civil Service Commissioners shall twice a year, or oftener if they deem it necessary, under such rules and regulations as they may prescribe, hold examinations for the purpose of determining the qualifications of applicants for positions on the police force, in the fire department, in the department of public health, or in any other special line of service in the city government which by the City Council may be placed under the civil service regulations. The examination for each line of service to be practiced fairly

testing the fitness of persons examined to discharge efficiently the duties of the particular line of employment. The Commissioners shall, as soon as practicable after such examination, certify to the Council the persons who have satisfactorily passed such examination, stating the order of excellence: *Provided, however,* That the Commissioners shall not certify the name of (and may deny the examination to) any person as to whose honesty and integrity, or general moral character, they have not reasonably satisfied themselves by affirmative investigation. Council shall choose employees in the civil service departments of the government, which shall always include the police department, the fire department, and the department of public health, only from persons so certified by the Civil Service Commissioners; and no appointee to a civil service position shall be removed from office by Council except by and with the approval of a majority of the Civil Service Commissioners upon charges duly presented, as to which the said employee shall have the opportunity to make his defense: *Provided, however,* That the Chief of Police and the Chief of the Fire Department, or any superintendent or foreman in charge of municipal work, may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders, but shall within twenty-four hours thereafter report such suspension or discharge, and the reason therefor, to the member of Council who may be the superintendent of said department, who shall thereupon affirm or revoke such discharge or suspension, which shall be final, unless such employee shall, within five days of such ruling, appeal therefrom to Council, which shall, with the Civil Service Commissioners, fully hear and determine the matter, and shall not finally discharge the employee without the concurrence of two-thirds of the Civil Service Commissioners. It shall further be the duty of the Civil Service Commissioners to give attention to the work of all departments within the civil service of said city, and to make reports to Council and such publications to the public as they may deem proper. Said Civil Service Commissioners may be removed upon petition and vote as hereinabove provided for members of Council. Each Civil Service Commissioner shall be paid an annual salary of one hundred and fifty (\$150) dollars, payable quarterly: *Provided,* That in cities of over fifty thousand inhabitants, and less than one hundred thousand inhabitants, each Civil Service Commissioner shall be paid an annual salary of two hundred and fifty (\$250) dollars, payable quarterly: *Provided, further,* That the provisions of this Section shall not apply to the City of Florence.

1915, XXIX, 203.

(4700) § 26. **Ordinances and Resolutions, How Passed.**—Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making of any contract or granting any franchise or right to occupy or use the streets, highways, bridges or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and in such form remain on file with the City Clerk, open to public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges or public places in any city shall be granted, renewed or extended except by ordinance passed three times on three sepa-

rate days, and every franchise or grant for interurban or street railways, waterworks, gas or electric light or power plants, heating plants, telegraph or telephone systems or other public service utilities within said city must be authorized or approved by a majority of the electors voting thereon at an election which shall be ordered by Council.

1912, XXVII, 793.

(4701) § 27. Officers and Employees Not to Be Interested in Any Job, Work or Contract.—No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract, or job, for work or materials, or the profits thereof, or any services to be furnished or performed for the city, or for any person, firm or corporation operating interurban or street railways, waterworks, gas works, electric light or power plants, heating plants, telegraph or telephone system, or other public utility within the territorial limits of said city, or doing business or proposing to do business in said city. No such officer or employee shall accept or receive, directly or indirectly, from any person, firm or corporation operating within the territorial limits of said city any such public utilities company or other business under a public franchise, any frank, free ticket or free service, or any other service, upon terms more favorable than are granted to the public generally, or request or induce the granting of any such favor to any other person. Any violation of the provisions of this Section shall be a misdemeanor, punishable by a fine of not less than one hundred (\$100.00) dollars nor more than five thousand (\$5,000.00) dollars, or by imprisonment for not less than one (1) month nor more than five (5) years: *Provided, however,* That the policemen and firemen in uniform shall have the right to free transportation upon any street railway within the limits of said city.

1912, XXVII, 793.

(4702) § 28. Recall of Officers—Special Provisions as to City of Florence.—The Mayor or any Councilman may be removed from office in the following manner: Whenever qualified, registered electors of said city, equal in number to at least twenty per centum of the entire vote cast at the primary election which chose the candidates at the last preceding municipal election, file with the Governor a petition demanding the removal of the Mayor or any Councilman, and stating the grounds for such demand, the signatures to the said petition showing the place of residence and the occupation of each signer, and stating that he is a qualified registered elector of said city, said petition being duly verified as to these facts by one or more persons who make affidavits on said petition as to any stated number of said petitioners, the said Governor shall order an election for a day not later than thirty (30) days and not earlier than two (2) weeks after the filing of the said petition with the Governor; said election to be conducted by the Board of Commissioners of Elections and the Managers of Elections, under the rules and regulations and penalties applying to other elections, at which election the said Board of Commissioners of Election shall provide ballots, on which shall be placed the name of the Mayor or Councilman whose removal the petitioners had demanded, and also the name or names of any other candidate, or candidates, for the position then

held by the said Mayor or Councilman, the said ballot to be prepared at least five (5) days before the date of the election. The person receiving the majority of the votes cast in the said election shall hold the office during the unexpired term, and the incumbent shall not be removed unless a majority vote is received by some other person; but in case there be no election, a second election shall be held, at which the ballots shall contain only the names of the incumbent and of his opponent who received the highest vote at the preceding election; the said election to be held on the third day after the first election, unless delayed by a contest as to the result of the election, in which case the Board of Commissioners of Elections shall advertise a day for the second election, not later than ten (10) days after the first election: *Provided*, That in the city of Florence the Mayor or any Councilman may be removed for incapacity, neglect of duty in office, or misconduct in office, such removal to be accomplished and the vacancy thereby created to be filled in the following manner: Before any election shall be held for the purpose of removing the Mayor or any Councilman, a petition to that end must be filed with the Governor. This petition (1) must be signed by registered, qualified electors of said city equal in number to at least 20 per centum of the entire vote cast at the primary election which nominated the officer whose removal is sought; (2) specify the charge or charges upon which said removal is demanded, and (3) must show the place of residence and occupation of each signer, and must contain a statement that he is a qualified registered elector of said city. The petition must further be verified by the affidavits of three of the signers thereof as to the truth of the charges therein preferred against said officer, said affidavits to be on their own knowledge or on information and belief; and must be accompanied by a certificate of the supervisor of the registration of said city showing that the signers thereof are all resident qualified registered electors of said city and that they equal in number 20 per centum of the vote cast in the primary election which nominated the officer whose removal is sought. Upon the filing of a petition complying with the foregoing requirements, the Governor shall order an election for a day not earlier than thirty (30) days after the filing of said petition in his office. The said election shall be conducted by the Board of Commissioners and the Managers of Elections under the rules and regulations and penalties applying to general elections, at which election the managers shall permit to vote all those who were duly qualified registered electors in the general election in which the officer whose removal is sought was elected and all who have subsequently become qualified registered electors up to five days preceding the day on which said election is held. In the said election the Board of Commissioners of Election shall provide ballots upon which shall be written or printed "For the removal of (Mayor or Councilman)" and "Against the removal of (Mayor or Councilman);" and in case a majority of the ballots cast be for the removal of said officer, immediately upon the declaration of the result his right and title to said office shall cease and determine, and the same shall become vacant; and it shall then be the duty of the Board of Commissioners of Election to call an election to fill the vacancy. The said election for filling said vacancy shall be held on the third Tuesday after the declaration of the result of the election

removing the officer, and shall be conducted as any other general election. The person receiving a majority of the votes cast in the said election shall hold the office during the unexpired term; but should no candidate be elected in the first election, a second election shall be held, at which the ballots shall only contain the names of the two candidates receiving the highest number of votes in the preceding election; the said election to be held on the Tuesday next succeeding the first election, unless delayed by a contest as to the result of the first election, in which event the Board of Commissioners of Elections shall advertise a day for the second election after the contest is finally decided.

1912, XXVII, 793; 1915, XXIX, 203.

(4703) § 29. Initiative—Referendum—Amendment or Repeal of Ordinance—City of Florence.—Any proposed ordinance may be submitted to the Council by a petition signed by qualified registered electors of said city, equal in number to twenty per centum of the vote cast for Mayor at the last preceding primary election, said petition stating the facts as to the petitioners and being verified, as hereinafter provided for petitions; and within two weeks after the filing of said petitions said Council shall pass the said ordinance or call a special election, at which the adoption or rejection of such ordinance shall be submitted to the registered electors of said city, or said ordinance shall forthwith, upon the failure of Council to act as hereinabove prescribed, become a valid ordinance of said city after the expiration of said two weeks. At such election the ballots shall contain the words "For the ordinance" (and state the title of the proposed ordinance) and "Against the ordinance." If the majority of the registered electors voting on the proposed ordinance shall vote in favor thereof, such proposed ordinance shall thereupon become a valid ordinance of said city; and any ordinance proposed by a petition or adopted by an election as herein provided cannot be repealed or amended except by an election as herein provided. Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this Section, but there shall not be more than one special election for such purpose in any period of six months. The Council may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general city election or at an election specially ordered not earlier than one (1) year thereafter, or at a special election ordered not earlier than one (1) year thereafter, or at a special election ordered at any time upon the filing of a petition of the percentage of qualified registered electors hereinbefore referred to, requesting such election to repeal or amend said ordinance: *Provided*, That in the City of Florence the petition referred to in this and Section 19 need not be verified under oath, but it shall be sufficient if it be accompanied by a certificate of the City Supervisor of Registration showing that the signers thereof are all resident qualified electors of said city, and that they equal in number 20 per centum of the vote cast for Mayor at the last preceding primary election.

1912, XXVII, 793; 1915, XXIX, 203.

(4704) § 30. When Ordinances Suspended.—When any ordinance is passed by Council its operation shall be suspended and its ratification or

rejection shall be submitted to a vote of the qualified registered electors of the city at a special election, if a petition signed by qualified registered electors of the city, as hereinbefore required, shall be presented to Council demanding the same; and after the filing of said petition, such ordinance shall not be operative unless a majority of the ballots cast at such election shall be in favor of the same.

1912, XXVII, 793.

(4705) § 31. Three Civil Service Commissioners.—The City Council, immediately after organizing under this Act, shall, by ordinance, appoint three Civil Service Commissioners, who shall hold office for two, four and six years, the successors of each to be thereafter appointed for the term of six years, at the expiration of the preceding term of service; such Commissioners to be removable from office by Council only for cause, four Councilmen voting for such removal. Council shall have authority to fill any vacancy for the unexpired term. The said Civil Service Commissioners shall, twice a year, or oftener, if they deem it necessary under such rules and regulations as they may prescribe, hold examinations for the purpose of determining the qualifications of applicants for positions on the police force, in the fire department, in the department of public health, or in any other special line of service in the city government which by the City Council may be placed under the civil service regulations. The examination for each line of service to be practiced, fairly testing the fitness of persons examined to discharge efficiently the duties of the particular line of employment. The Commissioners shall, as soon as practicable after such examination, certify to the Council the persons who have satisfactorily passed such examination, stating the order of excellence: *Provided, however,* That the Commissioners shall not certify the name of (and may deny the examination to) any person as to whose honesty and integrity, or general moral character, they have not reasonably satisfied themselves by affirmative investigation. Council shall choose employees in the civil service departments of the government, which shall always include the police department, the fire department, and the department of public health, only from persons so certified by the Civil Service Commissioners; and no appointee to a civil service position shall be removed from office by Council except by and with the approval of a majority of the Civil Service Commissioners upon charges duly presented, as to which the said employee shall have the opportunity to make his defense: *Provided, however,* That the Chief of Police and the Chief of Fire Department, or any superintendent or foreman in charge of municipal work, may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders, but shall within twenty-four hours thereafter report such suspension or discharge, and the reason therefor, to the member of Council who may be the superintendent of said department, who shall thereupon affirm or revoke such discharge or suspension, which shall be final unless such employee shall, within five days of such ruling, appeal therefrom to Council, which shall, with the Civil Service Commissioners, fully hear and determine the matter, and shall not finally discharge the employee without the concurrence of two-thirds of the Civil Service Commissioners. It shall further be the duty of the Civil Service Commissioners

to give attention to the work of all departments within the civil service of said city, and to make reports to Council and such publications to the public as they may deem proper. Said Civil Service Commissioners may be removed upon petition and vote as hereinabove provided for members of Council. Each Civil Service Commissioner shall be paid an annual salary of one hundred and fifty (\$150) dollars, payable quarterly: *Provided*, That in cities of over fifty thousand inhabitants and less than one hundred thousand inhabitants, each Civil Service Commissioner shall be paid an annual salary of two hundred and fifty (\$250) dollars, payable quarterly.

1912, XXVII, 793.

(4706) § 32. City Attorney — Qualifications — Duties — Florence.—The City Council shall appoint a City Attorney, who must be a freeholder of the city, and for not less than five (5) years preceding his appointment a resident thereof. In addition to his general duties, which shall be prescribed by Council, it shall be his special duty, upon knowledge, information, belief, or probable ground of suspicion, to cause investigation, and, if possible, indictments and prosecutions for each and every violation of any of the provisions of this Article, or any other provision of law in respect to any of the inhibitions in this Article contained, or any bribery, corruption, malfeasance, or other violation of law whatsoever in respect to the said city or any member of Council or any employee, or any other person or persons: *Provided* That in the City of Florence it shall not be necessary for the City Attorney to be a freeholder or to have resided in the city for five (5) years, but the City Council shall have the right to appoint as City Attorney any attorney of good and reputable standing who is a resident elector of the city and who has practiced law for two years, his duties shall be as hereinabove provided.

1912, XXVII, 793; 1915, XXIX, 203.

(4707) § 33. Oath of Office.—Before entering upon the duties of his office the Mayor and each Councilman and each Civil Service Commissioner shall take and subscribe the oath of office prescribed in Section 26, Article III, of the Constitution: *And, further*, That he will at all times endeavor to secure and maintain for the city an honest and efficient government in every particular, with an eye single to the public welfare. No member of Council or of the Civil Service Commission shall hold or be a candidate for any other office without first resigning or at once forfeiting his said office in said city government. No officer or candidate in connection with said city government shall directly or indirectly pay for any publication in any newspaper in commendation of his services or in advocacy of his candidacy except under the caption, "Paid Advertisement," and no person, firm or corporation, publishing or managing a newspaper, shall publish for a consideration any commendation, advocacy, or condemnation of any officer or candidate for office of said city without stating in said publication the price paid therefor and the person paying the same. Any violation of any of these provisions shall be punished by fine not exceeding five hundred dollars or imprisonment not exceeding one year: *Provided, however*, That the City Council shall, each month, print in pamphlet form,

a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the State Library, the City Library, the daily newspapers of the city, and to persons who shall apply therefor at the office of the City Clerk. At the end of each year the Council shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of such examination in the manner above provided for publication of statements of monthly expenditures, the expenses of all such publications to be paid out of the City Treasury.

1912, XXVII, 793.

(4708) § 34. Commissioners of Election.—Within five days after the filing of the requisite petition for the submission of the question of the adoption of the form of government herein provided for, the Governor of the State, upon the recommendation of the majority of the Legislative Delegation from the county in which said city is located, shall appoint from among the registered electors qualified to vote in said city three discreet and trustworthy men to serve as a Board of Commissioners of Election for said city for the term of two years, unless sooner removed by the Governor, and until their successors are appointed and have qualified, any vacancy to be filled by the Governor; their compensation to be one hundred dollars a year each, to be paid quarterly by the City Treasurer. Said Commissioners shall take the oath of office as prescribed by Section 26, Article III, of the Constitution, and shall organize as a Board by appointing one of their number Chairman of the Board, and such Chairman shall be empowered to administer oaths.

1912, XXVII, 793.

(4709) § 35. Managers of Election.—The said Board of Commissioners of Election shall forthwith appoint, from among the registered electors qualified to vote in said city, three discreet and trustworthy men to serve as Managers of Election for each polling precinct in said city, for the term of two years, unless sooner removed by the said Board of Commissioners of Elections, and until their successors are appointed and have qualified, any vacancy to be filled by said Board of Commissioners of Elections, each Manager to be paid three dollars for each election in which he serves, upon a warrant on the City Treasurer, drawn by the Chairman of the Board of Commissioners of Elections. The Managers of Elections shall take the oath of office as prescribed by Section 26, Article III, of the Constitution, and that they will fairly and impartially conduct every election according to law and make a true return of the result thereof. They shall keep the polls open from eight in the morning till eight in the evening, and upon the closing of the same shall immediately proceed to count publicly the votes cast, and shall continue such count until the same is completed, and shall make a statement of the whole number of votes cast in such election, together with the number of votes cast for each person voted for Mayor and for Councilman, or for or against a proposition submitted, upon the completion of which they shall transmit such statement to the Board of Commissioners of Elections for said city, through the Chairman of said

Board of Commissioners or other member designed to receive said election returns, and shall at the same time deliver the ballot box, with the ballots which had been cast at said election sealed up therein; and said Board of Commissioners of Elections shall immediately, upon the receipt of such statement or report of the Managers, open and publish the same and tabulate all the returns, and in case of a very close election or a seeming probability of error or for other cause, in the discretion of the said Board of Commissioners, shall recount the ballots, and on the second day succeeding the said election shall declare the result, and shall file a certified statement of the result of the balloting by precincts and in aggregate with the City Clerk, and also with the Clerk of Court for the county, and in the case of an election to determine the question of adopting or of abandoning the form of government provided for in this Article, the said Board of Commissioners of Elections shall file such statement of the result also with the Secretary of State for record in his office. The Board of Commissioners of Elections shall, as judicial officers, decide all protests or contests that may arise, and if necessary may adjourn from day to day and withhold the decision and the declaration of the result of the election for a period not exceeding five days from the second day after the election. No merely technical irregularities in any of the details hereinabove prescribed shall be held to vitiate an election, provided that it appear that the will of the registered electors was ascertained. The said Board of Commissioners of Elections shall also have charge of the registration of the electors of said city, and shall allow registration for four days consecutively up to two days preceding the first primary election, and shall require as a prerequisite of registration proof of payment of city, as well as other taxes, if past due.

1912, XXVII, 793.

(4710) § 36. Article to Be Construed Liberally.—The usual rule of law as to the interpretation of statutory provisions and the construction of statutory powers shall be reversed in respect to this Article, which shall be construed liberally, the spirit always controlling the letter, and any technical deficiencies being supplied by the reasonable amendment of the Article as a whole in the light of municipal needs.

1912, XXVII, 793.

(4711) § 37. Cities May Abandon Commission Government.—Any city, after operating for six years under the provisions of this Article, may abandon the form of government herein provided and accept the provisions of the general law of the State applicable to it before the adoption of this form of government by procedure of petition and election on the question of abandonment in the manner provided hereinabove for adopting this form of government: *Provided*, That the City of Spartanburg may abandon the form of government herein provided for after operating for five years: *Provided, further*, That in case a majority votes in favor of abandoning the commission form of government, then the Mayor shall within ten days thereafter declare the result and within four months give three weeks advertisement published in some daily paper of Spartanburg ordering an election for Mayor and Aldermen under its former charter

as and for their successors, who shall qualify immediately after their election.

1912, XXVII, 793; 1915, XXIX, 203.

(4712) § 38. When Effective After Adoption.—When any city shall have adopted such form of government it shall go into effect at the termination of the term of office of the Mayor in office when said election is held: *Provided*, That the provisions of this Article shall not apply to Georgetown and Orangeburg Counties.

1912, XXVII, 793.

(4713) § 39. City Council of Spartanburg.—That in the City of Spartanburg the said City Council shall consist of a Mayor and two Councilmen as now constituted, who shall hold their terms of office, according to law as now provided. Two of them shall constitute a quorum for the transaction of any business of the said city and an affirmative vote of two members of said Council shall be necessary and sufficient to adopt any motion or pass any resolution, ordinance or measure that may come before the said Council for disposition, and any ordinance or resolution in order to become effective shall be signed by two members of the said Council and be recorded before the same shall be in force. The Mayor of Spartanburg is hereby authorized to appoint extra policemen on special occasions for a term of not exceeding seven days.

1916, XXIX, 831.

(4714) § 40. Cities Between Seven and Ten Thousand Inhabitants May Adopt Provisions of This Article.—That towns and cities whose population is between seven and ten thousand may adopt the provisions of this Article and enjoy the benefits of its privileges under the following conditions: (1) That the election for the adoption of said commission form of government may be held at the same time and place and under the direction of the Managers of any regular election, and the registration for any such election on whether or not said commission form of government be adopted or not shall be the same as for the general election with which said question is proposed to be declared: *Provided*, That the notice of the proposal to hold such election shall be given by publication at least once a week for three months in some newspaper of general circulation in the city proposing to adopt it, and that notice of the opening of books of registration and the days on which they shall be opened shall also be published in the required advertisement; (2) that the governing commission of said city shall consist of a Mayor and two Councilmen, two being necessary to constitute a majority and also a quorum to do business; that the executive and administrative powers and duties of said city shall be distributed among three departments as hereinabove provided; that the Mayor shall receive an annual salary not to exceed \$300.00, and each Councilman, in lieu of all other salary, shall receive the sum of \$5.00 for each meeting of Council attended by such Councilman, not to exceed two meetings in any one month: *Provided*, That this amendment shall become effective as hereinbefore provided in Sections 8 and 12 of this Article, as amended; (3) that the monthly financial report and the proceedings of the Council shall be

printed in some newspaper of general circulation in the city; (4) that the Commissioners of Election provided for in this Act for larger cities may be for smaller cities the same as the Commissioners for the State elections for the county in which such city is located, and that for extra services for the city they be paid the same as Commissioners for the State elections are now paid, and that they shall be paid for such extra services by the city, nor shall any Board of Election Commissioners, however appointed, be paid more than is paid to the Commissioners for State elections; (5) that prior to voting in any election ordered by the City Council, and before voting for or against the adoption of the commission form of government, the voters shall be required by the Managers of Election to exhibit to them a certificate of registration from the city showing that his taxes have been duly paid and that he is a qualified elector of the State, and his ballot shall be deposited in a separate box from those used for other questions in the election and plainly marked "For or against commission form of government for the City of" Such registration certificate shall be issued by a City Supervisor of Registration, who shall be appointed by the City Council to hold office for four years, unless sooner removed for cause, and who shall be paid an annual salary of one hundred (\$100) dollars, and he shall be provided with necessary books by the city and shall keep, subject to public inspection at all times, a permanent record of his transactions: *Provided*, That the provisions of this Section shall apply to the City of Florence.

1912, XXVII, 793; 1915, XXIX, 203; 1918, XXX, 681.

(4715) § 41. **Provision as to Sumter.**—That there shall be held an election in the City of Sumter, S. C., on the second Tuesday in June, 1912, at which said election there shall be submitted a ballot or ballots to be provided as are ballots in other elections upon which shall be written or printed, "Shall the City of Sumter adopt the Commission Form of Government? Yes. No." (Erase one answer.) "Shall the City of Sumter adopt the Commission Form of Government with a City Manager? Yes. No." (Erase one answer.) The proper authorities to see that the two questions are intelligently and substantially submitted as herein provided, so that the electors of said city may select between the two questions. At the election provided to be held on the second Tuesday in August, 1912, a commission form of government having been established, the officers provided for herein shall be voted for by ballots to be furnished as provided by law. The form of government receiving a majority of the ballots cast at said election shall thereupon be established and thereby be and become the form of government of and for said city. That there shall be voted for at an election to be held on the second Tuesday in August, 1912, in the event of the adoption of a commission form of government at the election to be held for the same, candidates for Mayor and for two Councilmen for a term of four years: *Provided*, That of the two Councilmen other than the Mayor the one receiving the highest number of votes shall serve for a term of four years and the other for a term of two years, whose salary shall be as follows: Mayor, twelve hundred (\$1,200) dollars per annum; Councilmen, one thousand (\$1,000) dollars per annum each, if the form of government without the City Manager feature be adopted; in the event

that the majority of the votes or ballots cast at the said election shall be in favor of the commission form of government with a City Manager, then in that event the salaries shall be as follows: Mayor, three hundred (\$300) dollars per annum, and Councilmen two hundred (\$200) dollars per annum each, said salaries to be paid in equal monthly installments. If a majority of the ballots cast at the election provided for herein shall be in favor of having a Manager (City Manager), then, in that event, the Mayor and Councilmen when elected shall not distribute the powers of the said Council among the members of the same; but shall employ a male person of sound discretion and of good moral character not of their number of such salary and upon such terms as they may decide, who shall be subject to such rules and regulations as may be provided by said Councilmen. That the result of the said election as to the form of government shall be filed with the Secretary of State, and such filing shall be sufficient notice that said city has adopted and is operating under the commission form of government so adopted. If such election result in favor of adoption of either form of commission government herein referred to, that the Mayor and Councilmen elected or chosen as herein provided at the election to be held for that purpose shall be and constitute the City Council of said city. And each of them shall have the right to vote on all questions coming before the said Council, two of them constituting a quorum: *Provided, however,* That by unanimous consent the requirements as to order of business or procedure may be dispensed with. If the majority of the ballots cast at such election be in favor of the commission form of government without a Manager, then, in that event, the executive and administrative powers and all powers inhering in or devolved by law upon said Council of which each of the members (including the Mayor), who is also herein and hereby made a member of said Council upon the same being elected as herein provided, shall be superintendent of one, the Mayor making the first assignment and reassignments being made by a vote of the Council when necessary, that the Council of the said City of Sumter may exercise the powers and provisions and the privileges set forth and enumerated in Sections twenty (20) and twenty-one (21) in this Article. That the Council of the said City of Sumter may grant, renew or extend franchises for interurban or street railways or waterworks, gas or electric light or power plant, heating plants, telegraph or telephone systems or other public service utilities not prohibited by the Constitution of the State, within said city upon a petition for, against or in reference to the same, signed by two-thirds (2-3) of the qualified electors of the said city. That the books of registration, both of the City and County of Sumter, shall be opened for registration for three (3) weeks prior to the election ordered hereunder or to any election held hereunder, the said books to be closed thirty (30) days before each of said election as required by law. The Supervisors of Registration to attend in their office at least five (5) hours per day during the three weeks prior to each election, and for such service the County Supervisors of Registration shall receive the sum of fifty (\$50.00) dollars each for holding said State and county registration, that the elections herein provided to be held in the City of Sumter shall be held and conducted in the same manner as elections are now held for Mayor and Alder-

men of said city, unless otherwise in this Section directed. If for any reason the election provided for to be held on second Tuesday in June, nineteen hundred and twelve (1912), on the question of commission form of government, be not held, a petition signed by one-fourth (1-4) of the qualified electors of the said city, the Mayor of the said city is directed to order by proclamation an election, and fix the date for the same, to be held, upon the question of adopting a commission form of government, and if such election result in favor of establishing a commission form of government, then, in that event, the Mayor of said city shall order an election for the purpose of electing the officers herein provided for, and the Mayor shall fix the time for holding such election, and such election shall be held in the manner as herein provided with the same provisions as to registering, keeping open and the closing of the books of registration, and the extra compensation to the Supervisor of Registration; the Mayor and Aldermen and all other officers of the said city then in office (referring to the time of election for same under tenure other than under this Act) are hereby continued in office until the election herein provided for shall be held; and if a commission form of government is established, until the officer selected at the election for same shall have qualified; and all ordinances, resolutions and other provisions theretofore and now of force and not inconsistent with the provisions of this Article as modified by this Section shall remain in force until altered or repealed by the Council as herein provided. All the powers and privileges enumerated and set forth in Section 13 of this Article shall apply to the City of Sumter; except that if the form of government with the feature of City Manager be adopted that, in that event, the members of the Council shall not be required to keep the office hours therein provided for, but shall keep such hours as may be necessary, that all other provisions not inconsistent with the provisions of this Section shall apply to the City of Sumter. If any election results in a tie vote another election may be ordered by the Mayor. The regular election for Mayor and Aldermen now provided by law to be held in April, 1912, is hereby postponed to August 13th, 1912, and the Mayor and Aldermen now in office shall continue in office until the Mayor and Aldermen then elected shall qualify: *Provided*, That in case the commission form of government is adopted at the election herein provided for, there shall be no such election held.

1912, XXVII, 793.

(4716) § 42. Cities Over 2,000 and Less Than 4,000 Inhabitants May Adopt Commission Form of Government With Manager—Procedure—Powers.—That cities of over 2,000 and less than 4,000 inhabitants, as shown by the United States census of 1910, may adopt a commission form of government as provided herein: (a) That before the holding of the election provided herein in any such city, on the commission form of government, the books of registration of the electors in said city shall be open for the registration of electors for two weeks, each day of the week, at least five hours per day, except Sundays, and shall be closed after said two weeks for nineteen days before said election. (b) That a Supervisor of Registration shall be appointed by the Mayor, who shall conduct the registration herein provided for at the City Hall, and who shall be paid by such

city eighteen (\$18) dollars for his services: *Provided, however,* That no officer or regular employee of such city shall be eligible to hold the office of Supervisor of Registration. (c) Upon the representation of a petition signed by one-fourth of the qualified electors of such city the Mayor shall, by proclamation, submit to a vote of the qualified registered electors of said city as hereinbefore provided, the question of adopting the commission form of government with a City Manager, and an election for a Mayor and two Commissioners to serve, if said form of government shall be adopted, as hereinafter provided, which election shall be held as soon as practicable thereafter. (d) At said election there shall be submitted a ballot to be provided, as are ballots in other elections, upon which shall be printed, "Shall the City of adopt the Commission Form of Government with a City Manager? Yes. No." (Erase one answer.) On said ballot shall be printed also the names of candidates for Mayor and Councilmen. Each elector shall be entitled to vote for one candidate for Mayor and two candidates for Councilmen, and the candidate receiving the highest number of votes for Mayor and the two candidates receiving the highest number of votes for Councilmen shall be declared elected, but no vote shall be counted that does not vote for two Councilmen. (e) The election shall be held by Managers, whose appointment and duties shall be as provided by law for municipalities of less than 5,000 and more than 1,000 inhabitants, except as herein modified. (f) The Mayor and Councilmen, as herein provided, shall serve for four years, unless recalled in the manner hereinafter provided for; and after the first election every four years an election shall be had for Mayor and Councilmen. If any vacancy occurs in the office of Mayor or Councilmen the vacancy shall be filled by an election for the unexpired term. (g) The primary election of any party to decide the question of adopting a commission form of government with a City Manager and for nominating Mayor and Councilmen shall be held fifteen days preceding the municipal election and shall be conducted by the party machinery of such parties, under the rules of such party, but with the same requirement of registration for suffrage as in the municipal election. If a second primary should become necessary it shall be held one week after the first primary, and should a third primary become necessary it shall be held three days after the second primary. (h) If the election herein provided for shall result in the adoption of the commission form of government, with a City Manager, the result of said election shall be filed by the Managers of Election with their certificate that such city had adopted the commission form of government, with a City Manager, as provided in this Article, and shall be accompanied by the order of the Mayor of such city appointing them as such Managers, attested by the Clerk of Council in office at the time of such appointment, under the seal of the city. (i) If said election shall result in favor of the commission form of government, with the City Manager, the salary of the Mayor shall not exceed one hundred (\$100.00) dollar per annum, and the Councilmen shall serve without salary. (j) The Mayor and Councilmen chosen herein provided shall constitute a quorum and the affirmative vote of two members shall be necessary to adopt any motion or pass any measure other than with reference to meetings and adjourn-

ment. Every ordinance or resolution shall be reduced to writing and read before the vote is taken thereon, and every ordinance or resolution passed by Council shall be signed by two members and be recorded before the same shall be enforced. The Mayor, or, in his absence, the Mayor *pro tem.*, who shall be the Councilman who received the largest number of votes at the preceding election, shall preside at all meetings of the Council, but shall have no power to veto any measure. (k) The Council shall have, possess and exercise all legislative and judicial powers and duties conferred upon such city or theretofore belonging to it and all powers and duties now exercised by the Commissioners of Public Works with power to abolish such existing subordinate offices as they may see fit. (l) The said Mayor and Councilman shall employ a City Manager, who need not be a qualified elector, and whose qualifications, terms of employment and salary may be determined and fixed by the Council, and who shall furnish surety bond in the sum of five thousand (\$5,000.00) dollars for the faithful performance of his duties. The said Manager shall exercise the administrative functions of the city government, and shall not be engaged in any other business or other occupation, except that this provision shall not prevent his employment by the Chamber of Commerce of such city to further the commercial interests of such city. The salary paid by such city to the City Manager shall not exceed twelve hundred (\$1,200.00) dollars per annum: *Provided*, That the Mayor and both Councilmen, by unanimous vote, may increase said salary to an amount more than \$1,200.00. The City Manager shall not have power to bind the city in any one transaction for more than five hundred (\$500.00) dollars, but any such contract shall be approved by the Council before the same shall be binding on the city. (m) Regular meetings of the Council for the transaction of the city business shall be held at such times as may be provided for by ordinance, and at least once a month, and all such meetings, whether regular or special, shall be open to the public. At the end of each year, beginning with the date herein fixed for the first election of the officers herein provided for, the Council shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of such examination in a newspaper published in the city. (n) The term of office of the Mayor and Councilmen who shall be elected under the provisions hereof, if the result of such election shall be in favor of the commission form of government, with a City Manager, shall commence on the fifteenth day following said election. (o) Sections 26, 29 and 36 of this Article are hereby declared applicable to such city, and Section 27 is also made applicable, except that there shall be no criminal liability or penalty for violation thereof, but no contract made in violation thereof shall be deemed valid. No other Sections of this Article shall be applicable to such city. (p) The Mayor or any Councilman may be removed from office in the following manner: Whenever qualified, registered electors of said city, equal in number to at least twenty per centum of the entire registered electors registered for the last preceding municipal election, file with the Governor a petition demanding the removal of the Mayor or any Councilman or Councilmen, and stating the grounds for such demand, the signatures to

the said petition showing the place of residence and the occupation of each signer, and stating that he was a qualified registered elector in the past preceding municipal election of said city, and the said petition being duly verified on oath and the grounds of demand and genuineness of the signatures and qualifications of the signors of the petition, the said Governor shall order an election for a day forty-five days after the filing of the petition with the said Governor: *Provided*, That if the forty-fifth day falls on Sunday or on a legal holiday, the election shall be held on the next day thereafter which is not a Sunday or legal holiday. After receiving said petition the Governor shall have ten (10) days in which to examine it and investigate and determine as to the reasonableness of the grounds as alleged in the petition for recall election and whether it conforms to the requirements hereinbefore set forth. Whenever an election shall be ordered under the provisions of this Section the Governor, at the time of ordering such election, shall appoint two Supervisors of Registration, one of whom shall have signed the petition for recall, and at the same time appoint three Managers for each precinct; said Supervisors of Registration shall open books of registration at the City Hall beginning three days after their appointment and keep said books for registration for four hours each day for ten consecutive days. The said Supervisors shall keep said books of registration in their custody until two days before the date of election, when they shall turn over the books to the Managers of Election. After the election shall have been held the books of registration, together with all other records of said election, shall be by the Managers filed with the Clerk of the city. The said election shall be conducted by the Managers of Election under the rules and regulations and penalties applying to other elections, at which election the Managers of Election hereinbefore provided for shall provide ballots on which shall be placed the name of such candidate or candidates as may be nominated in writing by twenty-five or more qualified electors of said municipality, the proof of said nomination to be the written nomination by twenty-five or more qualified electors, which shall be filed with said Managers of Election and made a part of the record thereof, or by a primary election in which not less than fifty qualified electors participated by voting, which primary election and the result thereof showing the person or persons so nominated to have been nominated in such primary election shall be proven by the certificate of the president and secretary of the club or clubs holding such primary election, duly verified by their oaths which certificate shall be filed with said Managers of Election and made a part of the record thereof.

1914, XXVIII, 573; 1916, XXIX, 824; 1918, XXX, 681.

(4717) § 43. Only Nominees as Above Provided May Be Candidates—
Term.—No person or persons may be candidates in such recall election, nor shall the Managers of Election place on the ballots the name of any person or persons, whether incumbent or otherwise, who have not been nominated as above provided, and the person or persons elected in such recall election shall serve thereafter during the term for which they were elected.

1918, XXX, 681.

(4718) § 44. **Greenville May Come Under Article.**—That the City of Greenville may adopt the provisions of this Article and enjoy the benefit of its privileges under the following conditions:

1. **ELECTION ON COMMISSION GOVERNMENT—BALLOTS.**—There shall be held an election in said city on the first Tuesday in December, 1916, at which said election there shall be submitted ballots to be provided by the Board of Commissioners of Elections upon which shall be written or printed "Shall the City of Greenville adopt the Commission Form of Government? Yes. No."

2. **NOTICE OF ELECTION.**—Notice of said election shall be given by the Mayor of said city by advertisements appearing once a week for at least three weeks prior to said election in each of the daily newspapers published in said city, such notice to state time and place of said election.

3. **CONDUCT OF ELECTION.**—The Managers of said election shall be appointed, and the election conducted and the vote canvassed, and the result declared in the same manner as in other elections in said city, except as otherwise provided herein.

4. **REGISTRATION.**—The books of registration, both municipal and county, shall be open for the registration of electors for three weeks each day of the week except Sunday, at least five hours per day, and shall be closed after said three weeks at least thirty days before the date of said election: *Provided*, That the registration of voters in said city shall be in charge of the municipal registration officers of said city, and they shall be provided by Council with the necessary books and shall keep, subject to public inspection and under the supervision of the Board of Commissioners of Elections, a permanent record of their transactions with regard to said registration.

5. **COMPOSITION OF CITY COUNCIL IF ELECTION FAVORABLE—OFFICERS—SALARIES.**—If the election on question of adopting commission form of government results in favor of adopting said form of government, then, in that event, the City Council of said city shall, when the officers herein provided for have been duly elected and qualified, be composed of one Mayor, four Councilmen, and three Advisory Councilmen, who shall be qualified electors of said city, and shall be elected at large, and whose salaries shall be as follows: Mayor, twelve hundred dollars; Councilmen, each, one thousand dollars, and Advisory Councilmen, each, one hundred dollars per annum.

6. **TERMS OF ADVISORY COUNCILMEN.**—That of the three Advisory Councilmen so elected the one receiving the highest number of votes shall serve six years, the one receiving the next highest number of votes shall serve four years, and the remaining one shall serve two years, and thereafter one Advisory Councilman shall be elected every two years.

7. **VOTE—QUORUM—WHEN ADVISORY COUNCILMEN MAY VOTE.**—The Mayor and Councilmen and Advisory Councilmen, chosen as herein provided, shall constitute the City Council of the City of Greenville, the Mayor and regular Councilmen shall have the right to vote on all questions, and except as to matters required to be voted upon herein by the Advisory Councilmen, three shall constitute a quorum and the affirmative vote of a majority of the members of the Council present shall be necessary to pass

any measure or adopt any motion. That the three Advisory Councilmen shall have the right, and it shall be their duty, to vote on any and all budgets, appropriations, ordinances, and reassignments of departments, and upon all questions in the consideration of which the Advisory Councilmen shall have the right to vote, five shall constitute a quorum, and the votes of a majority of the Councilmen present shall be necessary to pass any measure relating to budgets, appropriations or ordinances: *Provided, however*, If upon any question the Council shall be evenly divided the vote of the Mayor shall determine the adoption or rejection of the measure voted upon.

8. NOTICE — CONTINUATION OF CERTAIN PRESENT OFFICERS — CERTAIN OFFICIALS TO GO OUT OF OFFICE.—The result of election as to the form of government, if adopted, and the date of election of Mayor, Councilmen, and Advisory Councilmen thereunder, shall be filed with the Secretary of State by the Mayor then in office, and such filing shall be sufficient record and notice that said city is thereafter operating under the form of government so adopted: *Provided, however*, That the Mayor and Aldermen and all city officials in office at time of election on question of adoption of said form of government shall continue and remain in office and the form of government be unchanged, until the expiration of the terms of office of the present Mayor and City Council: *Provided, further*, That should said commission form of government be adopted, then the terms of all officers and employees under the present form of government, except the Board of Health, shall cease and determine when said commission form of government becomes effective under this Act: *Provided, further*, That this Act shall not affect in any way the Board of Health of the City of Greenville, nor its powers nor method of appointment.

9. REGULAR ELECTION.—At the regular date for next election for Mayor in said city, in the event the commission government be adopted, an election shall be held, at which election the Mayor, Councilmen and Advisory Councilmen herein provided for shall be elected for terms of office as follows: The Mayor and Councilmen as provided in Section 18 of this Article, and the Advisory Councilmen for the terms of office hereinabove provided for.

10. NUMBER OF SIGNATURES REQUIRED.—The number of signatures required under Section 28 of this Article shall be equal to forty per cent. of the total number of electors registered at time of last preceding regular election in and for said city.

11. PROVISION INAPPLICABLE TO ADVISORY COUNCILMEN.—That the provision of Section 23 relating to office hours of members of Council shall not apply to the three Advisory Councilmen.

12. BOARD OF PUBLIC WORKS TO BE ABOLISHED.—That upon the adoption of the commission form of government and the election of the Mayor and Councilmen thereunder, the duties and powers of the Board of Commissioners of Public Works in said city shall thereupon be devolved on the City Council and the said Board of Commissioners of Public Works thereby abolished.

ARTICLE IX.**Commission Form of Government for Cities of More Than Twenty Thousand Inhabitants and Less Than Fifty Thousand Inhabitants.**

(4719) § 1. **Certain Cities May Adopt Form of Government.**—Any city which, by the last preceding United States census heretofore or hereafter made and published, may have more than twenty thousand inhabitants and less than fifty thousand inhabitants, may adopt the form of government provided for in this Article and become organized as a city under the provisions hereof, retaining and exercising all the rights and powers, and remaining subject to all the duties and obligations heretofore otherwise granted or imposed by law not herein repealed specifically or by necessary implication.

Civ. '12, § 3072; 1910, XXVI, 523.

State ex rel. Shull et al v. Manning, Governor, 104 S. C. 260, 88 S. E. 471.

(4720) § 2. **Adoption of Form of Government to Be Submitted to Election—Proclamation.**—Upon the petition of registered electors, qualified to vote in such city, equal in number to twenty-five per centum of the votes cast for all candidates for Mayor at the last preceding city election of any such city, showing the residence and occupation of each petitioner, and verified as hereinafter required for other petitions, the Mayor shall, by proclamation, submit to a vote of the qualified registered electors of said city the question of adopting the form of government herein and organizing as a city under this Article at a special election to be held at a time specified in said proclamation, not later than one month and not earlier than one week after said petition is filed. If the plan of government herein provided for be not adopted by the majority vote cast at the said special election the question of adopting said plan shall not be resubmitted to the voters of said city for adoption within two years thereafter, but at the expiration of two years the same question may be resubmitted upon the presentation of a petition as hereinabove provided for. The question shall be submitted by the Mayor in his proclamation in the following form, to wit: "Shall the City of (name of city) adopt the form of government provided in Article IX, Chapter LI, of the Code of Laws of South Carolina (cities of more than twenty thousand inhabitants and less than fifty thousand inhabitants)?"

Civ. '12, § 3073; 1910, XXVI, 523.

(4721)* § 3. **Election—Ballots—Declaring Result—Electors Entitled to Vote.**—At such election there shall be provided by the Board of Commissioners of Elections ballots, upon which shall be written, "Shall the City of (name of city) adopt the form of government provided in Article IX, Chapter LI, of the Code of Laws of South Carolina (cities of more than twenty thousand inhabitants and less than fifty thousand inhabitants)? Yes. No." (Erase one answer.) Each qualified registered elector shall be allowed to vote one ballot; the said election being conducted and the vote canvassed and the result declared in the same manner as heretofore provided by law in respect to municipal elections, except as hereinafter provided. If the majority of the votes cast shall be "Yes" (the word "No" being

erased), the Board of Commissioners of Elections shall declare that the said city has adopted the form of government provided for herein. If there be not a majority of the ballots with the word "Yes" thereon and the word "No" erased, the Board of Commissioners of Elections shall declare that the said form of government has been rejected. Immediately after the result of said election is declared, if it be in favor of the adoption of the said form of government, the Mayor shall forthwith file with the Secretary of State a certificate stating the result of said vote, which certificate shall be recorded in the office of the Secretary of State, and shall be a sufficient record and notice that the said city is thereafter operating under the said form of government: *Provided, however*, That the Mayor and Council and other officers then in office, shall continue and remain until their successors shall be elected and shall qualify as hereinafter provided; and all ordinances, resolutions, or other provisions, theretofore of force, and not inconsistent with the provisions of this Article, shall remain until altered or repealed by the Council elected as hereinafter provided. For the election on the adoption of this form of government the registered electors entitled to vote shall be those on the latest list that may have been registered for a municipal election, and if such registration be then in progress it shall be continued with all dispatch every day up through the third day preceding the special election herein provided for, and on such day shall be closed until after the result of the election is declared, and if the result of the election be in favor of this form of government, then registration for any and every election thereafter shall be made by the Board of Commissioners of Elections herein provided for, with the requirements herein provided.

Civ. '12, § 3074; 1910, XXVI, 523.

(4722) § 4. Election for Mayor and Councilmen.—Immediately after the filing of said certificate in the office of the Secretary of State, the Mayor shall by proclamation published continuously in the daily newspapers of said city, up to the day of the election, order a special election for one Mayor and four Councilmen, said election to be held not earlier than one month and not later than six weeks after the issuing of said proclamation, the Mayor and four Councilmen to be voted for at large, said election to be governed by the provisions hereinafter made with reference to regular elections for Mayor and Councilmen in such city or as otherwise provided for by law: *Provided*, That the Board of Commissioners of Elections shall provide the ballots and shall put thereon the names of all candidates, of whom notice must have been given for at least two days: *Provided, further*, That no ballot shall be counted for any candidate for Councilman unless it be for the full number of Councilmen to be elected, and this rule shall apply to every election for Councilmen.

Civ. '12, § 3075; 1910, XXVI, 523.

(4723) § 5. Term of Office of Mayor and Councilmen.—In every such city there shall be a Mayor and four Councilmen elected for the term of four years: *Provided*, That of the four Councilmen elected at the first election, two shall serve for four years, and two for only two years, and immediately after the said first election, the four Councilmen therein elected shall

appear before the Board of Commissioners of Elections, hereinafter provided for, and in the presence of, and under the direction of, the said Commissioners, and in public determine by lot the term of office for which each shall serve, whether two or four years; and the said Board of Commissioners of Elections shall certify to the Mayor the term of office of each Councilman as so determined by lot, and thereafter, every two years, on the second Tuesday in May, an election shall be had for two Councilmen, and every four years, on the second Tuesday in May, an election shall be had for a Mayor and two Councilmen, and the said Mayor and four Councilmen shall constitute the City Council of said city. If any vacancy occurs in the City Council the same shall be filled by a special election called by the remaining members of the City Council, or a majority thereof, upon three weeks' notice duly published in at least one of the newspapers published in such city, and such special election shall be held and otherwise conducted as a regular election for Mayor and Councilmen is held and conducted: *Provided*, That in case the unexpired term shall not be for a longer term than three months, the vacancy shall be filled by the remaining members of City Council, or a majority thereof.

Civ. '12, § 3076; 1910, XXVI, 523; 1920, XXXI, 897.

(4724) § 6. Primary Elections—How Conducted.—There shall be no party primary nominations of any person as a candidate for Mayor or Councilman, unless the said party primary election be conducted and the qualifications for suffrage therein be enforced as herein provided. The primary election of any party for nominating Mayor and Councilmen shall be held on the second Tuesday preceding the municipal election, and shall be conducted by the duly appointed Board of Commissioners of Elections and Board of Managers of Elections for the said municipal election, who shall be paid as for the holding of said municipal election, and shall conduct the primary elections at the same places and in the same manner and with the enforcement of the same requirements of registration for suffrage as in the municipal election, having a separate box for each organized political party in said city, and for any violation of the law governing the same shall be subject to the same punishment as in violation of the law governing other elections: *Provided, however*, That no person shall be allowed to vote in any party primary election unless he be a member of said party and make oath to that effect, as provided by the rules of said party: *Provided, further*, That no primary election shall be held for any political party unless the chief officer or officers in its city organization shall notify the Mayor and the Chairman of the Board of Commissioners of Elections for the municipal election at least five days before the time for the holding of the party primary election that the said political party desires a primary election, and at such primary election three members of such political party, duly appointed for the purpose by the proper officers of the party, shall have the right to be present at each polling precinct and advise the Managers if any person offering to vote in said party primary be not a member of said party and file protest as ground for legal contest in case such person be allowed to vote by the legal Managers. No ballot cast in said primary election shall be counted for any person who shall not have filed with the Chairman of the Board of Commissioners of Elections the

pledge as to corrupt practices and the itemized statements as to expenditures, as provided in an Act making certain offenses in primary elections misdemeanors and prescribing penalties therefor, approved March 6, 1905, Volume XXIV of the Statutes, at page 949. The Board of Commissioners of Elections shall cause the names of all candidates in the primary election, classed according to their party affiliation, to be published in the daily newspapers of the city from the time that they have become qualified as candidates up to and including the day of the primary election; and the said Board shall provide the printed ballots to be used in the said party primary elections, the names of candidates for Mayor and, also separately, the names of the candidates for Councilmen, arranged alphabetically; the ballots in each case to bear the words "Vote for (the number to be elected)." The candidate receiving the largest majority vote shall be declared elected. In case a primary election do not result in a majority and larger vote for the number of persons to be elected in the regular municipal election, a second primary shall be had on the seventh day after the first primary, in which second primary the ballots shall contain, for each position for which choice is to be made, the names of two persons—those receiving the highest vote at the preceding primary election: *Provided, further*, That the Supervisors of Registration in all counties containing municipalities affected by this Article shall be required to open the books of registration for a period of twenty days for primary elections. The said period of registration to close thirty days before said primary elections. Notice of the opening of books for the purpose of registration shall be given by advertising same in the papers of the county for at least five days, giving time and date of opening and closing of said books. The hours for registration shall be from 12 m. to 8 p. m. each day. The Supervisors of Registration shall receive three dollars each per day as additional compensation to that now provided by law: *Provided, further*, That the Board of Commissioners of Election of cities affected by the terms of this Article, shall allow registration for twenty days consecutively up to thirty days preceding the first primary election and shall require as a prerequisite to registration proof of payment of city, as well as other taxes, if past due.

Civ. '12, § 3077; 1910, XXVI, 523; 1912, XXVII, 567.

(4725) § 7. Expenses of Election.—The expenses of each and every election provided for in this Article, including advertisement, provision of ballots and any other item, shall be paid out of the City Treasury, upon the warrant of the Chairman of the Board of Commissioners of Elections.

Civ. '12, § 3078; 1910, XXVI, 523.

(4726) § 8. City Council—Quorum—Record of Votes.—The Mayor and Councilmen chosen as herein provided shall constitute the City Council of such city, and each of them shall have the right to vote on all questions coming before the Council, three of them constituting a quorum; and the affirmative vote of three members of said Council shall be necessary to adopt any motion or pass any measure, other than with reference to meetings and adjournments. Upon every vote, the yeas and nays shall be called and recorded, and every ordinance or resolution shall be reduced to writing and read before the vote is taken thereon, and every ordinance or

resolution passed by Council shall be signed by three members and be recorded before the same shall be in force. The Mayor, or, in his absence, one of the Councilmen chosen as Mayor *pro tem.*, shall preside at all meetings of the Council, but shall have no power to veto any measure.

Civ. '12, § 3079; 1910, XXVI, 523.

(4727) § 9. Powers of Council.—The Council shall have, possess and exercise all executive, legislative and judicial powers and duties conferred upon such city, or theretofore belonging to it, with the power to establish such subordinate officers as they may see fit and assign to them appropriate duties, subject to the Council. Each member of the Council shall give to the duties of his office all the time that may be needed for the most efficient conduct of the affairs of the city.

Civ. '12, § 3080; 1910, XXVI, 523.

(4728) § 10. Five Departments Created—Powers of Council—Salaries—Meetings.—The executive and administrative powers and duties shall be by said Council distributed among five departments, of which each of the members of Council shall be the Superintendent of one, the Mayor making the assignment, and reassignments being made by a vote of Council when deemed necessary. The Council shall have power to change or abolish any offices theretofore existing in said city, and to establish such offices with such salaries as may seem desirable, and shall, by a vote of three members, fill any position, or remove any officer, except certain civil service positions and officers hereinafter provided for, and shall abolish, as to such city, the Police Commissioners provided for in "An Act to authorize the establishment of Boards of Police Commissioners, and powers thereof in cities of not less than twenty thousand and not more than fifty thousand inhabitants," approved February 26, 1902, Statutes at Large, Volume XXIII, at page 1050; the police powers of said city being thereafter exercised by said Council, with one of the members of Council as Superintendent of said department: *Provided, however,* That other Acts of the General Assembly applicable to such city shall remain of force. The Mayor shall be paid an annual salary of twenty-five hundred dollars (\$2,500.00) and each Councilman an annual salary of two thousand dollars (\$2,000.00), payable in equal monthly installments. Regular meetings of the Council shall be held at such times as may be provided for by ordinance, and at least once a month, and all meetings, whether regular or special, at which any person not a city officer is admitted, shall be open to the public.

Civ. '12, § 3081; 1910, XXVI, 523.

(4729) § 11. Ordinances—How Passed—Franchise to Occupy Streets.—Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making of any contract or granting any franchise or right to occupy or use the streets, highways, bridges or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and in such form remain on file with the City Clerk, open to public inspection, at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges or public places in any city shall be

granted, renewed or extended, except by ordinance passed three times on three separate days; and every franchise or grant for interurban or street railways, waterworks, gas or electric light or power plants, heating plants, telegraph or telephone systems or other public service utilities within said city, must be authorized or approved by a majority of the electors voting thereon at an election which shall be ordered by Council.

Civ. '12, § 3082; 1910, XXVI, 523.

(4730) § 12. Qualification of Officers and Employees—Provisos.—No officer or employee, elected or appointed, in any such city shall be interested, directly or indirectly, in any contract, or job, for work or materials, or the profits thereof, or any services to be furnished or performed for the city, or for any person, firm or corporation operating interurban or street railways, waterworks, gas works, electric light or power plants, heating plant, telegraph or telephone system, or other public utility within the territorial limits of said city, or doing business or proposing to do business in said city. No such officer or employee, members of the health, waterworks, police and fire departments excepted, shall accept or receive, directly or indirectly, from any person, firm or corporation operating within the territorial limits of said city, any such public utilities company, or other business under a public franchise, any frank, free tickets or free service, or any other service upon terms more favorable than are granted to the public generally, or request or induce the granting of any such favor to any other person. Any violation of the provisions of this Section shall be a misdemeanor, punishable by a fine of not less than one hundred (\$100.00) dollars nor more than five thousand (\$5,000.00) dollars, or by imprisonment for not less than one (1) month nor more than five (5) years: *Provided, however,* That the policemen and firemen, in uniform, shall have the right to free transportation upon any street railway within the limits of said city.

Civ. '12, § 3083; 1911, XXVII, 25; 1914, XXVIII, 571.

(4731) § 13. How Mayor and Councilmen May Be Removed from Office.—The Mayor or any Councilman may be removed from office in the following manner whenever qualified registered electors of said city, equal in number to at least twenty per centum of the entire votes cast at the primary election which chose the candidates at the last preceding municipal election, file with the Governor a petition demanding the removal of the Mayor or Councilman, and stating the grounds for said demand, the signatures to said petition showing the place of residence and the occupation of each signer, and stating that he is a qualified registered elector of said city, said petition being duly verified as to these facts by one or more persons who make affidavit on said petition as to any stated number of said petitioners, the said Governor shall order an election for a day not later than thirty (30) days and not earlier than two (2) weeks, after the filing of the said petition with the said Governor; said election to be conducted by the Board of Commissioners of Election and the Managers of Elections, under the rules and regulations and penalties applying to other elections, at which election the said Board of Commissioners of Election shall provide ballots, on which shall be placed the name of the Mayor or

Councilman whose removal the petitioners had demanded and also the name or names of any other candidate or candidates, for the position then held by the said Mayor or Councilman, the said ballot to be prepared at least five (5) days before the date of the election. The person receiving the majority of the votes cast in said election shall hold the office during the unexpired term, and the incumbent shall not be removed unless a majority vote is received by some other person, but, in case there be no election, a second election shall be had, at which the ballots shall contain only the names of the incumbent and of his opponent who received the highest vote at the preceding election, the said election to be held on the third day after the first election, unless delayed by a contest as to the result of the election, in which case the Board of Commissioners of Election shall advertise a day for the second election, not later than ten (10) days after the first election: *Provided*, That a petition for the recall of Mayor or any Councilman of any city of less than ten thousand and more than four thousand inhabitants shall contain the names of qualified registered electors of said city equal in number to at least forty per centum of the entire votes cast at the primary election which chose the candidates at the last preceding municipal election.

Civ. '12, § 3084; 1910, XXVI, 523; 1914, XXVIII, 492.

(4732) § 14. Ordinances May Be Proposed by Petition — Election. — Any proposed ordinance may be submitted to the Council by a petition signed by qualified registered electors of said city, equal in number to twenty per centum of the votes cast for Mayor at the last preceding primary election, said petition stating the facts as to the petitioners and being verified, as hereinbefore provided for petitions; and within two weeks after the filing of said petition, said Council shall pass the said ordinance or call a special election, at which the adoption or rejection of such ordinance shall be submitted to the registered electors of said city, or said ordinance shall forthwith, upon the failure of Council to act as hereinabove prescribed, become a valid ordinance of said city after the expiration of said two weeks. At such election, the ballots shall contain the words "For the Ordinance" (and state the title of the proposed ordinance), and "Against the Ordinance." If the majority of the registered electors voting on the proposed ordinance shall vote in favor thereof, such proposed ordinance shall thereupon become a valid ordinance of said city; and any ordinance proposed by a petition or adopted by an election as herein provided, cannot be repealed or amended, except by an election as herein provided. Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this Section, but there shall not be more than one special election for such purpose in any period of six months. The Council may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general city election or at an election specially ordered, not earlier than one (1) year thereafter, or at a special election ordered at any time upon the filing of a petition of the percentage of qualified registered electors hereinbefore referred to, requesting such election to repeal or amend said ordinance.

Civ. '12, § 3085; 1910, XXVI, 523.

(4733) § 15. Ordinances May Be Suspended.—When any ordinance is passed by Council its operation shall be suspended and its ratification or rejection shall be submitted to a vote of the qualified registered electors of the city at a special election, if a petition signed by qualified registered electors of the city as hereinbefore required, shall be presented to Council demanding the same; and after the filing of said petition, such ordinance shall not be operative unless a majority of the ballots cast at such election shall be in favor of the same.

Civ. '12, § 3086; 1910, XXVI, 523.

(4734) § 16. Children Within Jurisdiction of Certain Recorder's Courts May Be Summoned to Show Cause Why Court Should Not Assume Care or Control of Them—What Children May Be So Summoned—Parents to Be Summoned.—Whenever a petition shall be presented to the Recorder's Court of any city of this State containing more than twenty thousand inhabitants and not more than fifty thousand inhabitants, according to the census of 1910, supported by affidavits, either on knowledge or on information and belief, that any child within its jurisdiction under the age of eighteen years is destitute or homeless, or is a beggar, or whose home, by reason of cruelty, neglect or depravity on the part of its parents, or other person in whose care it may be, is an unfit place for such child, or that any child is being required to work contrary to law, or in an unreasonable degree, the conditions and circumstances of the parents or person with whom it resides being considered; or is incorrigibly mischievous or vicious, or is a persistent truant from school, or habitually associates with criminals or vicious or immoral persons, or is growing up in ignorance or idleness, or is in imminent danger of becoming vicious or criminal; or whenever a report is made to the said Court by an officer of the law, as hereinafter provided, that any child under the age of eighteen years is liable to arrest or has been arrested for a violation of law, the said Court shall issue a summons to the child and its parent or parents or person with whom it resides, or in case of a child under arrest, to the officer in whose custody he then is, also to show cause why the supervision, care or custody of the said child should not be assumed by that Court. Such summons shall be returnable within three days from the date of service. The issuing of such summons shall not be a stay of any criminal proceedings which have been instituted against such child and which are referred to in said petition or report, except as hereinafter provided. In case the child has parent or parents within the jurisdiction of the Court with whom the child does not reside, but whose residence is known or can with reasonable diligence be ascertained, the said parent or parents shall be summoned to appear before the Court before the final disposition of the case.

1917, XXX, 132.

(4735) § 17. Court May Summon Witnesses.—The said Court shall have the power to summon before it any witnesses which it may deem necessary to a proper investigation and determination of the allegations of the said petition or report.

1917, XXX, 132.

(4736) § 18. **Procedure When Allegations of Petition Proved.**—Upon proof of the allegations of the petition the said Court shall have power to order such parent or parents or person with whom the child resides, to do and perform such duties in regard to the support and control of the child as shall be lawful and right. In case it is found necessary to apply remedies beyond the constitutional powers of the Court, the said Court shall certify the fact to the Court of Common Pleas, or to the Court of General Sessions, as the case may require, to act upon the same, and apply such remedies as may be lawful and right.

1917, XXX, 132.

(4737) § 19. **Probation Officers — Duties and Powers.**—If, after due hearing, the Court shall assume the supervision, care or custody of the child, it shall require the parent or parents or persons with whom it resides, and in the discretion of the Court, in addition to these or in lieu thereof, some suitable and proper person or persons to serve without compensation, and to be known as probation officer or officers, to look after said child and to report to the Court for as long a period and as often as the Court shall require, as to the treatment and conduct of the said child; and the child shall report to said probation officer or officers from time to time, as the Court may prescribe; and said probation officer or officers shall at all times have the right and power to investigate the surroundings, conditions, treatment and conduct of the child, and report same to the Court.

1917, XXX, 132.

(4738) § 20. **Commitment of Children to Individuals or Institutions.**—If at any time the Court shall find that the custody of the child should be taken from the parent or parents or persons with whom it resides, it may bind over such child to some orphan asylum or other institution for the care of children, or to some responsible person or persons, in all cases to be first approved by the Court, after due investigation, who will agree in writing to care for the child in a human manner and give it a reasonable amount of education, and to report to the Court at least once a year as to the treatment and conduct of the child, or, in the discretion of the Court, the child, if colored, may be sent to the Reformatory, now located in Lexington County; or, if white, to the South Carolina Industrial School, now located in Florence County.

1917, XXX, 132.

(4739) § 21. **Child May Be Tried and Punished.**—If it appears to the Court that the child is incorrigibly criminal or has committed a crime which demands punishment, rather than reformative discipline, the Court shall try said case or remand same to Sessions Court for trial and punishment.

1917, XXX, 132.

(4740) § 22. **Arrest and Incarceration of Child — Provisions.** — Upon the arrest of any child less than eighteen years of age, the arrest of the said child shall be reported to the Court by the officer making the arrest as speed-

ily as possible for investigation and action under this Article. But if confinement be necessary before the case can be heard, the child shall not be incarcerated in the same room with adult criminals, but in a separate room of detention, and where municipal authorities have made or shall make suitable provision therefor, said room or rooms shall be outside the jail or guardhouse: *Provided*, Separate accommodations shall be provided for boys and girls and for white and colored.

1917, XXX, 132.

(4741) § 23. Failure to Obey Court Punishable.—The neglect or refusal to obey the summons of the said Court, or any lawful order made by him as here authorized, shall be punishable as now authorized by law for the violation of the orders and decrees of said Court.

1917, XXX, 132.

(4742) § 24. Appeals.—All orders made in pursuance of the Article by the said Court shall be subject to review on appeal by the petitioner, the child, or its parents, or the person with whom it resides, or in case the child is charged with a crime beyond the jurisdiction of said Court, it shall be the duty of the Court promptly to certify to the Solicitor of the Circuit, at his request, the testimony in the case, together with his findings and orders thereon. All appeals shall be to the Judge of the Circuit at Chambers, and shall be heard on the original papers. The appeal shall act as a stay of proceedings in the Recorder's Court until the issue shall be heard and determined by the Judge of the Circuit Court. An appeal shall lie from the Circuit Court, but such appeal shall not act as a supersedeas unless the Circuit Judge shall so order, stating in the order that the issue raised is in serious doubt, and that if his decree is erroneous, its enforcement might work serious harm.

1917, XXX, 132.

(4743) § 25. City to Pay Costs and Fees.—The costs and fees of those in Courts for investigations to be paid by the city in which the case is heard.

1917, XXX, 132.

(4744) § 26. Civil Service Commissioners — Examinations — Removal from Office.—The City Council, immediately after organizing under this Article, shall by ordinance appoint three Civil Service Commissioners, who shall hold office for two, four and six years, the successors of each to be thereafter appointed for the term of six years, at the expiration of the preceding term of service; such Commissioners to be removable from office by Council only for cause, four Councilmen voting for such removal. Council shall have authority to fill any vacancy for the unexpired term. The said Civil Service Commissioners shall, twice a year, or oftener if they deem it necessary, under such rules and regulations as they may prescribe, hold examinations for the purpose of determining the qualifications of applicants for positions on the police force, in the fire department, or in any other special line of service in the city government which by the City Council may be placed under civil service regulations. The examination for each line of service is to be practical, fairly testing the fitness of the persons examined to discharge efficiently the duties of the particular line

of employment. The Commissioners shall, as soon as practicable after such examination, certify to the Council the persons who have satisfactorily passed such examination, stating the order of excellence: *Provided, however*, That the Commissioners shall not certify the name of (and may deny the examination to) any persons as to whose honesty and integrity, or general moral character, they have not reasonably satisfied themselves by affirmative investigation. Council shall choose employees in the civil service departments of the government, which shall always include the police department and the fire department, only from persons so certified by the Civil Service Commissioners; and no appointee to a civil service position shall be removed from office by Council except by and with the approval of a majority of the Civil Service Commissioners upon charges duly presented, as to which the said employee shall have the opportunity to make his defense: *Provided, however*, That the Chief of Police and the Chief of the Fire Department, or any superintendent or foreman in charge of municipal work, may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders, but shall within twenty-four hours thereafter report such suspension or discharge, and the reason therefor, to the member of Council who may be the superintendent of said department, who shall thereupon affirm or revoke such discharge or suspension, which shall be final unless such employee shall, within five days of such ruling, appeal therefrom to Council, which shall, with the Civil Service Commissioners, fully hear and determine the matter and shall not finally discharge the employee without the concurrence of two-thirds of the Civil Service Commissioners. It shall further be the duty of the Civil Service Commissioners to give attention to the work of all the departments within the civil service of said city and to make reports to Council and such publications to the public as they may deem proper. Said Civil Service Commissioners may be removed upon petition and vote as hereinabove provided for members of Council. Each Civil Service Commissioner shall be paid an annual salary of two hundred dollars (\$200.00), payable quarterly.

Civ. '12, § 3087; 1910, XXVI, 523.

(4745) § 27. City Attorney.—The City Council shall appoint a City Attorney, who must be a freeholder of the city, and for not less than five (5) years preceding his appointment a resident thereof. In addition to his general duties, which shall be prescribed by Council, it shall be his special duty, upon knowledge, information, belief, or probable ground of suspicion, to cause investigation, and, if possible, indictments and prosecutions for each and every violation of any of the provisions of this Article, or any other provision of law in respect to any of the inhibitions in this Article contained, or any bribery, corruption, malfeasance, or other violation of law whatsoever in respect to the said city by any member of Council, or any employee, or any other person or persons.

Civ. '12, § 3088; 1910, XXVI, 523.

(4746) § 28. Oath of Office—Dual Officers—Publication of Candidacy in Newspapers.—Before entering upon the duties of his office the Mayor and each Councilman and each Civil Service Commissioner shall take and

subscribe the oath of office prescribed in Section 26, Article III of the Constitution, and, further, that he will at all times endeavor to secure and maintain for the city an honest and efficient government in every particular, with an eye single to the public welfare. No member of Council or of the Civil Service Commission shall hold or be a candidate for any other office without first resigning or at once forfeiting his said office in said city government. No officer or candidate in connection with said city government shall directly or indirectly pay for any publication in any newspaper in commendation of his services or in advocacy of his candidacy or in respect thereto, or against any other candidate, except under the caption "Paid Advertisement," and any and no person, firm or corporation publishing or managing a newspaper shall publish for a consideration any commendation, advocacy or condemnation of any officer or candidate for office of said city without stating in said publication the price paid therefor and the person paying the same. Any violation of any of these provisions shall be punished by fine not exceeding five hundred dollars or imprisonment not exceeding one year: *Provided, however,* That the City Council shall annually or oftener publish for the information of the citizens in the daily newspapers or in pamphlets, or both, detail statements of the receipts and expenditures of the city and a summary of the proceedings and doings of the city government during the preceding period following the last publication, and also shall likewise annually publish the result of the examination of the books and accounts of the city by expert accountants, the expenses of all such publications to be paid out of the City Treasury.

Civ. '12, § 3089; 1910, XXVI, 523.

(4747) § 29. Board of Commissioners of Election.—Within five days after the filing of the requisite petition for the submission of the question of the adoption of the form of government herein provided for, the Governor of the State shall appoint from among the registered electors qualified to vote in said city three discreet and trustworthy men to serve as a Board of Commissioners of Elections for said city for the term of two years, unless sooner removed by the Governor, and until their successors are appointed and have qualified, any vacancy to be filled by the Governor, their compensation to be one hundred dollars a year each, to be paid quarterly by the City Treasurer. Said Commissioners shall take the oath of office as prescribed by Section 26, Article III of the Constitution, and shall organize as a Board by appointing one of their number Chairman of the Board, and such Chairman shall be empowered to administer oaths.

Civ. '12, § 3090; 1910, XXVI, 523.

(4748) § 30. Duties of Election Commissioners—Managers—Conduct of Elections — Recounts — Contests — Registration.—The said Board of Commissioners of Election shall forthwith appoint from among the registered electors qualified to vote in said city three discreet and trustworthy men to serve as Managers of Elections for each polling precinct in said city, for the term of two years, unless sooner removed by the said Board of Commissioner of Elections, and until their successors are appointed and have qualified, any vacancy to be filled by said Board of Commissioners of Elections, each Manager to be paid three dollars for each election in which

he serves, upon a warrant on the City Treasurer, drawn by the Chairman of the Board of Commissioners of Elections. The Managers of Elections shall take the oath of office as prescribed by Section 26, Article III of the Constitution, and that they will fairly and impartially conduct every election according to law and make a true return of the result thereof. They shall keep the polls open from 8 in the morning till 8 in the evening, and upon the closing of the same shall immediately proceed to count publicly the votes cast, and shall continue such count until the same is completed, and shall make a statement of the whole number of votes cast in such election, together with the number of votes cast for each person voted for for Mayor and for Councilman, or for or against a proposition submitted, upon the completion of which they shall transmit such statement to the Board of Commissioners of Elections for said city, through the Chairman of said Board of Commissioners or other member designated to receive said election returns, and shall at the same time deliver the ballot box, with the ballots which had been cast at said election sealed up therein; and said Board of Commissioners of Elections shall, immediately upon the receipt of such statement or report of the Managers, open and publish the same and tabulate all the returns, and in case of a very close election or a seeming probability of error or for other cause in the discretion of the said Board of Commissioners, shall recount the ballots, and on the second day succeeding the said election shall declare the result, and shall file a certified statement of the results of the balloting by precincts and in aggregate with the City Clerk, and also with the Clerk of the Court for the county, and in the case of an election to determine the question of adopting or of abandoning the form of government provided for in this Article, the said Board of Commissioners of Elections shall file such statement of result also with the Secretary of State for record in his office. The Board of Commissioners of Elections shall, as judicial officers, decide all protests or contests that may arise, and if necessary may adjourn from day to day and withhold the decision and the declaration of the result of the election for a period not exceeding five days from the second day after the election. No merely technical irregularities in any of the details hereinabove prescribed shall be held to vitiate an election, provided that it appear that the will of the registered electors was ascertained. The said Board of Commissioners of Elections shall also have charge of the registration of the electors of said city, and shall allow registration for four days consecutively up to two days preceding the first primary election, and shall require as a prerequisite to registration proof of payment of city as well as other taxes, if past due.

Civ. '12, § 3091; 1910, XXVI, 523.

Herbert v. Griffith, Mayor, et al, 99 S. C. 1, 82 S. E. 986.

(4749) § 31. This Article to Be Liberally Construed.—The usual rule of law as to the interpretation of statutory provisions and the construction of statutory powers shall be reversed in respect to this Article, which shall be construed liberally, the spirit always controlling the letter, and any technical deficiencies being supplied by the reasonable intendment of this Article as a whole in the light of municipal needs.

Civ. '12, § 3092; 1910, XXVI, 523.

(4750) § 32. How Form of Government May Be Abandoned.—Any city after operating for six years under the provisions of this Article may abandon the form of government herein provided and accept the provisions of the general law of the State applicable to it before the adoption of this form of government, by procedure of petition and election on the question of abandonment in the manner provided hereinabove for adopting this form of government.

Civ. '12, § 3093; 1910, XXVI, 523.

State ex rel. Shull et al v. Manning, Governor, 104 S. C. 260, 88 S. E. 471.

(4751) § 33. School Commissioners in Certain Cities May Condemn Lands.—That, subject to the same duties, liabilities and method of proceeding, all the rights, powers and privileges conferred upon municipal corporations by and under Sections (4455) to (4463), inclusive, of the Civil Code of South Carolina, be, and the same are hereby, granted unto and conferred upon all Boards of Public School Commissioners in cities containing twenty-five thousand (25,000) inhabitants for the purpose of condemnation of land for the erection thereon of any public schoolhouse or building or for public school playground or other use for the public schools.

1920, XXXI, 782.

ARTICLE X.

Powers of Cities of Fifty Thousand Inhabitants to Condemn Land for Water Front.

(4752) § 1. Cities of Fifty Thousand or More May Condemn Lands on Water Front.—Whenever any city of this State, having a population of fifty thousand inhabitants or more, and located upon a navigable stream, whether tidal or nontidal, shall desire to extend, improve or protect its water front for public purposes, it shall have the right to acquire all private property, whether within or without such city or partly within and partly without such city, needed for such extension, improvement or protection in the same manner, as to procedure, as is now provided by law for condemnation of rights of way by railroad companies, upon the payment of just compensation therefor as determined by said procedure. And the right hereby conferred on any such city shall include the right to condemn in the manner aforesaid the title or possession of any and all lands, water or riparian rights, wharves, docks, warehouses, buildings, rights of way, or any other property (including any property which may already have been condemned), where the same is so taken for the purpose of establishing, improving, developing, maintaining or operating the port and terminal utilities of such city for public purpose; and title thus acquired shall vest absolutely in said city: *Provided*, That no lands so condemned shall be sold to private owners by such city.

Civ. '12, § 3094; 1909, XXVI, 170; 1920, XXXI, 904.

(4753) § 2. Cities May Fill Up Certain Lowlands at Expense of Owner.—Whenever such extension, improvement or protection shall make necessary the filling up of lowlands, owned by private parties, to a level

established by the said city, and such filling up is proposed to be accomplished by excavation from the bed of a stream bordering the water front so to be extended, improved or protected, under a general plan established by said city, said lowlands may be filled up by the said city at the expense of the said private owners, and the cost thereof shall be a lien upon the lands so filled up; the said cost to each private owner shall be determined by the proportion which the cubic contents of the filling in each lot or parcel of land, separately owned, shall bear to the cubic contents of the whole area filled: *Provided, however*, That if the municipality and the owner cannot agree as to the cost of the filling aforesaid to be borne by such private owner, then the same shall be determined by a proceeding in the nature of an action against such property, to be instituted by the municipality, in the Court of Common Pleas for the county in which such municipality is situated, to recover the amount claimed to be due, and the reasonable cost to be paid by such lot owner shall be determined by the jury as in the cost of similar actions.

Civ. '12, § 3095; 1909, XXVI, 170.

(4754) § 3. How Such Lands Shall Be Filled.—The municipality shall first notify each private owner interested of the plan proposed and of the level up to which said lots are to be filled and of the general plan proposed, and such private owners may, if they see fit, arrange to fill up their lands at their own expense, such filling up to be done either prior to or contemporaneously with the filling done by the city, such filling to be in accord with the general plan adopted; and the owner or owners of any of said lands shall be entitled to use the mud or soil in the bed of the river in front of such land for the purpose of filling up their lands, in preference to any other, to the extent necessary to fill such lands.

Civ. '12, § 3096; 1909, XXVI, 170.

(4755) § 4. In Case of Disagreement, City May Condemn.—In the event that any lot owner objects to the cost of filling of his lot or lots, then, and in that event, such owner may require the municipality to purchase said lot at a price agreed upon between the said municipality and the owner; and in case of failure to agree upon the price, then, and in that event, the said municipality shall proceed to condemn, and is hereby authorized to condemn, the said lot or lots; and upon paying to the owner or owners the price that may be fixed therefor, as hereinafter provided, the title thereof shall vest in said municipality, who shall proceed to fill said lot or lots, and may sell the same to reimburse itself for all expenses and charges. That for the purpose of such condemnation the said municipality shall file, in the Court of Common Pleas for the county in which said municipality is located, a petition setting forth the necessity of filling of such lots, and that the owner or owners have refused or failed to fill the same, upon being notified, and that said owner objects to the estimated cost of said filling, a copy of which petition shall be served upon the owner or owners of said lots as summons are now served in cases of law. That the Judge of said Court of Common Pleas shall thereupon cause a jury to proceed to fix the value to the said lot or lots to be paid by the said municipality.

Civ. '12, § 3097; 1909, XXVI, 170.

Beattie et al v. City Council of City of Greenville et al, 113 S. C. 541, 102 S. E. 751.

(4756) § 5. Powers of Cities of Over 50,000 Inhabitants as to Port and Terminal Utilities—Elections on Bond Issues.—All cities of this State having a population of fifty thousand inhabitants or more, located upon a navigable stream, whether tidal or nontidal, shall have full power and authority to purchase, or otherwise acquire, within or without, or partly within and partly without, the corporate limits of such cities, lands, water or riparian rights, wharves, docks, warehouses, buildings, rights of way and any other property for the purpose and with the right of establishing, constructing, developing, improving, maintaining and operating the port and terminal utilities of such cities in aid of the commerce and for the public use and benefit of such cities and its citizens, with the right to make any and all contracts, rules, rates and regulations necessary or incident to that end; and to meet the cost of the same, such cities may issue coupon bonds, bearing interest at a rate not to exceed six per centum per annum, payable in any legal tender money of the United States forty years after date, with the privilege of redemption after twenty years from date: *Provided*, That before any such bonds shall be issued the City Council of such cities shall submit the question of the issue thereof to the qualified registered electors of such cities at a special election to be held by the City Council of such cities as hereinafter provided: *Provided, further*, That should any such election be held in any such cities prior to the next general municipal election therein there shall be afforded an opportunity for the due registration of all persons entitled thereto and who were not duly registered at the time of the last general election in such cities; and such registration shall be conducted in all respects in accordance with the law governing the registration of qualified electors in such cities prior to general municipal elections therein: *Provided, further*, That nothing herein contained shall require further registration of any elector qualified to vote at such special election under the laws now governing the same.

1920, XXXI, 969.

(4757) § 6. Petition for Tax Election—Conduct of Election.—It shall be the duty of the City Council of any such cities, upon the petition therefor of the majority of the freeholders of such cities, as shown by their tax books, to order a special election in any such cities for the purpose of submitting the question of the issue of such bonds to the qualified registered electors of such cities, said election to be held by such cities to be appointed and conducted in accordance with the laws of force governing such municipal elections. And if a majority of the electors voting at such an election vote for the issue of such bonds, the City Council of such cities shall so declare by ordinance, and shall issue said bonds and deliver them to the hereinafter created Port Utilities Commission of such cities.

1920, XXXI, 969.

(4758) § 7. Port Utilities Commissions—Personnel.—For the purpose of exercising the power and authority vested in such cities under the provisions of Section 5 of this Article, there is hereby created a Commission which shall be known as The Port Utilities Commission of (naming the city). This Commission shall be composed of the following nine members and their successors in office, who shall, as Commissioners, serve in such

capacity without compensation: Five Commissioners thereof shall be voted for by the qualified registered electors as hereinafter provided. Two of the said Commissioners so elected shall serve until the next ensuing general election for such cities, and three of said Commissioners so elected shall serve until the second next general election of such cities. The Commissioners who shall serve for the short and long terms shall be determined according to the number of votes received by such Commissioners, respectively, the Commissioners receiving the highest number of votes, respectively, to serve for the long term and the other Commissioners to serve for the short term. Whenever a tie vote shall have resulted in such election, the respective terms of those Commissioners so tying shall be determined by lot cast in the presence of the Election Commissioners as a whole. The term of office of each Commissioner elected by the qualified electors after the first term hereinbefore provided for shall be eight years. The remaining four Commissioners shall be *ex officio* the Mayor of such cities, *ex officio* the Chairman of the Committee on Railroads of the City Council of any such cities, and two Commissioners who shall be appointed by the Governor of the State of South Carolina, and who shall hold office for a term of two years. At the first meeting of The Port Utilities Commission of such cities after every election for Commissioners, it shall organize by electing from among the Commissioners one to act as Chairman of the Commission. A Secretary shall, as soon as possible, be appointed and shall serve for such period and be paid such salary as may be determined by the Commission, and until such appointment the Clerk of any such cities shall act as Secretary of the Commission. The Mayor and Aldermen of any such cities shall fill any vacancy occurring in the Commission by reason of death, resignation or otherwise, by appointment for the unexpired term, except in the case of the two members appointed by the Governor, in which case any vacancy shall be filled by the Governor. The persons so elected, designated or appointed to such office shall qualify by taking the oath taken by the election officers of any such city. The Mayor of such cities shall notify the persons elected as members of The Port Utilities Commission within ten days after the result of any election is declared, and promptly call a meeting for the purpose of organizing the Commission.

1920, XXXI, 969.

(4759) § 8. Elections for Commissioners.—The election for the Commissioners of The Port Utilities Commission of such cities may be held in accordance with law at the time of the election to determine the question of the issue of such bonds as hereinabove provided; or may be held at the option of such cities, in the following manner: Upon the duly signed petition of the registered electors qualified to vote in such cities, equal in number to twenty-five per centum of the votes cast for all candidates for Mayor at the last preceding city election of such cities, showing the residence and occupation of each petitioner, the Mayor shall, by proclamation, order a special election to be held at a time specified in said proclamation, not later than two months and not earlier than two weeks after said petition shall be duly filed with the proper officer. Those entitled to vote at said special election shall be all those who are then duly qualified registered electors of

such cities. The said special election shall be held and conducted as is provided by law for the conduct of municipal elections.

1920, XXXI, 969.

(4760) § 9. Powers of Commission—Reports to City Council.—The Port Utilities Commission of such cities is vested with full power and authority in its name to carry out on behalf of such cities the intent and purposes of the provisions of this Article; and to that end may exercise all and singular the rights, powers and privileges conferred upon such cities in Section 5 of this Article: *Provided*, That said Commission shall have no power to contract debts except as hereinafter provided. The Commission may adopt a seal and may sue and be sued in any of the Courts of this State by the name: The Port Utilities Commission of (naming the city). It may require and exact payment of such rates and charges as in the discretion of the Commission it is deemed wise to establish from time to time, giving such public notice thereof as it may determine to be reasonable, and with the power to change or modify such rates and charges as circumstances may seem to the Commission to warrant. The Commission shall receive the bonds required to be delivered to it under Section 6 of this Article, and may sell and dispose of said bonds and apply the proceeds, or so much thereof as may be necessary, towards the expenses and liabilities incurred by virtue of the exercise of the authority and powers vested in it under the provisions of this Article: *Provided*, That The Port Utilities Commission of such cities shall make a full statement to the City Council of such cities, at the end of each month, of its receipts, disbursements and outstanding accounts of all kinds for the preceding month: *And provided, further*, That the Commission shall have no power to incur any indebtedness whatsoever without the express authority or concurrence of the City Council of any such city.

1920, XXXI, 969.

(4761) § 10. Tax for Interest and Sinking Fund.—Any city exercising the power and authority conferred by this Article are hereby empowered to assess, levy and collect, in addition to the annual tax levied for other purposes, a sufficient annual tax from the taxable property of any such city to meet the interest to become due upon said coupon bonds, and also to raise the sum of at least one-fortieth part of the entire bonded indebtedness as a sinking fund in aid of the retirement and payment of such bonds. The said sinking fund shall be under the control and management of The Port Utilities Commission, and shall be applied to the payment of same when due.

1920, XXXI, 969.

(4762) § 11. Powers Granted Cumulative.—The powers conferred by the foregoing provisions of this Article upon such cities of this State are, and shall be taken, deemed and construed to be in addition to the powers now enjoyed by said cities.

1920, XXXI, 969.

CHAPTER LII.

Railroads—General Law.

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ARTICLE I.

General Provisions.

(4763) § 1. **Definition of Terms—To Whom Applicable.**—In the construction of this Chapter, except where such meaning would be repugnant to the context or contrary to the manifest intention of the Legislature, the phrase “railroads and railways” shall be construed to include all railroads and railways operated by steam, except marine railways doing business as common carriers in this State, and whether operated by the corporations owning them or by other corporations or otherwise; “railroad” shall be construed to mean a railroad or railway operated by steam power. The terms “railroad corporation” or “railroad company” contained in the law of this State shall be deemed and taken to mean all corporations, companies or individuals now owning or operating, or which may hereafter own or operate, any railroad, in whole or in part in this State, and the provisions of this law shall apply to all persons, firms and companies, and to all associations as common carriers upon any of the lines of railroads in this State (street railways and express companies excepted), the same as to railroad corporations hereinafter mentioned.

Civ. '12, § 3098; Civ. '02, § 2024; G. S. 1414; R. S. 1597; 1892, XXI, 15.

Crawford v. Mullins Lumber Co., 110 S. C. 318, 96 S. E. 494.

(4764) § 2. **Liability of Corporation Operating Road of Another Corporation—Trustees and Receivers—Liabilities.**—When a railroad laid out and constructed by one corporation is lawfully maintained and operated by another corporation, the latter shall be subject to the duties, liabilities, restrictions and other provisions, as they are set forth in this Chapter, respecting or arising from the maintenance and operation of such railroad in the same manner as if it had been laid out and constructed by said latter corporation. When a railroad is lawfully maintained and operated by trustees or receivers, they shall in like manner be subject to the duties,

liabilities, restrictions and other provisions respecting or arising from the maintenance and operation of such railroad which are attached in this Chapter to the corporation for whose stockholders or creditors, or either, they are trustees or receivers.

Civ. '12, § 3099; Civ. '02, § 2025; G. S. 1415; R. S. 1598.

Penalty under § (3887) may be collected of receivers of railroad company appointed by Federal Court, and suit may be brought without leave of Court. *Huguelet v. Warfield*, 84 S. C. 87, 65 S. E. 985.

The lessor is liable for damages arising from the acts of its lessee in the operation of the road. *National Bank v. Atlanta & C. A. Ry. Co.*, 25 S. C. 216; *Bouknight v. C. & A. Ry. Co.*, 41 S. C. 415, 19 S. E. 915; *Hart v. Same*, 33 S. C. 427, 12 S. E. 9; *Harmon v. C. & G. Ry. Co.*, 28 S. C. 401, 5 S. E. 535; *So. Ry. Co. v. Bouknight (O. C. A.)*, 70 Fed. Rep. 442, 30 L. R. A. 823.

Kirkland v. C. & W. C. Ry., 79 S. C. 273, 60 S. E. 668, 128 Am. St. Rep. 848, 15 L. R. A., N. S., 425; *Franklin v. Railway Co.*, 74 S. C. 332, 54 S. E. 575, overruling *Pennington v. Ry. Co.*, 85 S. C. 439; *Smalley v. Ry. Co.*, 73 S. C. 572, 53 S. E. 1000, 6 Am. & Eng. Ann. Cas. 868; *Shores v. Southern Ry.*, 72 S. C. 245, 51 S. E. 699; *Logan v. Ry. Co.*, 82 S. C. 518, 64 S. E. 515; *Reed v. Southern Ry.*, 75 S. C. 162, 55 S. E. 218; *Harbert v. A. & C. Air Line Ry.*, 74 S. C. 13, 53 S. E. 1001.

See *Kirkland v. C. & W. C. Ry.*, 15 L. R. A. (N. S.) 425, and annotations.

(4765) § 3. Persons Occupying Office at Railway Stations, Etc., to Be Deemed Agents of Corporation Chartered.—Any person occupying an office or room in any railway station and attending to and transacting therein the business of any railroad under the charter of which the said railroad is authorized by law shall be deemed the agent of such corporation, notwithstanding he may claim to be the agent of any other person or corporation claiming to operate said railroad by virtue of any lease, contract or agreement; and the bill of lading, receipt, agreement or contract signed or entered into by said person as agent of any such person or corporation operating said railroad shall be deemed the contract of the corporation under the charter of which the said railroad is so authorized.

Civ. '12, § 3100; Civ. '02, § 2026; 1888, XVIII, 437.

(4766) § 4. Construction of Word "Person" or "Persons."—The words "person or persons," as used in this Chapter, except where otherwise provided, shall be construed and held to mean person or persons, officer or officers, corporation or corporations, company or companies, receiver or receivers, trustee or trustees, lessee or lessees, agent or agents, or other person or persons acting or engaged in any of the matters and things mentioned in this Chapter.

Civ. '12, § 3101; Civ. '02, § 2027; G. S. 1543; R. S. 1600; 1882, XVII, 840.

(4767) § 5. Rules of Evidence — Disposition of Fines — Cumulative Remedies.—In all cases under the provisions of this Chapter the rules of evidence shall be the same as in civil actions, except as hereinbefore otherwise provided. All fines recovered under the provisions of this Chapter shall be paid one-half into the State Treasury, to be used for such purposes as the General Assembly may provide, the other half into the County Treasury of the county where said case is tried. The remedies now given by law against railroad corporations and this Chapter shall not be construed as repealing any statute giving such remedies.

Civ. '12, § 3102; Civ. '02, § 2028; 1892, XXI, 14.

(4768) § 6. Amendment to Charters Granted Since Act December 17, 1841.—Railroad corporations heretofore established in this State, whether by special Act or in conformity with the provisions of any general law, shall have the powers and privileges, and be subject to the duties, liabil-

ities, restrictions and other provisions contained in this Chapter, which, so far as inconsistent with charters granted since the seventeenth day of December, one thousand eight hundred and forty-one, shall be deemed and taken to be in alteration and amendment thereof: *Provided*, That nothing herein contained shall affect any act done or any right accruing, accrued, or established, or any proceedings, doings, or acts ratified or confirmed, or any suit or proceedings had or commenced in any case before the Act takes effect, but the proceedings therein shall, when necessary, conform to the provisions of this Chapter.

Civ. '12, § 3103; Civ. '02, § 2029; G. S. 1545; R. S. 1602; 1882, XVII, 792.

Southern Ry. Co. v. Bouknight, 70 Fed. 442, 445; *Central Trust Co. v. Charlotte, etc., R. Co.* 65 Fed. 257, 259.

(4769) § 7. General Rights and Liabilities—Contents of Particular Charters.—Every railroad company incorporated in this State shall have all the rights, powers and privileges set forth and granted in and by this Article, and be subject to all the liabilities, provisions and limitations herein contained; and said rights, powers, privileges, liabilities, provisions and limitations shall constitute part and parcel of the charter of every such corporation. Every such corporation shall be subject to the duties, liabilities, restrictions and other provisions contained in this Chapter.

Civ. '12, § 3104; Civ. '02, § 2030; R. S. 1542; 1885, XIX, 171.

(4770) § 8. Corporate Powers.—Every such corporation may make such by-laws for its regulation and government in any and all matters whatsoever, not inconsistent with the Constitution and laws of the United States and of this State, as may be deemed necessary, and may add to, alter or amend the same from time to time as may be desired; may appoint all necessary officers and prescribe their duties; may sue and be sued, plead and be impleaded, in any Court of law or equity in this State or in the United States; and may accept, purchase, hold, lease or otherwise acquire any property, real or personal, necessary or convenient to, and for the purposes of, the corporation, and may use, sell and convey and dispose of the same as the interest of the company may require; may make contracts, have and use a common seal and do all other lawful acts properly incident to and connected with such corporation and necessary and convenient for the control and transaction of its business: *Provided*, That the by-laws be not repugnant to the Constitution and laws of this State or of the United States.

Civ. '12, § 3105; Civ. '02, § 2031; R. S. 1543; 1885, XIX, 172.

(4771) § 9. Subscription Books — Subscriptions — Power to Execute Bonds, Mortgages, Etc.—For the purpose of raising the capital stock of any company so incorporated, it shall be lawful to open books of subscription at such times and places and under the direction of such persons as the incorporators may appoint; and such subscriptions to the capital stock may be made in land, money, bonds, machinery, materials and work, at such rates as may be agreed upon with the company; and said company shall have power to mortgage its property and franchises, and issue bonds on such terms and conditions and for such purposes and uses of the corporation as the company may from time to time deem necessary.

Civ. '12, § 3106; Civ. '02, § 2032; R. S. 1544; 1885, XIX, 171.

Payment of stock in part by note and helping in organization estop stockholder from refusing to pay balance. *R. R. v. Woodsides*, 5 Rich. 145.

(4772) § 10. Right of Way.—Every such railroad company shall have every right, power and privilege necessary for the purpose of acquiring such lands or rights of way as they may require for the location or construction of said railway, or for the erection or location of depots, warehouses, stations and other necessary and convenient establishments, or for extending or altering the same, and shall have the benefit of every process or proceeding, and shall be subject to all the restrictions which shall or may be provided or imposed by the laws of the State.

Civ. '12, § 3107; Civ. '02, § 2033; R. S. 1545; 1885, XIX, 171.

See Constitution of 1895, Art. IX, § 20.

(4773) § 11. Transactions With Other Railroads—Crossings and Connections—Purchase, Sale, Lease and Consolidation.—Such company shall have full power and authority to connect with or cross any other railroad or railroads on its proposed line, and also to purchase, lease or consolidate with, or to sell or lease its property and franchises to, any other railroad or railroads, in or out of this State, in such manner and upon such terms as may be agreed between such railroad companies: *Provided*, That the same be not inconsistent with laws of this State or of the United States.

Civ. '12, § 3108; Civ. '02, § 2034; R. S. 1546; 1885, XIX, 171; 1908, XXV, 1090.

Corporation owning railroad and permitting another corporation to operate it must be considered liable for injury caused by negligence of corporation operating road. *Smalley v. Atlanta, etc., R. Co.*, 73 S. C. 572, 53 S. E. 1000, 6 Am. & Eng. Ann. Cas. 868.

(4774) § 12. Operation of Sections of Road Completed or Acquired.—Such company shall be further authorized and empowered forthwith, upon the completion or acquirement, by purchase, lease or consolidation, of any portion or section of said railroad between any points through which the same may run under its charter, to operate and maintain such portion or section, with all the rights, powers and privileges hereby granted to the company.

Civ. '12, § 3109; Civ. '02, § 2035; R. S. 1547; 1908, XXV, 1090.

(4775) § 13. Liability of Stockholders — Limitations and Provisos.—Every stockholder in such corporation, created under the Constitution of 1868 and prior to the adoption of the Constitution of 1895, shall be jointly and severally liable to the creditors thereof in an amount, besides the value of his share or shares therein, not exceeding five per cent. of the par value of the share or shares held by him at the time the demand of the creditor was created: *Provided*, That such demand shall have been payable within one year; and also that proceedings to hold such stockholder liable therefor shall be commenced whilst he remains a stockholder therein, or within two years after he shall have ceased to be such stockholder; and also that persons holding stock in such company as executors, administrators or by way of collateral security shall not be personally subject to the liabilities of the stockholders under the foregoing provisions, but the persons pledging such stock shall be liable as a stockholder, and the estates and funds in the hands of such executors or administrators shall be liable in their hands in like manner and to the same extent as the deceased testator or intestate, or the word or person interested in such trust fund, would have been if they had respectively been living and competent to act and hold the stock in their own names.

Civ. '12, § 3110; Civ. '02, § 2036; R. S. 1548; 1885, XIX, 171.

(4776) § 14. **Railroad Mortgage—What to Cover.**—No railroad corporation which has previously issued bonds shall subsequently make or execute any mortgage upon its road equipment and franchises, or any of its property, real or personal, without including in and securing by such mortgage all bonds previously issued and all preexisting debts and liabilities of the corporation: *Provided*, That nothing in this Section contained shall apply to a mortgage for purchase money of any such road equipment, franchise or property, real or personal, or to a mortgage made or executed for the purpose, in whole or in part, of building, extending, improving or equipping such railroad, or any part thereof, or any other railroad, the greater part of whose stock is held by it, or to any pledge or hypothecation of any choses in action or other securities held or owned by it; nor shall this Section require that a mortgage executed by a corporation shall secure the payment of previously issued bonds or preexisting debts and liabilities of the corporation, where the bonds to be issued under said mortgage are intended, in whole or in part, to take up, by funding or otherwise, such previously issued bonds or preexisting debts and liabilities, or where such previously issued bonds or preexisting debts and liabilities are secured by a preexisting mortgage or other lien.

Civ. '12, § 3111; Civ. '02, § 2037; G. S. 1436; R. S. 1605; 1882, XVII, 709; 1896, XXII, 118; 1904, XXIV, 414.

See Chapter L, on Private Corporations, as to how stock may be voted in accordance with Constitution Art. IX, § 11.

(4777) § 15. **Proxies, Execution and Limitation.**—No proxy shall be valid unless executed and dated within six months previous to the meeting at which it is issued.

Civ. '12, § 3112; Civ. '02, § 2038; G. S. 1437; R. S. 1607; 1903, XXIV, 79.

(4778) § 16. **Annual Schedule and Report to Be Filed by Railroad Commissioners.**—The several railroad companies chartered by this State shall be required to file in the office of the Railroad Commissioners, on or before the thirty-first day of August in each and every year, a full and detailed schedule and report of the condition and operations of such road for the current year ending on the thirtieth day of June then immediately preceding. Such schedule and report shall be made in accordance with the following rules and form:

1. All liabilities (including interest accrued on funded debt) shall be entered upon the books in the month when they were incurred, without reference to date of payment.

2. Expenses shall be charged each month with such supplies, materials, etc., as have been *used* during that month, without reference to the time when they were purchased or paid for.

3. No expenditure shall be charged to property accounts except it be for actual interest in construction, equipments, or other property, unless it is made on old work in such a way as to clearly increase the value of the property over and above the cost of renewing the original structures, etc. In such cases, only the amount of increased cost shall be charged, and the amount allowed on account of the old work shall be stated.

4. Mileage of passenger and freight trains shall include only the miles shown to be run by distances between stations; allowances made to passen-

ger or freight trains for switching, and all mileage of switch engines, computed on a basis of eight miles per hour for the time of actual service, shall be stated separately.

5. Season ticket passengers shall be computed on the basis of twelve (12) passengers per week for the time of each ticket.

6. Local traffic shall include all passengers carried on local tickets and all freight carried at local tariff or special local rates.

All other traffic shall be considered through. These rules to be subject to such changes thereof as have heretofore been or shall hereafter be made by the Railroad Commissioners under the authority conferred on them by Section (5058) of this Code.

Civ. '12, § 3113; Civ. '02, § 2039; G. S. 1438, 1439; R. S. 1608.

(4779) § 17. May Extend Lines and Branches—Limit—Right of Way.

—It shall be lawful for any railroad or railway corporation chartered by this State, and be taken as the exercise of powers conferred by its charter, to continue or extend the main track or line of such railroad, or any extension thereof, or to build or extend branch roads from such main track or line to any point or points in the vicinity thereof, whenever it may be deemed advisable by such corporation so to do; but such extension or branch shall not exceed five miles in length. For the purpose of acquiring a right of way for any such extension or branch track, such railroad or railway corporation shall have and be entitled to all the rights and privileges and be subject to all the restrictions contained in this Chapter in reference to the manner of acquiring the right of way.

Civ. '12, § 3114; Civ. '02, § 2040; G. S. 1561a; R. S. 1609; 1885, XVIII, 168.

(4780) § 18. Railroads May Reconstruct and Relocate Lines—Make Other Changes in Tracks, Etc.

—That any railroad company owning or operating, or which may hereafter own or operate, a railroad, or any part thereof, in the State of South Carolina, under authority of the laws of this State be, and it is hereby, authorized and empowered to reconstruct its lines, tracks or any part of them, to relocate or straighten any line or lines or portion of a line or lines, to build embankments for the purpose of avoiding trestles, bridges or other openings upon which such railroad may be constructed, to change the grade of a track or tracks, and to widen cuts or embankments when necessary for proper construction or maintenance; to build such additional main line or lines, track or tracks, turnouts, switches, spur tracks, sidetracks, depots, depot facilities, yards, terminal facilities, water facilities, storage facilities and other such additional tracks, buildings, facilities, ways and appliances as may be necessary for the proper accommodation of the public business of such railroad company; to build cut-off lines, branch lines and other lines for the purpose of the better and more expeditious handling of the public business.

1915, XXIX, 539.

(4781) § 19. May Acquire Real Estate.

—That for the purposes mentioned in the foregoing Section, authority and power are hereby granted to such railroad company to acquire by purchase or gift and to hold such real estate as may be necessary, and power and authority are also granted such

railroad company to acquire such real estate as may be necessary for the purposes mentioned in the foregoing Section, if the same cannot be acquired by purchase or gift, by condemnation in the manner provided in Sections (5215) to (5228), inclusive, of this Code.

1915, XXIX, 539.

(4782) § 20. **Powers Additional.**—That the powers and authority conferred by this Article are in addition to the powers and authority which such railroad company may have by virtue of its charter or by virtue of the general laws of this State as they now exist.

1915, XXIX, 539.

(4783) § 21. **Proviso.**—That in the exercise of the powers and rights conferred in this Article no railroad shall remove its line of railway from any incorporated town of more than 500 inhabitants through which it now runs.

1915, XXIX, 539; 1916, XXIX, 824.

(4784) § 22. **Liability to Landowners for Damages for Obstruction of Watercourses.**—Railroad corporations shall be liable to landowners for all damages resulting from the wrongful obstruction of watercourses by such corporations, and it shall not be necessary to allege and prove that such damages resulted from the negligent construction of the road or other works of such corporations, but any person who is damaged shall be entitled to recover as in actions against individuals upon showing the wrongful obstruction of such watercourses.

Civ. '12, § 3115; Civ. '02, § 2041; 1897, XXII, 489.

The lessee or grantee of the creator of an obstruction of a water course, constituting a nuisance was, prior to the passage of this action, liable in damages where he either increased the obstruction, or continued it, after notice and demand for removal. *Elliott v. Rhett*, 5 Rich. 520; *Hammond v. R. R. Co.*, 16 S. C. 574; *Leitzsey v. Water Power Co.*, 47 S. C. 464, 25 S. E. 744, 34 L. R. A. 215; *Townes v. City Council*, 52 S. C. 404, 29 S. E. 851; *Privett v. R. R. Co.*, 54 S. C. 93, 32 S. E. 75; *DeLaney v. R. R. Co.*, 58 S. C. 357, 36 S. E. 699; *Sutton v. Catawba Power Co.*, 76 S. C. 320, 56 S. E. 966; *Lawton v. S. A. L. Ry.*, 75 S. C. 82, 55 S. E. 128; *Lampley v. A. C. L. R. R. Co.*, 71 S. C. 158, 50 S. E. 773; *Touchberry v. N. W. R. R. Co.*, 83 S. C. 315, 65 S. E. 343; *Shores v. Southern Ry.*, 72 S. C. 244, 51 S. E. 699; *Jones v. Seaboard Air Line R. Co.*, 67 S. C. 181, 202, 45 S. E. 188.

Railroad corporation obtaining right of way prior to passage of this Act is not liable to landowner for flooding water unless negligence in construction be shown. *Lampley v. Atlantic, etc., R. Co.*, 71 S. C. 156, 158, 50 S. E. 773.

ARTICLE II.

Formations of Corporations by Purchasers.

(4785) § 1. **Incorporation on Purchase—Certificate—Capital Stock.**—In case of the sale of any railroad situated, heretofore or hereafter, wholly or partly within this State, by virtue of any mortgage or deed in trust, whether under foreclosure or other judicial proceeding, or pursuant to any power contained in such mortgage or deed of trust, the purchaser or purchasers thereof, or his or their survivor or survivors, representatives or assigns, may, together with their associates (if any), form a corporation for the purpose of owning, possessing, maintaining, and operating such railroad, or such portion thereof as may be situated within this State, by filing in the office of the Secretary of State of this State a certificate specifying the name and style of such corporation, the number of directors of the same, the

names of its directors, and the period of their services, not exceeding one year, the amount of the capital stock of such corporation, and the number of shares into which it is to be divided; and the persons signing such certificate, and their successors, may be a body corporate and politic, by the name specified in such certificate, with power to sue and be sued, contract and be contracted with, and to own, possess, maintain, and operate the railroad referred to in such certificate, and to transact all business connected with the same; and a copy of such certificate, attested by the Secretary of State or his deputy, shall, in all Courts and places, be evidence of the due organization and existence of such corporation and of the matters specified in such certificate: *Provided*, That nothing herein contained shall be construed to authorize in any manner the purchase or lease of such railroad by any railroad corporation or steamship company, chartered either by this or by any other State, except as hereinafter provided: *And provided, further*, That the capital stock, to be named in the certificate aforesaid, shall in no case be greater than the amount of the capital stock specified in the original charter of the railroad so sold, and any amendment or amendments thereto.

Nothing herein contained, however, shall be construed to prevent an increase of capital stock to such additional amount as may be needed to convert any bonds or other indebtedness of the original corporation into stock, and the corporation so formed may divide its capital stock into common and preferred stock upon such terms and with such conditions as may be prescribed.

Civ. '12, § 3116; Civ. '02, § 2042; G. S. 1420; R. S. 1610; 1882, XXVII, 793; 1889, XX, 377.

Railroad Co. v. Gibbes, 24 S. C. 70; Southern Railway, Carolina Division, v. Howell, 79 S. C. 285, 60 S. E. 677.

(4786) § 2. Owners of Abandoned Railroad to Commence Operation Within Sixty Days.—Any person, company or corporation who now owns any line of railroad in this State, and who have not organized and are not now operating said railroad, shall, within sixty days from the passage of this Section, reorganize the same as provided for in Section 1 above; and any person, company or corporation now running or hereafter acquiring any railroad within this State by purchase or otherwise shall organize and put into operation said road within sixty (60) days from the purchase or acquisition thereof.

Civ. '12, § 3117; Civ. '02, § 2043; 1897, XXII, 533.

(4787) § 3. Penalty for Failure to Reorganize.—Should such person, corporation or company mentioned in Section 2 fail to reorganize said company as provided for in Section 2, within the time therein limited, then said person, corporation or company shall pay a penalty of fifty dollars per day for each and every day they shall fail to operate said railroad; this penalty to be collected by the Railroad Commission of this State: *Provided, however*, That the penalty herein provided shall not attach where reasonable cause for failure to operate can be shown; and said person, company

or corporation shall, in addition to the penalty above provided, also forfeit all of its franchises, powers and privileges.

Civ. '12, § 3118; Civ. '02, § 2044; 1897, XXII, 533.

Jack v. Williams, 106 Fed. 259, 261.

Purchasers of railroad who have forfeited their franchise will not be required to restore rails to roadbed, repair trestles, etc., of railroad that has been dismantled under order of Court after it was demonstrated that it could not be operated except at a loss. *Cunningham v. Jack*, 145 Fed. 281, 283, affirming *Jack v. Williams*, 118 Fed. 823.

(4788) § 4. To What Roads This Article Applies.—The provisions of Section 2 shall only apply to the main lines and regular branches of any railroad within this State, and shall not apply to any sidetracks or spur tracks constructed for special or temporary purpose or occasional use.

Civ. '12, § 3119; Civ. '02, § 2045.

(4789) § 5. Powers, Rights, Etc., of New Corporation.—Such corporation shall possess all the powers, rights, immunities, privileges and franchises in respect to such railroad, or the part thereof included in such certificate, and in respect to the real and personal property appertaining to the same, which were possessed or enjoyed by the corporation which owned or held such railroad previous to such sale, under or by virtue of its charter and any amendments thereto, and of other laws of this State, or the laws of any other State, in which any part of such railroad may have been situated, not inconsistent with the laws of this State.

Civ. '12, § 3120; Civ. '02, § 2046; G. S. 1421; R. S. 1611; 1882, XXVIII, 793.

Railroad Co. v. Gibbs, 24 S. C. 701; *Southern Railway, Carolina Division, v. Howell*, 79 S. C. 285, 60 S. E. 677.

(4790) § 6. May Issue Bonds—Rate of Interest—Mortgage of Railroad Property.—Such corporation shall have power to make and issue bonds bearing such rate of interest, not exceeding seven per cent. per annum, payable at such times and places and in such amount or amounts as it may deem expedient, and to sell and dispose of such bonds at such prices and in such manner as it may deem proper, and to secure the payment of such bonds by its mortgage or deeds of trust of its railroad or any part thereof, and its real and personal property and franchises. And all of the property and franchises of such corporation embraced or intended to be embodied in any such mortgage or deed of trust, whether then held or hereafter acquired, shall be subject to the lien and operation of such mortgage or deed of trust, and in case of sale under the same, shall pass to and become vested in the purchaser or purchasers thereof, so as to enable him or them to form a new corporation in the manner hereinbefore prescribed, and to vest in such new corporation all the faculties, rights, immunities, privileges and franchises possessed by its predecessor or conferred by this Chapter.

Civ. '12, § 3121; Civ. '02, § 2047; G. S. 1422; R. S. 1612; 1882, XVIII, 793.

(4791) § 7. Provisions as to Recording Railroad Mortgages.—Mortgages or deeds of trust covering the whole or any part of the real or personal property of a railroad company and the appurtenant franchises shall be valid so as to affect from the time of their execution and delivery the rights of all subsequent creditors and purchasers, when recorded within forty days from the execution and delivery thereof, in the office of the Secretary of State: *Provided*, That within six months thereafter such mortgages or deeds of trust shall be recorded also in the books provided for the

recording of mortgages on real estate in the office of the Clerk of Court or Register of Mesne Conveyance of each county in which any part of the real property affected thereby is situated: *And provided, further*, That such mortgages or deeds of trust, if so recorded in the office of the Secretary of State, and also in the books provided for the recording of mortgages on real estate in the office of the Clerk of Court or Register of Mesne Conveyance subsequent to the expiration of said period of forty days, shall be valid to affect the rights of all subsequent creditors and purchasers from the date of such record: *Provided*, That nothing herein contained shall be construed to affect the provisions of Section (4924) of this Code.

Civ. '12, § 3122; 1903, XXIV, 80.

(4792) § 8. May Establish Sinking Fund—Limitation.—Such corporation shall so have power to establish sinking funds for the payment of its liabilities, and to issue capital stock, to such an aggregate amount as may be deemed necessary, not exceeding the amount named in its certificate of organization. And any such corporation shall also have power to make by-laws, rules and regulations in relation to its business and the number of its directors, and the times and places of holding meetings of the stockholders and directors, and the same to alter and change as may be deemed expedient: *Provided*, That such by-laws, rules and regulations shall conform to the laws of this State.

Civ. '12, § 3123; Civ. '02, § 2048; G. S. 1423; R. S. 1612; 1882, XVII, 794.

(4793) § 9. Subject to Provisions Notwithstanding Original Charter.—Any railroad corporation formed under the provisions of this Article shall be subject, as to the charter of such corporation, to the provisions of Section 1 of Chapter XLIX of this Code, any provision in the original charter of the company which owned or held such railroad previous to such sale, and any amendments thereto, to the contrary notwithstanding.

Civ. '12, § 3124; Civ. '02, § 2049; 1882, XVII, 795.

ARTICLE III.

Consolidation of Companies and Other Provisions.

(4794) § 1. Companies May Merge and Consolidate—Proviso.—It shall be lawful for any railroad company organized under the laws of this State, and operating a railroad, whether wholly within or partly within and partly without this State, under authority of this and any adjoining State, to merge and consolidate its capital stock, franchises and property with those of any other railroad company or companies organized and operated under the laws of this or any other State, whenever two or more railroads of the companies proposed to be consolidated are continuous or are connected with each other, or by means of any intervening railroad. Railroads terminating on the banks of any river which are or may be connected by ferry or otherwise shall be deemed continuous under this Article. Nothing in this Article contained shall be taken to authorize the consolidation of any company of this State with that of any other State whose laws shall not also authorize the like consolidation: *Provided*, That nothing contained in this

Section shall authorize any merger or consolidation inconsistent with the Constitution and laws of this State, with regard to parallel or competing railroad lines, but such merger and consolidation shall be subject to the limitations mentioned and specified therein: *Provided, further*, That when railroad companies are consolidated under the provisions of this Article a charter of incorporation for the new company so formed by such consolidation shall be issued to the owners and stockholders of the company so consolidating or to such of them as the stockholders of each of said companies shall designate: *And provided, further*, That only the fees now provided by law for consolidation be charged, and no additional fee be charged for such charter.

Civ. '12, § 3125; Civ. '02, § 2050; G. S. 1425; R. S. 1615; 1901, XXIII.

Best v. Ry. Co., 72 S. C. 486, 52 S. E. 223; Reed v. Ry. Co., 75 S. C. 162, 55 S. E. 218; Geraty v. A. C. L. R. E. Co., 80 S. C. 355, 60 S. E. 936; Southern Railway, Carolina Division, v. Howell, 79 S. C. 285, 60 S. E. 677; Stewart v. Walterboro, etc., R. Co., 64 S. C. 92, 94; 41 S. E. 827; Pickett v. Southern Railway, 69 S. C. 445, 448, 45 S. E. 466; State v. Southern Ry. Co., 82 S. C. 12, 17, 62 S. E. 1116. See, also, Joseph v. Southern R. Co., 127 Fed. 606.

Agreement held to be merger and not a consolidation. Lee v. Atlantic, etc., R. Co., 150 Fed. 775. Where the company into which was merged the other company was a foreign corporation, such merger does not change the citizenship of the consolidating company for purpose of Federal jurisdiction although for other purposes it becomes domestic corporation. Lee v. Atlantic, etc., R. Co., 150 Fed. 775, 784.

(4795) § 2. Provisions Governing Consolidation.—Said consolidation shall be made under the conditions, provisions, restrictions, and with the powers hereafter in this Chapter mentioned and contained; that is to say:

1. The directors of the several corporations proposing to consolidate may enter into a joint agreement, under the corporate seal of each company, for the consolidation of said companies and railroads, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers, and their places of residence, the number of shares of the capital stock, the amount of par value of each share, and the manner of converting the capital stock of each of the said companies into that of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of said companies or railroads.

2. Said agreement shall be submitted to the stockholders of each of the said companies or corporations at a meeting thereof, called separately, for the purpose of taking the same into consideration; due notice of the time and place of holding such meeting, and the object thereof, shall be given by a general notice, published in some newspaper in the city, town or county where such company has its principal office or place of business; and at the said meeting of stockholders the agreement of the said directors shall be considered, and a vote, by ballot, taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and said ballots shall be cast in person or by proxy; and if a majority of all the votes of all the stockholders shall be for the adoption of said agreement, then that fact shall be certified thereon by the secretary of the respective companies, under the seal thereof; and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the Secretary of State, and shall from thence be deemed and taken to be the agreement and the act of consolidation of the said companies, and a copy of said agreement and act of con-

solidation, duly certified by the Secretary of State, under the seal thereof, shall be evidence of the existence of said new corporation.

Civ. '12, § 3126; Civ. '02, § 2051; G. S. 1426; R. S. 1616; 1882, XVII, 795.

Pickett v. Southern Railway, 69 S. C. 445, 448 S. E. 466; *Lee v. Atlantic, etc., R. Co.*, 150 Fed. 775, 784.

Proof of charter and consolidation agreement. *Montgomery v. Railway Co.*, 73 S. C. 506, 53 S. E. 987.

(4796) § 3. Rights, Etc., of New Corporation.—Upon the making and perfecting the agreement and act of consolidation, as provided in the preceding Section, and filing the same, or a copy, with the Secretary of State, as aforesaid, the several corporations parties thereto shall be deemed and taken to be one corporation by the name provided in said agreement and act, possessing within this State all the rights, privileges and franchises, and subject to all the restrictions, disabilities and duties of each of such corporations so consolidated.

Civ. '12, § 3127; Civ. '02, § 2052; G. S. 1427; R. S. 1617; 1882, XVII, 796.

Pickett v. Southern Railway Co., 69 S. C. 449, 48 S. E. 466; *Lee v. Atlantic, etc., Co.*, 150 Fed. 775, 785.

One corporation so consolidated is not dissolved so as to relieve it of its liability for a tort previously committed. *Stewart v. Walterboro, etc., R. Co.*, 64 S. C. 92, 41 S. E. 827.

(4797) § 4. Transfer of Rights, Etc., of Each Corporation—Liabilities.—Upon the consummation of said act of consolidation, as aforesaid, all and singular the rights, privileges and franchises of each of said corporations, parties to the same, and all the property, real, personal, and mixed, and all debts due on whatever account, as well as of stocks, subscriptions, and other things in action belonging to each of such corporations, shall be taken and deemed to be transferred to, and vested in, such new corporation, without further act or deed; and all property, rights of way, and all and every other interest shall be as effectually the property of the new corporation as they were of the former corporation, parties by said agreement; and the title to real estate, either by deed or otherwise, under the laws of this State, vested in either of such corporations, shall not be deemed to revert, or be in any way impaired by reason of this Chapter: *Provided*, That all rights of creditors, and all liens upon the property of said corporations shall be preserved unimpaired; and the respective corporations may be deemed to continue in existence to preserve the same; and all debts, liabilities and duties of either of said companies shall thenceforth attach to said new corporation, and be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

Civ. '12, § 3128; Civ. '02, § 2053; G. S. 1428; R. S. 1618; 1882, XVII, 796.

Pickett v. Southern R. Co., 69 S. C. 449, 48 S. E. 466; *Phinizy v. Augusta, etc., R. Co.*, 62 Fed. 771, 775; *Lee v. Atlantic, etc., R. Co.*, 150 Fed. 775, 785.

The term creditor includes one having a claim for damages against a consolidating road arising out of tort. Though not reduced to judgment, suit may be brought against the original corporation. *Stewart v. Walterboro, etc., R. Co.*, 64 S. C. 92, 41 S. E. 827.

It seems that action for debt or tort arising before consolidation should be brought against the constituent companies incurring liability. *Joseph v. Southern R. Co.*, 127 Fed. 606, 607. See, also, *Stewart v. Walterboro, etc., R. Co.*, 64 S. C. 92, 41 S. E. 827.

Corporation created by consolidating railroad companies in this State, under Act of 1902, page 1152, is liable for tort committed by constituent company before consolidation. *Pickett v. Southern Railway*, 69 S. C. 445, 453, 48 S. E. 466, distinguishing *Stewart v. Walterboro, etc., R. Co.*, 64 S. C. 92, 41 S. E. 827.

Where constituent corporations had outstanding bonds, secured by mortgages, directors of new corporation may, without vote of stockholders, issue bonds and mortgage on property in place of such bonds and mortgage of old corporations. *Phinizy v. Augusta, etc., R. Co.*, 62 Fed. 678.

(4798) § 5. New Company Shall Establish Offices.—Such new company shall, as soon as convenient after such consolidation, establish such offices

as may be desirable, one of which shall be at some point in this State on the line of its road, and may change the same at pleasure, giving public notice thereof in some newspaper published on the line of said road.

Civ. '12, § 3129; Civ. '02, § 2054; G. S. 1429; R. S. 1619; 1882, XVII, 796.

Lee v. Atlantic, etc., R. Co., 150 Fed. 775.

(4799) § 6. Liability to Suits.—Suits may be brought and maintained against such new company in any of the Courts of this State, for all causes of action, in the same manner as against other railroad companies therein.

Civ. '12, § 3130; Civ. '02, § 2055; G. S. 1430; R. S. 1620; 1882, XVII, 796.

Best v. Railroad Co., 72 S. C. 486, 52 S. E. 223; *Lee v. Atlantic, etc., R. Co.*, 150 Fed. 775, 785.

(4800) § 7. Subject to Taxation.—That portion of the road of such consolidated company in this State, and all its real estate and other property heretofore subject to taxation, shall be subject to like taxation, and assessed in the same manner, and with like effect, as the property of other railroad companies in this State.

Civ. '12, § 3131; Civ. '02, § 2056; G. S. 1431; R. S. 1621; 1882, XVII, 796.

(4801) § 8. Privileges of Stockholders Opposing Consolidation—Proceedings.—Any stockholder of any company hereby authorized to consolidate with any other, who shall refuse to convert his stock into the stock of the consolidated company, may, at any time within thirty days after the adoption of the said agreement of consolidation by the stockholders, as in this Chapter provided, apply, by petition, to the Court of Common Pleas of the county in which the chief office of said company may be kept, or to a Judge of said Court in vacation, if no such Court sits within said period, on reasonable notice to said company, to appoint three disinterested persons to estimate the damage, if any, done to such stockholder by said proposed consolidation, and whose award, or that of a majority of them, when confirmed by the said Court, shall be final and conclusive, and the persons so appointed shall also appraise said stock of said stockholder at the full market value thereof, without regard to any depreciation or appreciation in consequence of the said consolidation; and the said company may, at its election, either pay to the said stockholder the amount of damages so found and awarded, if any, or the value of the stock so ascertained and determined; and upon the payment of the value of the stock, as aforesaid, the stockholder shall transfer the stock so held by him to said company, and to be disposed of by the directors of said company, or to be retained for the benefit of the remaining stockholders; and in case the value of said stock, as aforesaid, is not paid within thirty days from the filing of said award and confirmation by said Court and notice to said company, the damages, so found and confirmed, shall be a judgment against said company, and collected as other judgments in said Court are, by law, recoverable.

Civ. '12, § 3132; Civ. '02, § 2057; G. S. 1432; R. S. 1622; 1882, XVII, 796.

Phinizy v. Augusta, etc., R. Co., 62 Fed. 678, 684.

(4802) § 9. Purchase of Connecting Roads, Rights, Etc., Sold Under Mortgage or Process—Proviso.—When any railroad shall be sold and conveyed by virtue of any mortgage or deed of trust, or under and by virtue

of any process or decree of any Court of this State, or of the Circuit Court of the United States, it may be lawful for any company, of which the railroad connects therewith, to purchase and pay for the same, to issue their own stock for such an amount as the purchasers may deem the full and fair value thereof, and to hold and enjoy the railroad so purchased, with all the rights, privileges and franchises, and with the same rights to charge for tolls, transportation and car services, and subject to the same restrictions as were held, enjoyed and limited by and in respect to the company of which the road may be so sold: *Provided, however,* That no corporation, individual, or association or either or both, shall purchase or lease any railroad lying in whole or in part within this State, or any interest therein, or shall operate the same, where such purchaser or lessee already owns, operates or is interested in a line or lines of railroad which, either alone or in conjunction with other connecting railroads lying within or without this State, can compete between any two or more points within this State, and any such purchase, lease or acquisition is hereby declared to be null and void; nor shall any individual or individuals owning or exercising a controlling interest in any such competing company or companies either directly or indirectly, purchase or lease, in whole or in part, any such railroad; and the corporators or individuals so offending by making such acquisition shall also forfeit any franchise or license which they may hold from this State to operate or hold the competing road which they own, operate or are interested in, and the company owning the railroad so to be controlled shall forfeit its charter, franchise or license to own and operate the same.

Civ. '12, § 3133; Civ. '02, § 2058; G. S. 1433; R. S. 1623; 1882, XVII, 798; 1894, XXI, 811.

This practically works a consolidation of the roads. *So. Ry. Co. v. City Council of Greenville*, 45 S. C. 602, 23 S. E. 953. See, also, Constitution of 1895, Art. IX, §§ 7 and 20.

(4803) § 10. Amalgamation, Etc., of Railroads Restricted.—No corporations owning and controlling a line of railroad which can compete as above set forth shall make any consolidation, amalgamation or merger of stocks or franchises or of railroads or interests, and any contract or agreement for the same shall be null and void.

Civ. '12, § 3134; Civ. '02, § 2059; 1894, XXI, 811.

Act of 1894, 21 Stat. 812, is not inconsistent with or repealed by Constitution of 1895. *Edwards v. Southern Railway*, 66 S. C. 277, 280, 44 S. E. 748.

(4804) § 11. May Purchase Bonds and Stock of Other Companies, Lease Other Roads, Guarantee Bonds or Stocks.—It shall and may be lawful, except as prohibited in Section 13 of this Article, and in Sections 7 and 20 of Article IX of the Constitution of 1895, for any railroad company created by and existing under the laws of this State, from time to time, to purchase and hold the stocks and bonds, or either, of any other railroad company or companies chartered by or of which the road or roads is or are authorized to extend into this State; and it shall be lawful, except as prohibited in Section 13, and in Sections 7 and 20 of Article IX of the Constitution of 1895, for any railroad companies to enter into contracts for the purchase, use or lease of any other railroads, upon such terms as may be agreed upon with the company or companies owning the same, and to run, use and operate such road or roads in accordance with such con-

tract or lease: *Provided*, That the roads of the companies so contracting or leasing shall be directly, or by means of intervening railroads, connected with each other. And it shall and may be lawful for any railroad corporation now organized, or which may hereafter be organized under the laws of this State, to guarantee the bonds or stocks or dividends of any other railroad corporation, whenever the roads of such corporations shall connect with each other, or shall form a continuous line of railroad directly, or by means of any connecting railroad, or by steamboat or steamship line, such guaranty to be upon such terms and conditions as may be agreed upon by the stockholders of the corporations making the same: *Provided*, That no railroad corporation consolidating as hereinbefore provided shall thereby acquire any extraordinary rights, privileges and exemptions not enjoyed by each of the companies consolidating under their respective charters: *And provided, further*, That all such agreements, and all parts of them, shall, at all times, be subject to amendment, alteration or repeal by the Legislature.

Civ. '12, § 3135; Civ. '02, § 2060; G. S. 1434; R. S. 1624; 1882, XVII, 798.

(4805) § 12. Ownership of Stock in Certain Cases Prohibited—Duty of Attorney General.—No corporation, individual or association or either or both, owning or operating directly or indirectly any railroad lying in whole or in part within this State, or owning or controlling at the time, either solely or in connection with others, a majority of the stock of the corporation owning or controlling, by stock, ownership or otherwise, any such railroad, shall own or be interested in the stock of any corporation chartered by this State which owns or leases, in whole or in part, or is otherwise interested in, any railroad which competes in the manner set forth in Section 10 with the railroad or railroads so owned or operated by the parties seeking to acquire or become interested in said stock of said corporation last mentioned. A purchase or acquisition of the stock of a company controlling said last named company by stock ownership is likewise prohibited. In the event of such acquisition of such stock, or an interest therein, by said parties first in this Section above named, the charter of the corporation of this State last mentioned owning such railroad shall be forfeited, and its franchises are *ipso facto* withdrawn, and all railroad charters hereafter accepted are declared to be granted subject to this condition. And the Attorney General of this State shall proceed at once, in the name of the State, to have said dissolution decreed by a Court of competent jurisdiction, and to dispose of the property of said corporation and distribute its assets to its creditors and stockholders according to law.

It shall be the duty of the Attorney General to see to the observance of this Section, and to proceed by action, or other appropriate proceedings, legal or equitable, to inquire into, restrain or terminate the unlawful exercise of any franchise or disobedience to the terms thereof.

Civ. '12, § 3136; Civ. '02, § 2061; 1894, XXI, 811.

(4806) § 13. May Aid in Construction of Other Railroads or Steamboat Lines.—A railroad corporation may aid in the construction of any branch or connecting railroad within the limits of this State, whether connecting by railroad or steamboat lines, by subscribing for shares of stock

in such corporation, or of any steamship line connecting the terminus of such railroad company with any port of the United States, or by taking its notes or bonds, to be secured by mortgage or otherwise, as the parties may agree, and shall be entitled to vote on all shares of stock so subscribed for and held.

Civ. '12, § 3137; Civ. '02, § 2062; G. S. 1435; R. S. 1625; 1882, XVII, 799.

ARTICLE IV.

The Railroad Commissioners.

(4807) § 1. **Election and Term of Office—Subsequent Elections—Oath and Disabilities—Vacancies—Salaries.**—There shall be three Railroad Commissioners elected in accordance with the provisions hereafter contained; that is to say: they shall be elected by the present General Assembly for the term of two years, beginning with the first day of January, 1893. At the expiration of said terms they shall be succeeded by their successors in office, who shall have been elected at the next general State election. The Commissioners of Election for the several counties in the State shall at each general election herein provided for conduct the election of the Commissioners as is conducted the election of other State officers other than Governor and Lieutenant Governor. The term of office of the Commissioners to be elected at the general election of 1894 shall be for two, four and six years, respectively, the term of each Commissioner to be determined by lot, in the presence of the Governor. At the expiration of said terms, respectively, they shall each be succeeded by his successor in office, who shall have been elected at the general election next preceding the date of said expiration. Said Commissioners shall take the oath of office provided by the Constitution and laws of this State for State officers, and shall not, jointly or severally, or in any way, be the holder or holders of any railroad stock or bond. The Governor shall have the power to fill vacancies in the office of Commissioner until the successor in such office for a full term or an unexpired term, as the case may be, shall have been elected at the next ensuing general election and qualified. The salary of each Commissioner shall be twenty-five hundred dollars per annum, to be paid from the Treasury of the State.

Civ. '12, § 3138; Civ. '02, § 2063; 1892, XXI, 9; 1919, XXXI, 4.

(4808) § 2. **Quorum—Eligibility of Commissioners.**—A majority of said Commissioners shall constitute a quorum for the transaction of all business pertaining to their office. The Commissioners to be elected under the terms of this Article shall be elected from the State at large: *Provided*, That any citizen of this State above the age of twenty-five years shall be eligible to election to the position of Railroad Commissioner.

Civ. '12, § 3139; Civ. '02, § 2064; 1892, XXI, 9.

(4809) § 3. **Office and Location—Clerk—Payment of Expenses—Limit to Expenditures.**—The said Commissioners shall be furnished with an office, necessary furniture and stationery, and may employ a secretary or clerk at a salary of twelve hundred dollars per annum, at the expense of

the State. The office of said Commissioners shall be kept in Columbia, and all sums of money authorized to be paid by this Article out of the State Treasury shall be paid only on the warrant of the Comptroller General: *Provided*. That the total sum to be expended by said Commissioners for office rent, furniture and stationery shall in no case exceed the sum of five hundred dollars (\$500), or so much thereof as may be necessary, per annum.

Civ. '12, § 3140; Civ. '02, § 2065; 1892, XXI, 9.

(4810) § 4. Assessment of Expenses on Corporations — Basis — When Payable—Free Transportation—Experts and Agents.—The expenses of the Commissioners, including salaries, and the salary of their secretary or clerk, shall be borne by the several corporations owning or operating railroads, telegraph and express companies in this State, according to their gross income proportioned to the number of miles in this State, to be apportioned by the Comptroller General of the State, who, on or before the first day of October in each and every year, shall assess upon each of said corporations its just proportion of such expenses in proportion to its gross income of the current year ending on the thirtieth day of June preceding that on which the assessment is made; and the said assessments shall be charged up against the said corporations, respectively, under the order and direction of the Comptroller General, and shall be collected by the several County Treasurers in the manner provided by law for the collection of taxes from such corporation, and shall be paid by the said County Treasurers as collected into the Treasury of the State, in like manner as other taxes collected by them for the State. The Commissioners and their secretary shall be transported free of charge, when in the performance of the duties of their office concerning railroads, over all railroads and railroad trains in this State, and they may take with them experts or other agents whose service they may deem to be temporarily of importance, and they shall in like manner be transported free of charge.

Civ. '12, § 3141; Civ. '02, § 2066; G. S. 1453, 1454; R. S. 1626, 1628, 1629; 1882, XVII, 817; 1892, XXI, 10; 1898, XXII, 780.

Held to be constitutional. *Railroad Co. v. Gibbes*, 24 S. C. 70, 27 S. C. 385, 4 S. C. 49.

(4811) § 5. Commissioners Have General Supervision.—The Commissioners shall have the general supervision of all railroads and railways, express and telegraph lines in this State operated by steam, and shall examine the same and keep themselves informed as to their condition and the manner in which they are operated, with reference to the security and accommodation of the public and the compliance of the several corporations with the provisions of their charters and the laws of the State; and to enforce the provisions of this Chapter; and the provisions of this Chapter shall apply to all railroads and railways, and to the corporations, trustees, receivers, or others owning or operating the same.

Civ. '12, § 3142; Civ. '02, § 2067; G. S. 1455; R. S. 1680; 1882, XVII, 817; 1898, XXII, 780.

Regulation of hours when ticket office must be opened. *Hall v. S. C. Ry. Co.*, 25 S. C. 564.

Confers powers of supervision. *Railroad Commissioners v. A. C. L. Ry. Co.*, 71 S. C. 130, 50 S. E. 641; *Railroad Commissioners v. Columbia, etc., R. Co.*, 82 S. C. 418, 420, 64 S. E. 240.

Commission's power to regulate does not exclude that of municipalities within their limits. *Boggero v. Railway*, 64 S. C. 104, 41 S. E. 819.

Court will not review findings of fact by commission. *Railroad Commissioners v. A. C. L. Ry. Co.*, 74 S. C. 80, 54 S. E. 224.

Notice of hearing to be given. *Railroad Commissioners v. C. N. & L. R. R. Co.*, 82 S. C. 418, 64 S. E. 240.

(4812) § 6. Railroad Commission to Have Jurisdiction Over Interurban Railroads.—That all authority, power and duties now conferred by law upon the Railroad Commission as to railways, express and telegraph lines in this State, operated by steam, steamboat lines and truck lines doing business as common carriers within this State, is hereby extended and conferred upon the Railroad Commission as to all interurban railways, whether steam, electricity or other power be used and whether such roads be partly without the corporate limits of towns or cities.

1913, XXVIII, 179; 1917, XXX, 162; 1920, XXXI, 722.

(4813) § 7. Additional Power.—The provisions of the foregoing Section are in addition to the power and duties heretofore conferred upon the Railway Commission, and shall not be construed as any limitation or restriction upon said Railway Commission.

1913, XXVIII, 179.

(4814) § 8. Railroad Commissioners May Make and Promulgate Reciprocal Demurrage Rules.—That the Railroad Commissioners of South Carolina be, and they are hereby, authorized and empowered to make and promulgate reciprocal demurrage rules governing the regulation of railroads and shippers in this State as fully and effectually as if same were made and promulgated by the General Assembly of the State of South Carolina.

1917, XXX, 163.

(4815) § 9. Fines and Penalties Equally Distributed Between State and County in Certain Cases.—All penalties and forfeitures collected from railroad, express, telegraph and telephone companies in pursuance of Acts providing same for failure to comply with certain orders of the Railroad Commission defined in said Acts, be paid over, one-half into the State Treasury of South Carolina, and the other half into the County Treasury of the county in which the suit is brought imposing the penalty or forfeiture so collected, the said revenues accruing from such collections to be used for general State and county purposes.

Civ. '12, § 3143; 1911, XXVII, 158.

(4816) § 10. Safety Devices to Be Installed by Direction of Railroad Commission.—The Railroad Commission shall have authority to require the installation and use by the railroads operating trains in or through this State of any safety device, when in their judgment, after due consideration and trial, shall have been proven to materially contribute to the safety of the operation of trains and for the protection of the lives and limbs of the crews operating such trains or the traveling public, or for their reasonable comfort, or for the sanitation of passenger and freight trains on which passengers travel or employees work, as well as all depots, both passenger and freight.

Civ. '12, § 3144; 1911, XXVII, 159.

(4817) § 11. Railroad Commission to Regulate Crossings.—That the Railroad Commissioner is empowered and required to regulate and control by special order in each case the manner in which any street, street railway, or other railroad track and to regulate the manner of constructing

culverts under any railroad so as to affect proper drainage of adjacent territory, may cross any railroad track.

1912, XXVII, 791.

(4818) § 12. **Railroad Commission May Apportion Expense of Elimination of Grade Crossings—Limit on Assessment Against Railroads—Crossings Eliminated to Be Closed as Highways or Traveled Places.**—The Railroad Commission be, and is hereby, given full authority to provide such rules and regulations with reference to the crossings of railroad tracks by public highways, as in its judgment will be conducive to the public safety, and, furthermore, upon complaint, shall investigate and may require that any necessary crossings be made either above or below grade, so as to avoid, as far as possible, any grade crossings: *Provided*, That if the Railroad Commission shall decide that such a crossing should be eliminated or relocated, it will be authorized and directed to apportion, assess and require the payment by such railroad company of its proper *pro rata* share of the expense incident to the construction and grading of any highway or road appurtenant to such elimination or relocation: *Provided, further*, That the cost to be assessed against such railroad company shall not exceed its proper *pro rata* share for more than one-fourth of one mile: *Provided, further*, That in the case of railroads independently operated, having less than eighty miles of road within this State, the cost to be assessed against such railroad shall be such equitable proportion of the expenses incident to grading and constructing such appurtenant highway or road as the Commission may determine, not to exceed its *pro rata* share for more than one-eighth of a mile: *And provided, further*, That such crossings as are eliminated by virtue of this Section shall be closed as public highways or travel places.

1915, XXIX, —; 1920, XXXI, 1124.

(4819) § 13. **Penalty for Failure to Obey Commission.**—A failure to comply with such orders of said Railroad Commission within time fixed by said Commission, shall subject said railroad to a penalty of five hundred dollars, to be collected by suit in any Court of competent jurisdiction by any person or order aggrieved. All penalties and forfeitures collected to be paid over, one-half into the State Treasury of South Carolina, and the other half into the County Treasury of the county in which the suit is brought imposing the said penalty, the said revenues accruing from such collections to be used for general State and county purposes.

Civ. '12, § 3145; 1911, XXVII, 159.

(4820) § 14. **Proceedings for Violating Charters.**—Whenever, in the judgment of the Railroad Commissioners, it shall appear that any such corporation has violated any law, or neglected, in any respect or particular, to comply with the terms of its charter, or with the provisions of any of the laws of the State, especially in regard to the connections with other railroads, the rates of toll, and the time schedule, they shall give notice thereof in writing to such corporation, and if the violation or neglect is continued after such notice, the Commissioners shall make application to a Circuit Judge, or a Judge thereof, in vacation, for an injunction to

restrain the company complained of from further continuing to violate the law or the terms of its charter, or for a writ of mandamus, as hereinafter provided in Section (4888).

Civ. '12, § 3146; Civ. '02, § 2068; G. S. 1456; R. S. 1631; 1882, XVII, 817.

Sections (4819), (4820), (4821), are not unconstitutional. *Railroad Commissioners v. Columbia, etc.*, R. Co., 82 S. C. 418, 64 S. E. 240.

(4821) § 15. Give Notice of Repairs—Proceedings.—Whenever, in the judgment of the Railroad Commissioners, it shall appear that repairs are necessary upon any such railroad, or that any addition to the rolling stock, or any enlargement of, or improvement in, the stations or station houses, or any modification in the rates of fare, for transporting freight or passengers, or any change in the mode of operating the road and conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, they shall give information in writing, to the corporation of the improvements and changes which they adjudge to be proper; and if the said company shall fail, within sixty days, to adopt the suggestions of said Commissioners, they shall take legal proceedings as they may deem expedient, and shall have authority to call upon the Attorney General to institute and conduct such proceedings: *Provided*, That the powers herein conferred upon the Railroad Commission of South Carolina shall be sufficient to require of common carriers the establishment and maintenance of such terminal facilities, extension of pass tracks, sidetracks, other than industrial tracks, and all other improvements and changes which seem reasonable and expedient to the said Railroad Commission.

Civ. '12, § 3147; Civ. '02, § 2069; G. S. 1457; R. S. 1632; 1882, XVII, 818; 1920, XXXI, 1086.

Bonham v. Columbia, etc., R. Co., 26 S. C. 353, 2 S. E. 127; *Railroad Commissioners v. Columbia, etc., R. Co.*, 82 S. C. 418, 420, 64 S. E. 240.

Authorizes the Commissioners to ascertain and determine the facts. *Railroad Commissioners v. A. C. L. R. Co.*, 71 S. C. 132, 50 S. E. 641. See *Railroad Commissioners v. A. C. L. R. Co.*, 74 S. C. 80, 54 S. E. 224.

(4822) § 16. Investigate Complaints—Notice in Writing—Proceedings.—Upon the complaint and application of the Mayor and Aldermen or Council of any city, town, or County Board of Commissioners of any county, within which any part of such railroad is located, it shall be the duty of the Railroad Commissioners to make an examination of the condition and operation thereof. Before proceeding to make such examination in accordance with such application, said Commissioners shall give to the applicants and the railroad corporation reasonable notice, in writing, of the time and place of entering upon the same. If, upon such examination, it shall appear to the Commissioners that the complaint alleged by the applicant is well founded, they shall so adjudge, and shall inform the corporation operating such railroad of their adjudication, in the same manner as is provided in Section 14 of this Article; and the company failing for sixty days after such notice to remove the cause of such complaint, they shall make report thereof to the General Assembly for such action as it may deem expedient; or if there be necessity for prompt action, they may take such legal proceedings as may be proper, and the Attorney General shall institute and conduct such proceedings.

Civ. '12, § 3148; Civ. '02, § 2070; G. S. 1458; R. S. 1633; 1882, XVII, 818.

Right of municipal authorities to regulate speed, etc., of railroads in their limits. *Boggero v. Southern Railway*, 64 S. C. 104, 41 S. E. 823.

(4823) § 17. **Shall Investigate Causes of Accidents.**—The Railroad Commissioners shall investigate the causes of any accident on a railroad resulting in loss of life, and of any accident not so resulting, which, in their judgment, shall require investigation.

Civ. '12, § 3149; Civ. '02, § 2071; G. S. 1459; R. S. 1634; 1882, XVII, 819.

(4824) § 18. **May Require Information.**—Every railroad corporation shall, at all times, on request, furnish the Railroad Commissioners any information required by them concerning the condition, management and operation of its railroads, and particularly with copies of time tables, and also with the rates of transporting freight and passengers upon its road and other roads with which its business is connected.

Civ. '12, § 3150; Civ. '02, § 2072; G. S. 1460; R. S. 1635; 1882, XVII, 819.

(4825) § 19. **Request or Advice Not to Impair Legal Duties.**—No request or advice of the Railroad Commissioners shall have the effect to impair, in any manner or degree, the legal duties and obligations of any railroad corporation or its liability for the consequence of its acts, or of the neglect or mismanagement of any of its agents or servants.

Civ. '12, § 3151; Civ. '02, § 2073; G. S. 1461; R. S. 1636; 1882, XVII, 819.

(4826) § 20. **Commissioners' Annual Report to Legislature and Recommendations as to Legislation.**—The Commissioners shall make an annual report to the Legislature of their official acts, including such statements, facts and explanations as will disclose the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the State; and such suggestions as to the general railroad policy of the State, or as to any part thereof, or as to the condition, affairs or conduct of any of the railroad corporations, as may seem to them appropriate, with a special report of all accidents, and the causes thereof, for the preceding year. And they shall also recommend such legislation as in their judgment may be necessary to secure just and reasonable rates for the transportation of passengers and freights and for the prevention of unjust discrimination.

Civ. '12, § 3152; Civ. '02, § 2074; G. S. 1462; R. S. 1637; 1882, XVII, 819; 1883, XVIII, 485.

(4827) § 21. **Annual Reports of Railroads—Blanks—Defective Reports—Transmitting Report to Governor.**—The Commissioners shall require the annual reports to be made by railroad companies in manner and form and at the time provided for herein, and shall be authorized to require reports to be made of such other matters as they may deem expedient; and they may, from time to time, make such changes as they may deem proper in the form of report herein prescribed, giving the corporations one year's notice of any such changes or additions as require any alterations in the method or form of keeping their accounts; and the Commissioners shall, on or before the first day of June in each year, furnish to the several railroads blank forms of such reports. When the report received from any corporation is defective, or probably erroneous, the Commissioners shall notify the corporation to amend the same within fifteen days. The Commissioners shall prepare such tables and abstracts of all the returns they shall deem expedient, and their annual report shall be transmitted to the

Governor of the State on or before the second Monday in November in each year, to be laid before the Legislature. The originals of the report or reports, as amended, subscribed, and sworn to by the officers of the corporation, shall be preserved in the office of the Commissioners.

Civ. '12, § 3153; Civ. '02, § 2075; G. S. 1463; R. S. 1638; 1882, XVII, 819.

(4828) § 22. Fiscal Year for Reports from Railroads to End December 31.—That the fiscal year for which reports shall be made by railroad companies in the State of South Carolina to the Board of Railroad Commissioners, the Comptroller General or other officers of the State of South Carolina, shall terminate on the 31st day of December, so as to conform to the calendar year and to the fiscal year as fixed by the Interstate Commerce Commission of the United States.

1917, XXX, 163.

(4829) § 23. Reports to Be Made in Conformity to Change Effectuated Herein.—That all reports now required by law to be made by railroad companies to the Board of Railroad Commissioners, to the Comptroller General, or to other officers of the State of South Carolina, at specified times and based upon the operations of said railroad companies for the fiscal year preceding such reports, such fiscal year now by law terminating on the 30th day of June of every year, shall be made to said Board or officers at like periods after the 31st day of December of every year, as they are now required to be made after the 30th day of June of every year.

1917, XXX, 163.

(4830) § 24. Supervision of Contracts—Approving Division of Earnings—Rules and Regulations—Void Agreements.—All contracts and agreements between railroad companies doing business in this State as to rates of freight and passenger tariffs shall be submitted to said Commissioners for inspection and correction, that it may be seen whether or not they are a violation of the law or of the provisions of the Constitution or of this Chapter, or of the rules and regulations of said Commissioners; and all arrangements and agreements whatever as to the division of earnings of any kind by competing railroad companies doing business in this State shall be submitted to said Commissioners for inspection and approval, in so far as they affect rules and regulations made by said Commissioners to secure to all persons doing business with said companies just and reasonable rates of freight and passenger tariff, and so far as they are affected by any of the provisions contained in this Chapter, for securing to all persons just, equal and reasonable facilities for the transportation of freight and passengers; and said Commissioners may make such rules and regulations as to such contracts and agreements as may be then deemed necessary and proper; and any such agreements not approved by such Commissioners, or by virtue of which rates shall be charged exceeding the rates fixed for freight and passengers, shall be deemed, held and taken to be violations of this Chapter, and shall be illegal and void.

If the said contracts, agreements, or arrangements shall, in the opinion of the Commissioners, in any way be in violation of any of the provisions of this Chapter, the Commissioners shall forthwith notify the said railroad

companies, in writing, of their objections thereto, specifying such objections; and if the said railroad companies shall fail or neglect, within five days after such notice, to amend and alter such contract, agreement, or arrangement, in a manner satisfactory to the Commissioners, the Commissioners shall thereupon call upon the Attorney General to institute and conduct such legal proceedings as may be necessary to enforce the penalties prescribed in this Chapter for such violations of its provisions.

Civ. '12, § 3154; Civ. '02, § 2076; G. S. 1464; R. S. 1639, 1665; 1892, XXI, 13.

(4831) § 25. Right to Issue Subpœna—Witness Fees—Penalty for Disregard of Subpœna—Contempt.—Said Railroad Commissioners in making any examination for the purpose of obtaining information pursuant to this Chapter shall have power to issue subpœnas for the attendance of witnesses by such rules as they may prescribe, and said witnesses shall receive from the State Treasury for such attendance one dollar per day and five cents per mile traveled by the nearest practical route in going to and returning from the place of meeting of said Commissioners, to be ordered paid by the Comptroller General upon presentation of subpœnas sworn to by the witnesses as to the number of days served and miles traveled, before the Clerk of said Commissioners, who is hereby authorized to administer oaths. In case any person shall wilfully fail or refuse to obey such subpœna, it shall be the duty of any Circuit Judge of the Court of Common Pleas and General Sessions of any county, upon application of said Commissioners, to issue an attachment for such witness and compel him to attend before the Commissioners and give his testimony upon such matters as shall be lawfully required by such Commissioners; and said Circuit Judge shall have power to punish for contempt as in other cases of refusal to obey the process or order of the Court.

Civ. '12, § 3155; Civ. '02, § 2077; G. S. 1465; R. S. 1640; 1892, XXI, 16.

(4832) § 26. Penalty for Failure by Agent, Etc., to Report, Etc.—Every officer, agent or employee of any railroad company who shall wilfully neglect or refuse to make and furnish any report required by the Commissioners as necessary to the purposes of this Chapter, or who shall wilfully and unlawfully hinder, delay, or obstruct said Commissioners in the discharge of the duties imposed upon them, shall forfeit and pay a sum of not less than one hundred dollars nor more than one thousand dollars for each offense, to be recovered in any action in the name of the State as provided in Section (4886) of this Code.

Civ. '12, § 3156; Civ. '02, § 2078; G. S. 1465; R. S. 1640; 1892, XXI, 16.

(4833) § 27. May Propound Interrogatories.—The Commissioners may make and propound to any of the railroad companies of this State any interrogatories additional to those contained in the schedule and report hereinbefore provided, which shall be answered by such companies in the same manner.

Civ. '12, § 3157; Civ. '02, § 2079; G. S. 1467; R. S. 1642; 1892, XXI, 16.

(4834) § 28. Examination of Books on Application of Certain Persons.—On the application in writing of a Director, or of any person or persons owning one-fiftieth part of the entire paid-in capital stock of any corpora-

tion operating a railroad, or the bonds or other evidences of indebtedness of such corporation equal in amount to one-fiftieth part of its paid-in capital stock, the Railroad Commissioners shall make an examination into the books of said corporation.

Civ. '12, § 3158; Civ. '02, § 2080; G. S. 1468; R. S. 1643; 1882, XVII, 821.

(4835) § 29. Have Access to List of Stockholders.—The Railroad Commissioners shall further have, at all times, access to the list of stockholders of every corporation operating a railroad, and may, in their discretion, at any time, cause the same to be copied, in whole or in part, for their own information or for the information of persons owning stock in such corporation.

Civ. '12, § 3159; Civ. '02, § 2081; G. S. 1469; R. S. 1644; 1882, XVII, 821.

(4836) § 30. Investigation of Books and Papers—Agents and Employees—Delegation of Powers—Penalties.—It shall be the duty of said Commissioners when necessary to investigate so much of the books and papers of all the railroad companies doing business in this State as they may think proper, to ascertain if the rules and regulations as aforesaid have been complied with, and to make personal visitations of railroad offices, stations and other places of business for the purpose of examinations and to make rules and regulations concerning such examinations, which rules and regulations shall be observed and obeyed as other rules and regulations as aforesaid; said Commissioners shall also have full power and authority to examine all agents and employees of said railroad companies and other persons under oath and otherwise, in order to procure the necessary information to make just and reasonable rates of freight and passenger tariffs, and to ascertain if such rules and regulations are observed or violated, and to make necessary and proper rules and regulations concerning such examinations, and which rules and regulations herein provided for shall be obeyed and enforced as all other rules and regulations provided for in this Chapter. The powers herein conferred upon the Commissioners to fix passenger and freight rates, joint and several, are hereby delegated to them by the General Assembly, as fully as the General Assembly itself could exercise them; and in arriving at their conclusions and decisions as to what are just and reasonable rates, and in making examinations for such purpose, they shall have the powers conferred in Sections 25, 26, 27 and 28 for securing the attendance of witnesses, reports and testimony of officers, agents or employees of railroad companies, and for the production of books and papers; and for violation of the provisions of this Section the same penalties are hereby imposed as are provided in said Sections, respectively; and such witnesses shall receive the compensation prescribed in Section 25. Said passenger rates shall not exceed those allowed by Section (4955).

Civ. '12, § 3160; Civ. '02, § 2082; R. S. 1645; 1892, XXI, 13.

The Court will not take judicial notice of the proceedings, rules and regulations of the Commission. *Jones Bros. v. Ry.*, 76 S. C. 70, 56 S. E. 666.

Legislative power not delegated to Commissioners. *Ib.*

(4837) § 31. Railroad Commission Given Jurisdiction Over Telephone Lines.—The Railroad Commission of this State shall have and exercise the same jurisdiction and supervisory powers and control over and con-

cerning all telephone lines, stations and exchanges in this State, and over all persons, firms or corporations owning or operating such telephone lines, stations or exchanges for the transmission of intelligence for hire, that it now has and exercises over and concerning railroads, telegraph and express lines, and the persons, firms, or corporations owning or operating them in this State; and said Commission shall especially have the right and power and it shall be its duty to fix and regulate the rates or tolls to be charged by the owners or operators of all such telephone lines, stations or exchanges, for the transmission of intelligence for hire, and to require reasonable connections to be made and maintained when practicable, between such lines, stations, or exchanges, and to fix and regulate reasonable rates, tolls, or compensation therefor, and also to require reasonable connections to be made and maintained when practicable, between any such lines, stations or exchanges, and the lines or stations of private individuals, firms or corporations desiring such connections, and to fix and regulate the rates, tolls or compensation therefor; and also to make and enforce rules and regulations by which all persons, firms or corporations, owning or operating telephone lines, stations, or exchanges in this State for the transmission of intelligence for hire, shall be governed in the conduct of said business: *Provided*, That in cities and towns where franchises have been granted by any city or town, to operate and maintain a telephone exchange or exchanges and the rates and tolls are fixed in any such franchise so granted, nothing herein shall permit any increase in the rates and tolls so fixed for service now furnished, whether local or otherwise, except by agreement, with the municipal authorities in any such city or town and the subscribers: *Provided, further*, That except by agreement with the subscribers, no change shall be made in any existing rates without a hearing by said Commission which shall be had at such time and place as shall be designated by said Commission most convenient to the parties interested, and of which the said Commission shall publish a notice in at least one newspaper most likely to give notice to the parties interested, once a week for at least four weeks.

Civ. '12, § 3161; 1904, XXIV, 496.

(4838) § 32. Enforcement of This Article.—For the purpose of enforcing and carrying into effect the provisions of Sections 31, 32, 33 and 34, and making such investigations as may be necessary and proper in enabling it to discharge the duties hereby imposed, the said Commission is hereby invested with all the rights, powers, and privileges conferred upon it and charged with all the duties imposed upon it or its members as Railroad Commissioners, by the laws of this State for like purposes in regard to railroads, telegraph lines, and the persons, firms or corporations owning or operating them.

Civ. '12, § 3162; 1904, XXIV, 496.

(4839) § 33. Penalty for Violation of Provisions by Telephone Lines.—Any person, firm or corporation, owning or operating any telephone line, stations or exchange in this State, for the transmission of intelligence for hire who shall wilfully violate any of the provisions of Sections 31, 32, 33 and 34, or fail or refuse to obey any of the orders of said Commission,

shall forfeit and pay as a penalty therefor the sum of twenty-five dollars per day for each day in default, to be recovered by suit in the name of the State on the relation of any person, firm or corporation aggrieved, in any county in which such violation or default shall be committed or occur. And the sum so recovered shall, after paying all expenses of said suit, be paid into the Treasury of the State. It shall be the duty of the Attorney General and of the Solicitors of the State to prosecute said suits.

Civ. '12, § 3163; 1904, XXIV, 496.

(4840) § 34. Proportion of Expenses of Telephone Lines.—The persons, firms or corporations owning or operating telephone lines, stations or exchanges in this State for the transmission of intelligence for hire, shall bear their proportion of the salaries of the said Railroad Commission and the salaries of their Clerk and other assistants and of the expenses of their office along with the several corporations mentioned in Sections (4810) and (5026) and to that end the Comptroller General and the fiscal officers named in said Sections shall place all such persons, firms and corporations in the same category as to the pay of the said salaries and expenses as said other corporations, and shall assess and collect their *pro rata* of said salaries and expenses in the same manner as the *pro rata* of the said other corporations, and all the duties, requirements, and penalties which the law provides for or against the said other corporations with regard to said salaries and expenses, shall devolve upon and be incurred by every person, firm or corporation owning or operating any telephone line, station or exchange in the State for the transmission of intelligence for hire.

Civ. '12, § 3164; 1904, XXIV, 496.

ARTICLE V.

Provisions as to Discrimination and Unreasonable Charges.

(4841) § 1. Charge of Unreasonable Rates—Declared to Be Extortion—Punishment.—If any railroad corporation organized or doing business in this State under the Act of corporation, or general law of this State now of force, or which may hereafter be enacted, or any railroad corporation organized, or which may hereafter be organized, under the laws of any other State, and doing business in this State, shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for transportation of passengers, or freight of any description, or for the use and transportation of any railroad car upon its tracks or any of its branches, or upon any railroad within this State which it has the right, license or permission to use, operate or control, the same shall be deemed guilty of extortion, and, upon conviction thereof, shall be fined in a sum not less than one hundred nor more than one thousand dollars.

Civ. '12, § 3165; Civ. '02, § 2083; R. S. 1646; 1892, XXI, 10.

(4842) § 2. Unjust Discrimination Prohibited—Punishment—Rebates.—If any railroad corporation, as aforesaid, shall make any unjust discrimination in its rates and charges of toll as compensation for transportation

of passengers or freights of any description, or for the use and transportation of any railroad car upon its said road or upon any of the branches thereof, or upon any railroads connected therewith which it has the right, license or permission to operate or control within this State, the same shall be deemed guilty of having violated the provisions of this Chapter, and, upon conviction thereof, shall be fined in a sum of not less than one hundred nor more than one thousand dollars.

It shall be unlawful for any person so engaged as aforesaid, or person engaged solely in the shipment or receiving of property, directly or indirectly, to allow or receive any rebate, drawback or other advantage, in any form, upon shipments made or services rendered or received by them as aforesaid.

Civ. '12, § 3166; Civ. '02, § 2084; R. S. 1647; 1892, XXI, 10.

(4843) § 3. Charges in Proportion to Distance—Passengers—Freights and Cars—Construction and Application.—It shall be unlawful for any such person or persons so engaged as aforesaid, to charge, collect or receive for the transportation of any passenger or freight of any description upon its railroad for any distance within this State the same or a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation of any passenger of the same class or like quantity of freight of the same class over a greater distance of the same railroad; or to charge, collect or receive at any point upon its railroad a higher rate of toll or compensation for receiving, handling or delivering freight of the same class and quantity than it shall at the same time charge, collect or receive at any point upon the same railroad; or to charge, collect or receive for transportation of any passenger or freight of any description over its railroad a greater amount as toll or compensation than shall at the same time be charged, collected or received by it for the transportation of any passenger of the same class or like quantity of freight of the same class being transported over any portion of the same railroad of equal distance; or to charge, collect or receive from any person or persons a higher or greater amount of toll or compensation than it shall at the same time charge, collect or receive from any other person or persons for receiving, handling or delivering freight of the same class and like quantity at the same time upon its railroad; or to charge, collect or receive from any person or persons for the transportation of any freight upon its railroad a higher or greater rate of toll or compensation than it shall at the same time charge, collect or receive from any person or persons for the transportation of a like quantity of freight of the same class being transported from the same point over equal distances of the same railroad; or to charge, collect or receive from any person or persons for the use and transportation of any railroad car or cars upon its railroad for any distance the same or a greater amount of toll or compensation than is at the same time charged, collected or received from any other person or persons for the use and transportation of any railroad car of the same class or number for a like purpose being transported over a greater distance of the same railroad; or to charge, collect or receive from any person or persons for the use and transportation of any railroad car or cars upon its railroad a higher or greater rate of toll or compensation than it shall

at the same time charge, collect or receive from any other person or persons for the use and transportation of any railroad car or cars of the same class or number for a like purpose being transported from the same point over an equal distance of the same railroad. And all such discriminating rates, charges, collections or receipts, whether made directly or by means of any rebate, drawback or other shift or evasion, shall be deemed and taken against such person or persons so engaged as aforesaid as *prima facie* evidence of the unjust discrimination prohibited by the provisions of this Article.

This Section shall not be construed so as to exclude other evidence tending to show any unjust discrimination in freight and passenger rates. The provisions of this Section and the two preceding Sections shall extend and apply to any railroad, the branches thereof, and any road or roads which any such person or persons so engaged as aforesaid has the right, license or permission to use, operate or control wholly or in part within this State: *Provided, however*, That nothing herein contained shall be so construed as to prevent such person or persons so engaged as aforesaid from issuing commutation, excursion or thousand mile tickets as the same are now issued by such corporations.

Civ. '12, § 3167; Civ. '02, § 2085; G. S. 1442; R. S. 1648; 1882, XVIII, 487.

Is not applicable to interstate commerce. *Railroad Commissioners v. R. R.*, 23 S. C. 230; *Hall v. Railroad Co.*, 25 S. C. 564; *Stienberger v. Railroad Co.*, 29 S. C. 510, 7 S. E. 836.

What are interstate shipments? *Fraser v. C. & W. C. Ry. Co.*, 81 S. C. 163, 62 S. E. 14; *Hunter v. C. & W. C. Ry. Co.*, 81 S. C. 169, 62 S. E. 13; *Hanley v. K. C. Ry. Co.*, 187 U. S. 617, 47 L. Ed. 333.

(4844) § 4. Charges for Shorter Hauls—Construction and Provisos.—

It shall be unlawful for any person or persons engaged in the transportation of property as provided in Section 1 of this Article to charge or receive any greater compensation for carrying, receiving, storing, forwarding or handling articles of the same character and description for a shorter than a longer distance in one continuous carriage; and the road of a corporation shall include all the road in use by such corporation, whether owned or operated under a contract or lease by such corporation: *Provided*, That nothing in this Chapter contained shall be construed so as to require any corporation or combination of corporations to regulate their charges for shorter distances by their proportion of through rates between terminal or junctional competitive points: *Provided, further*, That if one corporation should use, operate or otherwise control, wholly or in part, several lines or divisions of hitherto independent railroads within the State, the Commission may in their discretion, conjointly with the said corporations, fix different rates of toll or compensation for freight traffic on each of said hitherto independent lines or divisions: *Provided, further*, That the Railroad Commission, conjointly with the railroad companies, shall have authority to make special rates for the purpose of developing all manufacturing, mining, milling and internal improvements in this State.

Civ. '12, § 3168; Civ. '02, § 2086; G. S. 1443; R. S. 1649; 1887, XIX, 790.

What is terminal point? *Steinberger v. R. R.*, 29 S. C. 510, 7 S. E. 836.

(4845) § 5. Exceptions as to Uniformity in Freight Charges.—

Nothing in this Chapter shall apply to the carriage, receiving, storing, handling, or forwarding of property carried for the United States, or any State thereof, at lower rates of freight and charges than for the general public,

or to the transportation of articles free, or at reduced rates of freight, for charitable purposes, or to or from public fairs and expositions for exhibition.

Civ. '12, § 3169; Civ. '02, § 2087; G. S. 1444; R. S. 1650; 1887, XIX, 840.

(4846) § 6. Chapter Applies to Continuous or Part Continuous Carriage.—Each and all of the provisions of this Chapter shall apply to all property, and the receiving, delivery, loading, unloading, handling, storing, or carriage of the same on one actually or substantially continuous carriage, or as part of such continuous carriage, as provided for in Section 1 of this Article; and the compensation therefor, whether such property be carried wholly on one railroad or partly on several railroads, and whether such services are performed or compensation paid by or to one person alone or in connection with another or other persons.

Civ. '12, § 3170; Civ. '02, § 2088; G. S. 1445; R. S. 1651; 1887, XIX, 814.

(4847) § 7. Consignee Entitled to Itemized Statement of Charges—Correction of Errors.—Whenever any article or articles of freight shall be shipped to any point within the limits of this State, whether shipped from a point beyond the limits of this State or not, it shall and may be lawful for the consignee or consignees of said articles to demand and receive from the agent or agents of the railroad company delivering the same, and before the payment of any charges upon the same, a full and correct statement of said charges, the class or classes to which each and every of the articles belong, the rates of freight charged for each class and showing the total amount to be paid by said consignee or consignees together with the proportion of the same to be paid to each road over which, or any part of which, said freight may have passed, whether such road be beyond the limits of this State or not: *Provided*, That should such itemized statement not be incorporated in the waybills the agent or agents shall deliver the articles on the payment of freight and procure as soon as possible such required items when demanded. If any errors should then appear, the same shall be immediately collected by such agent or agents.

Civ. '12, § 3171; Civ. '02, § 2089; G. S. 1446; R. S. 1652; 1889, XX, 378.

(4848) § 8. Consignee May Require Settlement According to Contract—Penalty.—In all cases the railroad company delivering freights to consignees shall be required to settle their freight charges according to the contract as set forth in the bill of lading from the shipping point, and they are hereby forbidden to retain the article of freight after the consignee offers and is ready and willing to comply with the terms of said bill of lading.

Civ. '12, § 3172; Civ. '02, § 2090; G. S. 1448; R. S. 1654; 1889, XX, 378.

(4849) § 9. Provision to Recover Charges from Common Carriers in Excess of Legal Rate.—That in all cases where any common carrier shall charge more than the legal rate of transportation applying to any goods, commodities, live stock or any other kind of property, as shown by any rates fixed by law, or by the tariffs filed with and approved by the Railroad Commission of this State in the case of interstate transportation, or by

the United States Commerce Commission, as required by law, then, in all such cases, the consignee, or owner and holder of a bill of lading, or the owner of such property transported, who may have paid such illegal charge or charges, shall have the right to recover in any Court of competent jurisdiction any and all such amounts as may have been paid in excess of the legal rate or rates applying to such property, and such persons shall not be defeated of a recovery on account of the fact that such payment or payments may have been made voluntarily: *Provided, however*, No actions shall be maintained hereunder until after thirty days from demand upon such common carrier for the repayment of such excess charges.

1914, XXVIII, 641.

(4850) § 10. Cotton—How Classified—Provisos.—All cotton packed in bales transported by common carriers within the limits of this State shall be classed as “heavy goods”—that is to say, an article to be weighed, and charged for and treated accordingly: *Provided*, That any common carrier before receiving such cotton for shipment, shall have the right to demand from the shipper the weights of the several bales thereof, and to adopt the same as the weights upon which freight is to be charged; and in case of loss, no recovery shall be had by any shipper for a greater amount than the weights so furnished by him.

Civ. '12, § 3173; Civ. '02, § 2091; G. S. 1449; R. S. 1655; 1889, XX, 378.

(4851) § 11. Commissioners to Make Freight and Passenger Tariffs—Regulations—Provisos.—The Commissioners elected as hereinbefore provided, shall, as provided in the next Section of this Chapter, make reasonable and just rates of freight and passenger tariffs, to be observed by all railroad companies doing business in this State on the railroads therein, but said passenger rates shall not exceed the maximum prescribed in Section (4955); they shall make reasonable and just rules and regulations to be observed by all railroad companies doing business in this State, as to charges to any and all points for the necessary hauling and delivery of all freights; shall make such just and reasonable rules and regulations as may be necessary for preventing unjust discrimination in the transportation of freight and passengers on the railroads in this State; shall have the power to make just and reasonable joint rates for all connecting roads doing business in this State, as to all traffic or business passing from one of said roads to another, and to require the making of such connection at intersecting points of the schedules of trains as the public convenience may in their judgment demand: *Provided, however*, That before applying joint rates to roads that are not under the management and control of one and the same company the Commissioners shall give thirty days' notice to said roads of the joint rate contemplated and of its division between said roads, and give hearing to roads desiring to object to the same; shall make reasonable and just rates of charges for use of railroad cars carrying any and all kinds of freight and passengers on said railroad, no matter by whom owned or carried, and shall make just and reasonable rules and regulations to be observed by said railroad companies or railroads, to prevent the giving or paying of any rebate or bonus, directly or indirectly, and

from misleading or deceiving the public in any manner, as to the real rates charged for freight and passengers: *Provided*, That nothing in this Chapter shall be taken as in any manner abridging or controlling the rates for freight charged by any railroad company in this State for carrying freight which comes from or goes beyond the boundaries of the State, and on which freight less than local rates on any railroad carrying the same are charged by such railroad, but said railroad companies shall possess the same power and right to charge such rates for carrying such freights as they possessed before the passage of this Chapter, and Commissioners shall have full power, by rules and regulations, to designate and fix the difference in rates of freight and passenger transportation to be allowed for shorter and longer distances on the same or different railroads, and to ascertain what shall be the limit of longer and shorter distances.

Civ. '12, § 3174; Civ. '02, § 2092; R. S. 1656; 1892, XXI, 11.

Interstate Commerce Comm. v. Railway Co., 167 U. S. 479, 496, 42 L. Ed. 243.

Regulations as to hours for ticket office to be open. Hall v. S. C. Ry. Co., 25 S. C. 564.

Schedule rates. Johnson v. Ry., 73 S. C. 39, 52 S. E. 644.

(4852) § 12. Schedule of Rates — Evidence — Schedules to Be Posted — Proviso — Penalty. — The said Railroad Commissioners are hereby authorized and required to make for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of just and reasonable rates of charges for transportation of passengers and freight and cars on each of said railroads, and said schedule shall, in suits brought against any such railroad corporations wherein is involved the charges of any such railroad corporation for the transportation of any passenger or freight or cars, or unjust discrimination in relation thereto, be deemed and taken in all of the Courts of this State as sufficient evidence that the rates therein fixed are just and reasonable rates of charges for the transportation of passengers and freights and cars upon the railroads; and said Commissioners shall from time to time, and as often as circumstances may require, change and revise said schedule. When any schedule shall have been made or revised it shall be the duty of all such railroad companies to post at all their respective stations a copy of said schedule for the protection of the people: *Provided*, That the schedules thus prepared shall not be taken as evidence as herein provided until schedules have been prepared and published as aforesaid for all the railroad companies now organized under the laws of this State or that may be organized at the time of said publication. All such schedules purporting to be printed and published as aforesaid shall be received and held in all such suits as *prima facie* the schedules of said Commissioners without further proof than the production of the schedule desired to be used as evidence, with a certificate of the Railroad Commission that the same is a true copy of the schedule prepared by them for the railroad company or corporation therein named, and that the same has been duly published as required by law: *Provided*, That thirty days' notice of any change or revision of the schedule of rates shall first be given to the railroad company to be affected thereby before the same shall go into effect.

Any railroad corporation which shall fail to post at any of its stations a copy of the schedule of rates as provided in this Section, shall be liable to a penalty of one hundred dollars for each and every day in which it

shall fail to post such schedule, to be recovered by any citizens who will sue therefor, one-half of such penalty to go to the State, the other half to the citizen suing for the same.

Civ. '12, § 3175; Civ. '02, § 2093; R. S. 1657; 1898, XXII, 810.

Action for penalty. *Johnson v. S. A. L. Ry.*, 73 S. C. 36, 52 S. E. 644.

(4853) § 13. Commission to Fix Storage Charges on Freight.—Power is hereby conferred on the Railroad Commission of South Carolina, and they are required to fix and prescribe a schedule of maximum rates and charges for storage of freight made and charged by railroad companies doing business in this State, and to fix at what time, after the reception of freight at place of destination, such charges of storage shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination, and residence of consignee, and such other facts as in their judgment should be considered in fixing the same

All the provisions of the Act creating said Railroad Commission, and Acts amendatory thereof, prescribing the procedure of said Commission in fixing freight and passenger tariffs, and hearing complaints of carriers and shippers, and of altering and amending said tariffs, shall apply to the subject of fixing and amending rates and charges for storage, as aforesaid.

Civ. '12, § 3176; Civ. '02, § 2094; 1901, XXIII, 719.

This Section does not delegate legislative power. *Jones Bros. v. Ry.*, 76 S. C. 67, 56 S. E. 666.

(4854) § 14. Discrimination and Excessive Charges for Storage Prohibited.—No railroad company shall make or retain, directly or indirectly, any charge for storage of freight greater than that fixed by the Commission for each particular storage, nor shall they discriminate directly or indirectly by means of rebate, or any other device in such charges, between persons.

Civ. '12, § 3177; Civ. '02, § 2095; 1901, XXIII, 719.

(4855) § 15. Penalty for Discrimination or Excessive Charges for Storage.—If any railroad company shall violate the provisions of Section 14, either by exceeding the rates of storage prescribed, or by discriminating, as aforesaid, the person or persons so paying such overcharge, or subject to such discrimination, shall have the right to sue for the same in any Court of this State having jurisdiction of the claim, and shall have all the remedies, and be entitled to recover the same penalties and measures of damages as is prescribed in the case of overcharge of freight rates, upon making like demand as is prescribed in such case, and after like failure to pay the same.

Civ. '12, § 3178; Civ. '02, § 2096; 1901, XXIII, 719.

(4856) § 16. Freight Rates on Melons, Etc., to Be Published.—It shall be the duty of all railroad companies doing business in this State, to publish during the months of January and February of each year, the rates of freight on watermelons and cantaloupes per carload per twenty-four thousand pounds and upwards, from the various points in this State to the different markets of the country, which rate shall not be increased

during the current year. Any railroad company violating the provisions of this section by charging rates higher than those so published, shall forfeit to the party injured double the amount of the freight charged, to be recovered in any Court of competent jurisdiction.

Civ. '12, § 3179; 1903, XXIV, 82.

(4857) § 17. Railroad Commission Empowered to Fix Contracts Between Common Carriers, Telephone Companies, Etc.—That in case of failure on their part to agree, the Railroad Commission of South Carolina is authorized and directed to supervise and fix all agreements, contracts, rates, or the divisions thereof, rules and regulations, between or among common carriers, telephone and telegraph companies, of whatever kind, now or hereafter to be placed under the control or supervision of the said Railroad Commission.

1920, XXXI, 1064.

(4858) § 18. To Make Regulations.—The Railroad Commission of South Carolina is hereby empowered, authorized and directed to make such rules and regulations as may be necessary to carry into effect the provisions of Section 17 hereof.

1920, XXXI, 1064.

(4859) § 19. Connecting Railroads Not to Discriminate.—It shall not be lawful for any railroad company, chartered by this State, to discriminate against any railroad company which may connect with it, either at one of its terminal stations, or at any intermediate point on its line where said companies have stations and agents established, by neglecting or refusing to deliver with due diligence to said connecting road, in the yard or on the track of the same, all cars wholly or partly loaded with freight consigned to points on said connecting road, or to points beyond its line; but in all cases where freight is to be delivered to a connecting road to complete its transportation, such delivery shall be made by the railroad which brought the freight to the connecting point, and no additional charge shall be made therefor: *Provided, however,* That said delivering road may demand of its connections payment of all charges which have accrued thereon, on or before delivery of said freight on the tracks or in the yards of its connecting road.

Civ. '12, § 3180; Civ. '02, § 2097; G. S. 1471; R. S. 1658; 1882, XVII, 822.

(4860) § 20. Not to Discriminate as to Other Railroads by Refusal to Receive Freight.—It shall not be lawful for any railroad company, chartered by this State, to discriminate in favor of or against any railroad company which may connect with it, either at one of its terminal stations, or at an intermediate point on its line where said companies have stations and agents established, as against any other railroad company which may connect with it, at the same station or point, by refusing either to receive freight for shipment, or to issue through bills of lading, at equal rates of freight for the same, to any one given destination, reached by any or all of such connecting roads, or their connections, for which freight is received, or through bills of lading are issued, to be forwarded by any other of such connecting roads at the same point: *Provided, however,* If any of said

connections shall refuse to transport freight from its own terminus to the ultimate destination of said freight at the same rate as is charged by any other connections at the same point, then the initial road shall be released from the provisions of this Section, and the said connecting road shall not be entitled to the benefit of its provisions.

Civ. '12, § 3181; Civ. '02, § 2098; G. S. 1472; R. S. 1659; 1882, XVII, 822.

(4861) § 21. Not to Discriminate in Rates of Freight as to Other Railroads.—It shall not be lawful for any railroad company chartered by this State, to discriminate in its rates of freight in favor of or against any railroad company which may connect with it, either at one of its terminal stations, or at any intermediate point on its line; but in all cases the charges on freight of the same character, having the same original point of shipment and the same destination, shall be uniform to and from all lines making connection with the said railroad at the same point.

Civ. '12, § 3182; Civ. '02, § 2099; G. S. 1473; R. S. 1660; 1882, XVII, 822.

(4862) § 22. "Railroad Company" Construed—What Shall Not Operate as a Bar to This Chapter.—In the construction of the three preceding Sections, the term railroad company chartered by this State shall be held to mean each railroad company holding its franchise under a separate charter granted by this State; and no ownership or shares of the capital stock of one corporation by another corporation, nor any lease, contract or other agreement between corporations or individuals, shall operate as a bar to the provisions of this Chapter; but each corporation so chartered shall deal with all its connections at any one point on the same terms, and shall afford the like usual facilities for the interchange of freight between all of its connections at the same point; and any contract, combination, joint ownership or joint management contrary to the provisions of this Article shall be null, void, and of no effect.

Civ. '12, § 3183; Civ. '02, § 2100; G. S. 1474; R. S. 1661; 1882, XVII, 823.

(4863) § 23. Railroads to Receive Cars from Other Roads on Equal Terms—Rebates, Fraud, Etc.—All railroad companies in this State shall, at the terminus of any intermediate station, be required to switch off and deliver to the connecting road having the same gauge, in the yard of the latter, all cars passing over their lines, or any portion of the same, containing goods or freights consigned, without rebate or deception, by any route, at the option of the shipper, according to customary or published rates, to any point over or beyond such connecting road; and any failure to do so, with reasonable diligence, shall render the railroad company so failing liable to the owner or consignee for all damages that may result therefrom with interest and all costs and disbursements. Should the defendant in any suit brought under this Section set up as a defense that the plaintiff has accepted a rebate, or practiced fraud or deception touching the rate, it shall be a complete reply to such defense if the plaintiff can prove that defendant or its agents has allowed a rebate or rebates, or practiced like fraud or deception, from the same competing points against the rival line.

Civ. '12, § 3184; Civ. '02, § 2101; R. S. 1662; 1887, XIX, 822.

(4864) § 24. Common Carriers Not to Interfere With Contracts of Shipment.—If any person, firm or corporation shall have contracted to deliver to any other person, firm or corporation within this State certain commodities, no common carrier doing business in this State, over whose road such commodities would be transported before delivery to the consignee, shall interfere with the fulfillment of such contracts between such shipper of freight and the proposed consignee; nor shall undertake to control or direct, or in any wise interfere with, the shipment of such commodities by the party or parties who has contracted so to ship the same. To this end no common carrier doing business in this State, over whose road such commodities would pass in transportation before delivery to the consignee in this State, when furnishing cars to the shippers thereof, shall have the right to designate to what consignees freight loaded in such cars shall be consigned, or in any way to interfere with or seek to control the use of such cars by the shipper in making shipment to such consignee as he may desire to ship to, or be under contract to ship to.

Civ. '12, § 3185; 1906, XXV, 107.

(4865) § 25. Penalty for Carriers Interfering With Contracts of Shipment.—Any common carrier violating the provisions of Section 24 shall be liable to such damages, including special and punitive damages, as may be found in an action maintained in the Courts of this State. Any shipper or proposed consignee, bringing suit for the violation of the terms of Section 24, may include in the same action, actual damages sustained by him through such act of the common carrier, as well as any special damages, and may also recover in the same action such punitive damages as may be allowed to him.

Civ. '12, § 3186; 1906, XXV, 107.

(4866) § 26. Consignees of Coal, Etc., May Have Same Reweighed by Commissioner.—Any consignee of coal or other articles to be delivered to him in car-load lots by any common carrier at any point within the limits of this State where such common carrier maintains track scales, shall have the right to demand that such coal or other articles be reweighed before delivery to him by said common carrier; and it shall be the duty of such common carrier, within forty-eight hours after such demand, to reweigh the same and delivery to such consignee a written, or partly written and partly printed, statement, showing the true weight thereof.

Civ. '12, § 3187; 1906, XXV, 117.

(4867) § 27. Penalty for Failure to Have Coal Reweighed.—Any common carrier refusing or failing to comply with any of the provisions of Section 26 shall forfeit the right to any freight incurred through transportation of such coal or other article, or in the event that such freight shall have been prepaid, shall be liable as a penalty to the said consignee for the amount of freight so prepaid, to be recovered by suit in any Court of competent jurisdiction.

Civ. '12, § 3188; 1906, XXV, 117.

(4868) § 28. No Demurrage After Demand That Coal Be Reweighed—No demurrage or other similar charges shall be made by any common

carrier against a consignee making the demand specified in Section 26, between the time of the making of such demand and the time of delivery by such common carrier to said consignee of the statement required in said Section.

Civ. '12, § 3189; 1906, XXV, 117.

(4869) § 29. Common Carriers to Maintain Scales Under Certain Conditions.—It shall be the duty of any common carrier doing business in this State, upon demand of any party or any industrial enterprise having a sidetrack adjacent to and used in connection with the business of the said party or industrial enterprise, to erect and maintain on the said sidetrack suitable scales for reweighing the said coal or other articles, in car-load lots: *Provided, however,* The said party or industrial enterprise shall agree and become liable to the said common carrier to pay the amount incurred by said common carrier in the erection and maintenance of the said scales. In such event, it shall be the duty of the said common carrier to reweigh such coal or other articles delivered in car-load lots to the said party or industrial enterprise upon said sidetrack, as provided for in Section 26. Upon refusal so to weigh, the said common carrier shall be liable for the same penalties heretofore provided in Sections 26 to 29 inclusive.

Civ. '12, § 3190; 1906, XXV, 117.

(4870) § 30. Railroad Commission to Have Jurisdiction Over Track and Platform Scales.—All railroad track and platform scales, which are used in connection with shipping, are hereby placed under the jurisdiction of the Railroad Commission, for inspection, and to require new scales when needed, and to require the installation of such scales whenever in their opinion same is necessary for the needs of the public. A failure or refusal to carry out instructions of said Commission, in reference to said scales, shall be punished by a penalty of two hundred dollars for each refusal, to be recovered by suit in any Court of competent jurisdiction by any person or corporation aggrieved; and any sum so recovered shall be turned into the State Treasury for general use.

1912, XXVII, 578.

(4871) § 31. Railroads to Receive Cars from Connecting Lines.—All railroad corporations organized or doing business in this State under the Act of Corporation or General Law of this State now of force or which may hereafter be enacted, and all railroad corporations organized or which may be hereafter organized under the laws of any other State and doing business in this State, shall be compelled to receive, deliver to and handle at each of their junctions or terminal points in this State all cars or trains of a connecting line bound to or from any point upon its own line or beyond, upon the same terms and same charges, either by way of trackage or by way of its proportion of the entire rate charged upon said cars, trains or freight, that it charges or demands either under the law or by contract or agreement with any other railroad connecting with it at said junction or terminal point where it performs the same or similar service

for each of said railroads, and shall furnish the same facilities to each of said railroads.

Civ. '12, § 3191; Civ. '02, § 2102; 1896, XXII, 119.

(4872) § 32. Railroad Must Recognize Through Bills of Lading—When.—No railroad doing business in this State shall be allowed to refuse to issue or recognize a through bill of lading between competitive points when issued over or by one railroad with which it connects unless it issues and recognizes the same where goods are shipped to or from said points over any other competitive railroad with which it connects reaching said point, and that the said railroad shall not charge nor receive for said goods passing over its lines, either by law of local freight, or a division of a through freight rate, a greater sum when said goods are shipped by or over one line of railroad with which it connects than it would charge or receive when said goods are shipped by or over any other line of railroad with which it connects: *Provided, however,* That nothing herein contained shall prevent any such railroad from demanding payment of its charges in advance of performing said service of carrying said goods, or from limiting its liability to losses or damage to said freight upon its own line by a clause inserted in said bill of lading.

Civ. '12, § 3192; Civ. '02, § 2103; 1896, XXII, 119.

(4873) § 33. Facilities for Receiving and Forwarding Freight to Be Furnished.—Every railroad company doing business in this State working railways which form a part of a continuous line of railway communication shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic, freight or passengers arriving by the other, without any unreasonable delay and without any preference or advantage, or prejudice or disadvantage, and so that no obstruction may be offered to the public desirous of using such railways as continuous line of communication, and so that all reasonable accommodation may, by means of the railways of the several companies, be at all times afforded to the public in that behalf.

The above mentioned facilities and benefits shall be afforded as well to other railroads as to the public.

Civ. '12, § 3193; Civ. '02, § 2104; 1896, XXII, 119.

(4874) § 34. Shipper to Have the Right to Designate Route.—All persons shipping from, into, within or through this State shall have the right to designate the route or routes by which said goods shall be shipped, and it shall be unlawful for any corporation or person other than the holder of the bill of lading to vary said routing so designated, or to ship the same by any other route, or to receive said goods if so diverted, unless the route so designated shall be interrupted or incapable of being used at the time by strike or casualty, preventing the running of trains thereof.

Civ. '12, § 3194; Civ. '02, § 2105; 1896, XXII, 119.

Cannot apply to interstate shipments. *Lowe v. S. A. L. Ry.*, 63 S. C. 248, 41 S. E. 297.
Mitchell et al v. Greenville, S. & A. Ry. Co., 99 S. C. 319, 83 S. E. 261.

(4875) § 35. Penalty for Violation of Certain Provisions.—Any transportation company violating the provisions of any of the Sections 31, 32,

33 and 34, wilfully or knowingly shall be subject to a suit for each violation thereof at the instance of any person or owner of goods, or other persons or corporations, and upon proof of such violation the said party instituting the same shall be entitled to recover a penalty of five hundred dollars for such violation. Each violation of said Sections shall constitute a separate cause of action.

Civ. '12, § 3195; Civ. '02, § 2106; 1896, XXII, 119.

Mitchell et al v. Greenville, S. & A. Ry. Co., 99 S. C. 319, 83 S. E. 261.

(4876) § 36. Railroads to Interchange Freights.—It shall be unlawful for any railroad chartered or operated in this State to refuse to pay any carrier on traffic delivered at any of the terminal or junction points such freight charges as may have accrued from original point of shipment to the terminal or junction points, wherever delivery may be made, and to which at current rates the carrier making such delivery and previous carriers interested may be justly entitled to whenever the same may be collected by the road making the delivery to consignee: *Provided*, That the total amount of freight charges does not exceed any amount equal to one-half the market value of the property involved: *And also provided*, That this does not apply on property which, from its nature, is classed as "prepaid freight," or which may be destined for points designated and conducted as prepaid stations, of which due public notice has been given: *Provided, further*, That such carriers shall afford to such railroad company or companies making the delivery to the consignee the same advantages and facilities, in the handling and interchange of business, that it affords any other railroad at the same point.

Civ. '12, § 3196; Civ. '02, § 2107; 1896, XXII, 117.

(4877) § 37. Facilities for Interchange of Traffic to Be Furnished.—Railroads subject to this Article shall afford all reasonable, proper and equal facilities for the interchange of traffic between its own road and other carriers, whether at terminal or junction points, for the receiving, forwarding and delivering of freight and passengers to and from points on its line or lines beyond, and shall not discriminate in its rates or charges between or against any such connecting carriers.

Civ. '12, § 3197; Civ. '02, § 2108.

(4878) § 38. When Railroad Companies Required to Connect Tracks—Penalty of Avoidance—Powers of Commission.—Whenever the lines of railroad of two or more corporations may now, or hereafter, enter or pass through the corporate limits of any city or town in said State, the corporations owning the same are hereby required to build such connecting tracks as may be necessary to effect an actual connection of such lines for the purpose of interchanging and delivering cars and freight in carload lots; the entire reasonable cost of construction and maintenance of such connecting track to be borne by said railroad corporations, whose tracks are so connected, in such ratable proportion as shall be determined and adjusted by the Railroad Commissioners of this State. Failure to comply with the provisions of this Section for six months after the passage of this Section, or for six months after the building of any new line of railroad into any such city or town, shall subject each and every such corpora-

tion so failing, to a penalty of twenty-five dollars per day, to be recovered in an action by any citizen of such city or town, one-half for his own benefit and the other half for the benefit of the State of South Carolina: *Provided*, That any one of such railroad corporations may relieve itself from liability to such penalty by giving notice in writing within thirty days from the date when it shall become liable to the operations of this Section, to the other corporations so liable thereto, of its readiness to proceed with the construction of such connecting track; and if the other corporation or corporations so notified, shall fail to unite in such construction within ten days after such written notice, the corporation giving such notice may proceed to the construction of such track, and may recover of each and every other line so connected, such proportion of the costs of such construction as shall be determined by the Railroad Commissioners; but the recovery thereof shall not operate to discharge such delinquent corporation or corporations from liability to the penalty above imposed up to the time of the full completion of such connecting track: *Provided, however*, That the Railroad Commissioners shall have, and are hereby invested with, the power to suspend the operation of the requirements of this Section at such junctional points as are hereinbefore specified when it can be shown, upon a full and fair hearing before them, that the erection and operation of such connection would be unreasonable and unnecessary

Civ. '12, § 3198; Civ. '02, § 2109; 1900, XXIII, 388.

(4879) § 39. Rights of Way for Connecting Track.—For the purpose of building such track, the right of way may be taken over and across the property of either or all of such railroad corporations, and by and with consent of the Council of such city or town, such connecting track may be laid across or along any of the streets of such city or town, or the public grounds thereof: *Provided*, That such compensation shall be made to abutting landowners as they may be entitled to by law. In case it should be necessary for such connecting track to cross any private property other than such as above specified, then the right of condemnation is hereby given under the provisions of this Code upon the subject, to be exercised upon the application of either or all of such railroad corporations.

Civ. '12, § 3199; Civ. '02, § 2110; 1900, XXIII, 388.

(4880) § 40. Crossing One Track by Another—Power of Railroad Commissioners in Relation Thereto.—In building such connecting line the right is granted, under the supervision of the Railroad Commissioners, to run across or along any existing track at grade, and any railroad corporation building a new line into such city or town after the construction of such connecting track shall be required to connect its line with such track, and to pay to each and every such corporation owning such track a part of the costs thereof, which said part of the costs shall be fixed and determined by the Railroad Commissioners.

Civ. '12, § 3200; Civ. '02, § 2111; 1900, XXIII, 388.

(4881) § 41. Cars to Be Transferred to Connecting Track—Fees—Penalty.—It shall be the duty of all railroad corporations whose tracks shall be so connected to transfer to any other railroad track any car or cars

upon demand of the consignee or owner of the freight in said car or cars, at such transfer charges as may be fixed by the Railroad Commission, not to exceed one dollar per car in any case; empty cars to be returned free. Failure to comply with the written demand of the consignee or owner within twenty-four hours, shall subject the railroad corporation so failing to a penalty of one dollar per hour so long as such failure may continue, to be deducted from the freight bill of such owner or consignee, or to be recovered by an action of law, unless it be determined by the jury to be reasonably impracticable for such railroad corporation to make such transfer within said time.

Civ. '12, § 3201; Civ. '02, § 2112; 1900, XXIII, 388.

(4882) § 42. **Authorized to Join Tracks — Expenses.**—When any railroad company owning, leasing or operating a railroad in or through any part of this State shall have its terminus or any part of its track at or near the terminus of any other railroad in this State having the same gauge, or shall cross the same, said railroad company shall have the right, and is hereby authorized, to join its track, by safe and proper switches, with said other railroads, and for this purpose shall have the right to enter upon the right of way of said other railroad: *Provided*, That if the railroad with which such connection is proposed shall refuse to join in expenses for the same the railroad proposing the connection shall pay them.

Civ. '12, § 3202; Civ. '02, § 2113; 1887, XIX, 823.

(4883) § 43. **Right to Use Franchise Where Connecting Switches Are Refused.**—Should any railroad company refuse to allow the connecting switches put in its line, when requested under Section 42, it shall and may be lawful for the other road seeking such connection to proceed to procure the right to use so much of the franchise of the former as may be necessary for such purpose, in the manner now provided by law for private property taken for use of any railroad.

Civ. '12, § 3203; Civ. '02, § 2114; 1887, XIX, 823.

(4884) § 44. **Connecting Roads to Operate as One, When Operated by Same Company.**—All connecting railroads doing business in this State, and under the management or control, by lease, ownership, association or otherwise, of one and the same person, firm, corporation or association, shall for purposes of transportation, in applying freight and passenger tariffs, be considered as constituting but one and the same road, and the rate shall be computed as upon parts of one and the same road unless otherwise specified by the Railroad Commission.

Civ. '12, § 3204; Civ. '02, § 2115; 1896, XXII, 118.

Regarded as one road for purpose of license tax. *Southern R. Co. v. City Council of Greenville*, 45 S. C. 602, 23 S. E. 953.

(4885) § 45. **Violation of Rules After Notice—Recompense—Penalty—Action for Recovery—How Instituted.**—If any railroad company doing business in this State, by its agents or employees, shall be guilty of a violation of the rules and regulations provided and prescribed by said Commissioners, and if, after due notice of such violation given to the principal officer thereof, ample and full recompense for the wrong or injury

done thereby to any person or corporation, as may be directed by said Commissioners, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offense of not less than one thousand dollars nor more than five thousand dollars, to be fixed by the presiding Judge. An action for recovery of such penalty shall lie in any Court in the State where such violation has occurred or wrong has been perpetrated, and shall be in the name of the State of South Carolina. The Commissioners shall institute such action through the Attorney General or any of the Solicitors of this State.

Civ. '12, § 3205; Civ. '02, § 2116; R. S. 1666; 1892, XXI, 14.

(4886) § 46. **Injuries to Persons—Recovery—Damages—Limitation of Time.**—If any railroad company doing business in this State shall, in violation of any rule or regulation provided by the Commissioners aforesaid, inflict wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury in the county where the same is done in any Court having jurisdiction thereof, and the damages to be recovered shall be the same as in action between individuals, except that in cases of wilful violation of law such railroad companies shall be liable to exemplary damages: *Provided*, That all suits under this Chapter shall be brought within twelve months of the commission of the alleged wrong or injury.

Civ. '12, § 3206; Civ. '02, § 2117; R. S. 1667; 1892, XXI, 14.

(4887) § 47. **Duplicate Receipts—Delivery of Goods on Presentation of Receipt—Penalty.**—All railroad companies in this State shall on demand issue duplicate freight receipts to shippers, in which shall be stated the class or classes of freights shipped, the freight charges over the road giving the receipt, and, so far as practicable, shall state the freight charges over other roads that carry such freight. When the consignee presents the railroad receipt to the agent of the railroad that delivers such freight, such agent shall deliver the articles shipped on payment of the rate charged for the class of freights mentioned in the receipt. If any railroad company shall violate the provisions of this Article, such railroad company shall incur a penalty to be fixed and collected as provided in Section 45.

Civ. '12, § 3207; Civ. '02, § 2118; R. S. 1669; 1892, XXI, 14.

(4888) § 48. **Mandamus to Require Compliance—Punishment for Disobedience—Costs and Counsel Fees.**—If any railroad company shall neglect or refuse to comply with the provisions of this Chapter or with the rules and regulations prescribed by said Commissioners within the limits of their authority, such company shall be subject to a writ of *mandamus*, to be issued by any Justice of the Supreme Court, or Circuit Judge, upon application of the Commissioners, or a majority of them, to require compliance with said laws or said rules and regulations, and failure to comply with said writ of *mandamus* shall be punishable as for contempt; and for any wilful violation of any of said laws, or failure to comply with the requirements of such rules or regulations, the Court may award such costs and counsel

fees, on the return of said writs, and after due deliberation thereon, as may be just.

Civ. '12, § 3208; Civ. '02, § 2119; R. S. 1670; 1892, XXI, 14.

Mandamus to enforce order. Railroad Commissioners v. A. C. L. Ry. Co., 71 S. C. 135, 50 S. E. 641.

(4889) § 49. Deposit of List of Names and Residences of President and Directors.—All railroad companies owning or operating a line of railroad situated in whole or in part within the limits of this State shall deposit with the Railroad Commissioners a list containing the names and residences of the president and board of directors of the railroad company owning or operating the said line of railroad.

Civ. '12, § 3209; Civ. '02, § 2120; 1892, XXI, 14.

ARTICLE VI.

Regulations as to Running Trains on Sunday and Carriage of Animals.

(4890) § 1. Trains Prohibited from Running on Sunday—Exceptions.—It shall be unlawful for any railroad corporation owning or controlling railroads operating in this State to load or unload, or permit to be loaded or unloaded, or to run or permit to be run, on Sunday, any locomotive, cars or trains of cars moved by steam power, except as hereinafter provided, and except to unload cars loaded with animals.

Civ. '12, § 3210; Civ. '02, § 2121; G. S. 1475; R. S. 1674; 1882, XVII, 823.

(4891) § 2. What Trains May Run.—Said corporations or persons may run on Sunday trains laden exclusively with vegetables and fruits; and on said day, in any and every month, their regular mail trains and such construction trains as may be rendered necessary by extraordinary emergencies other than those incident to freight or passenger traffic, and such freight trains as may be in transit which can reach their destination by six o'clock in the forenoon: *Provided*, That the Railroad Commissioners shall have the power (upon proper application made to them for the purpose by the officers of the church or religious denominations in charge of the place where such services are to be held) to authorize and permit the running of trains on any Sunday in the year for the transporting of passengers to and from religious services: *Provided*, The application for the permit and the authority granted must both be in writing and made a part of the records of said Railroad Commissioners: *Provided*, That solid trains made up of through freight cars reaching on Sunday any point upon any railroad in South Carolina and destined for some point or points beyond the limits of the State of South Carolina, may be continued as a solid through freight train along the line of said railroad through the State of South Carolina, without stopping said train for any other purpose than to take on fuel and receive necessary running orders and to change engines and cabooses.

Civ. '12, § 3211; Civ. '02, § 2122; G. S. 1476; R. S. 1675; 1901, XXIII, 721; 1903, XXIV, 83; 1912, XXVII, 572.

Trakas v. Charleston, etc., R. Co., 87 S. C. 206, 209, 69 S. E. 209.

(4892) § 3. **Train Delayed by Accidents, Etc., May Run to Usual Point of Rest.**—Any train running by a schedule in conformity with the provisions of this Chapter, but delayed by accident or other unavoidable circumstance, may be run until it reaches the point at which it is usual for it to rest upon a Sunday.

Civ. '12, § 3212; Civ. '02, § 2123; G. S. 1477; R. S. 1676; 1882, XVII, 823.

(4893) § 4. **Penalty for Violation.**—For a wilful violation of the provisions of the three preceding Sections the railroad company so offending shall forfeit to the State five hundred dollars, to be collected in any Court of competent jurisdiction.

Civ. '12, § 3213; Civ. '02, § 2124; G. S. 1478; R. S. 1677; 1882, XVII, 823.

(4894) § 5. **Overloading Cars With Animals—Period of Confinement—Care of Animals, Etc.**—No railroad company in the carrying or transporting of animals shall overload the cars, nor permit the animals to be confined in cars for a longer period than twenty-eight consecutive hours without unloading the same for rest, water and feeding, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement, the time during which the animals have been confined without rest on connecting roads from which they are received shall be included, it being the intent of this Chapter to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon contingencies heretofore stated. Animals so unloaded shall be properly fed, watered and sheltered during such rest by the owner or the person having custody thereof, or in case of his default in so doing, then by the railroad company transporting the same, at the expense of the owner or the person in custody thereof; and the said company shall, in said case, have a lien upon said animals for food, care and custody furnished, and shall not be liable for any detention of such animals authorized by this Chapter. Any company, owner, or custodian of such animals, who shall fail to comply with the provisions of this Section, shall, for each and every offense, be liable for and forfeit and pay a penalty of not less than fifty, nor more than five hundred dollars, to be paid to the State Treasury: *Provided, however,* That when animals shall be carried in cars in which they can and do have proper food, water, space, and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply.

Civ. '12, § 3214; Civ. '02, § 2125; G. S. 1479; R. S. 1678; 1882, XVII, 823.

Held constitutional, and the company cannot relieve itself of the duties imposed by special contract. *Crawford v. Southern Ry. Co.*, 56 S. C. 136, 34 S. E. 80; *Comer v. R. R. Co.*, 52 S. C. 37, 29 S. E. 637. It requires the carrier to feed and water the stock in transit where the owner neglects to do so. It also requires the carrier to furnish the owner with facilities to feed and water the stock.

Id. The burden of proof is on the carrier to show compliance with the statute. *Comer v. R. R. Co.*, *supra*; *Swindler v. Hilliard*, 2 Rich. 286; *Wallingford v. R. R. Co.*, 26 S. C. 258, 2 S. E. 19; *Baker v. Brinson*, 9 Rich. 201; *Johnstone v. R. R. Co.*, 39 S. C. 55, 17 S. E. 512.

(4895) § 6. **"Animals," "Owner," Etc., Construed.**—In Section 5 the word "animal" or "animals" shall be held to include all brute creatures; and the word "owner," "person," and "whoever," shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations in regard to animals

transported, owned, or employed by or in the custody of such corporations, shall be held to be the acts and knowledge of such corporations.

Civ. '12, § 3215; Civ. '02, § 2126; G. S. 1480; R. S. 1679; 1882, XVII, 824.

(4896) § 7. **Regulation of Loading and Unloading Live Stock by Railroads—Provisos.**—That every railroad company receiving live stock for transportation shall cause the same to be loaded not more than two hours before the scheduled departure of the train carrying the same, and every railroad company delivering live stock at its destination for unloading shall cause the same to be unloaded within two hours after the arrival of the trains carrying the same: *Provided*, That a longer time may be allowed if voluntarily consented to in writing by the owner or shipper on a paper other than the bill of lading: *And provided, further*, That in so far as the unloading of stock is concerned the consignee in person or his duly authorized agent shall make demand in writing for such unloading within two hours: *And provided, further*, That this Section shall not apply at stations where no unloading pen is maintained or where there is no agent of the railroad on duty upon the arrival of such train.

1916, XXIX, 822.

(4897) § 8. **Railroad Companies Required to Furnish Shippers of Live Stock Certain Information.**—Any railroad company doing business in South Carolina shall be required to furnish the owner, or shipper, or their agents, full information concerning the shipment, movement and delivery of live stock when en route, and on said company's line or in said company's possession. If company cannot make time published in schedule they must, whenever as much as three hours behind schedule time, wire owner and agent at destination extent of and cause of delay, and advise him of expected time of arrival. Upon failure to furnish such information, and upon failure to give shipper benefit of best connection as published in schedule, railroad company shall pay a fine not more than twenty-five dollars: *Provided*, That nothing herein contained shall interfere with the transmission of train orders: *Provided, further*, That in the event of failure upon the part of any common carrier to give the information herein required, it shall be incumbent upon such common carrier affirmatively to show that such failure was due to the necessary use of the wire, or wires, for transmission of train orders.

Civ. '12, § 3216; 1906, XXV, 114.

ARTICLE VII.

Regulations for the Prevention of Accidents and Concerning the Responsibility Thereof.

(4898) § 1. **Brakes Shall Be Attached—Brakemen Stationed.**—Every railroad corporation shall cause a good and sufficient brake to be attached to every car used upon its railroad for the transportation of passengers, and to every car used for the transportation of freight, except four wheeled freight cars used only for that purpose; and shall cause to be

stationed on every passenger train trusty and skillful brakemen, equal in number at least to one for every two cars in the train, except on passenger trains, where power brakes are used, and one such brakeman upon the last car of every freight train, which must always be equipped with a good and sufficient brake.

Civ. '12, § 3217; Civ. '02, § 2127; G. S. 1499; R. S. 1681.

This Section requires brakes to gondola and flat cars having eight wheels. *Mew v. C. & S. Ry. Co.*, 55 S. C. 90, 32 S. E. 828. As to mixed passenger and freight trains and brakemen required, see *Joyner v. Railway Co.*, 26 S. C. 49, 1 S. E. 52.

In the absence of testimony to the contrary, a railroad company will be presumed to have complied with this Section. *Joyner v. Railway Co.*, 26 S. C. 49, 1 S. E. 52. In order that the company be held liable, the failure to comply must be the proximate cause of the injury. *Adkins v. Railway Co.*, 27 S. C. 71, 2 S. E. 849. Injury to passenger from defective coupling. *Stuckey v. Railway Co.*, 60 S. C. 237, 38 S. E. 416. Foreign cars. *Youngblood v. S. C. & Ga. Railway Co.*, 60 S. C. 9, 38 S. E. 232; *Wallingford v. Railway Co.*, 26 S. C. 258, 2 S. E. 19.

This duty involves duty of reasonable inspection to see that brakes attached remain good and sufficient for that purpose. *Boyd v. Seaboard Air Line Railway*, 67 S. C. 218, 222, 45 S. E. 186.

(4899) § 2. Trains Shall Be Equipped With Tools.—Every railroad corporation shall equip each of its trains, for use in case of accident, with such tools and appliances as the Railroad Commissioners may direct.

Civ. '12, § 3218; Civ. '02, § 2128; G. S. 1500; R. S. 1682.

(4900) § 3. Lighting Cars With Naphtha and Other Substances Easily Ignited—Fastening Stoves—Penalty.—No passenger cars on any railroad shall be lighted by naphtha, or by any illuminating oil or fluid, made in part of naphtha or wholly or in part from coal or petroleum, or other substance of material, which will ignite at a temperature of less than three hundred degrees Fahrenheit. And all stoves shall be securely fastened to their places. Any railroad corporation which violates the provisions of this Section shall forfeit a sum not exceeding five hundred dollars.

Civ. '12, § 3219; Civ. '02, § 2129; G. S. 1501; R. S. 1683.

(4901) § 4. Formation of Trains.—In forming a passenger train, baggage, or freight, or merchandise, or lumber cars shall not be placed in rear of passenger cars.

Civ. '12, § 3220; Civ. '02, § 2130; G. S. 1481; R. S. 1680; 1882, XVII, 823.

(4902) § 5. Crossing Other Tracks—When to Stop.—Whenever any railroad crosses the track of any other railroad, except where interlocking and signaling safety devices are in use, it shall be the duty of the engineer, or person in control of the train, besides giving the signals required to be given near all crossings, to bring the train to a full or complete stop before crossing the said track; the same rule to apply to the running of a locomotive by itself without a train.

Civ. '12, § 3221; Civ. '02, § 2131; G. S. 1482; R. S. 1684; 1882, XVII, 824.

Creech v. C. & W. C. R. R. Co., 66 S. C. 535, 45 S. E. 86.

(4903) § 6. Signals to Be Given at Crossings.—A bell of at least thirty pounds weight and a steam or air whistle shall be placed on each locomotive engine or interurban car, and such bell shall be rung or such whistle sounded by the engineer or fireman or motorman at the distance of at least five hundred yards from the place where the railroad crosses any public highway or street or traveled place, and be kept ringing or whistling until the engine or interurban car has crossed such highway or street or traveled place; and if such engine or car shall be at a standstill within

less distance than one hundred rods of such crossing such bell shall be rung or such whistle sounded for at least thirty seconds before such engine or interurban cars shall be moved, and shall be kept ringing or sounding until such engine or interurban cars shall have crossed such public highway or street or traveled place: *Provided*, That a gong of not less than ten inches in diameter may be placed upon interurban cars in lieu of a bell as herein required and shall be sounded as herein provided.

Civ. '12, § 3222; Civ. '02, § 2132; G. S. 1483; R. S. 1685; 1882, XVII, 825; 1919, XXXI, 102.

See post, § (4925). Constitutionality of statute. *Kaminitsky v. R. R. Co.*, 25 S. C. 53; *Cole v. Blue Ridge Railway*, 75 S. C. 156, 160, 55 S. E. 126; *Clifford v. Southern Railway*, 87 S. C. 324, 325, 69 S. E. 513; *Ward v. Richmond & D. R. Co.*, 43 Fed. 422.

Starting car standing across public way without giving statutory signal. *Burns v. So. Ry. Co.*, 61 S. C. 404, 39 S. E. 567; *Littlejohn v. Same*, 49 S. C. 12, 26 S. E. 967; *Littlejohn v. R. & D. Ry. Co.*, 45 S. C. 181, 22 S. E. 789; *Weaver v. Railway*, 76 S. C. 49, 64, 56 S. E. 657, 114 Am. St. Rep. 924. Neglecting to give the statutory signals is negligence per se. *Bowen v. So. Ry. Co.*, 58 S. C. 227, 36 S. E. 590; *Hankinson v. R. R.*, 41 S. C. 19, 19 S. E. 206; *Strother v. R. R. Co.*, 47 S. C. 381, 25 S. E. 272; *Smith v. Ry. Co.*, 53 S. C. 121, 30 S. E. 697; *Petrie v. R. R. Co.*, 29 S. C. 302, 7 S. E. 515; *White v. R. R. Co.*, 30 S. C. 218, 9 S. E. 96; *Turbyfill v. Ry.*, 83 S. C. 325, 65 S. E. 278.

The Statute only applies to "travel places." *Hale v. R. R. Co.*, 34 S. C. 293, 13 S. E. 537; *Neely v. R. R. Co.*, 33 S. C. 136, 11 S. E. 636.

This Statute applies to train of cars across highway, the engine of which has already crossed not to return. *Brown v. Southern Railway*, 65 S. C. 260, 267, 43 S. E. 794.

But in an action at common law for negligence testimony as to failure to give the statutory signals at a crossing a mile distant from scene of accident was held competent. *Mason v. So. Ry. Co.*, 58 S. C. 70, 36 S. E. 440; *Mack v. R. R. Co.*, 52 S. C. 323, 29 S. E. 905.

A traveled place is a place where persons are both accustomed to and have a right to travel. *Hale v. R. R. Co.*, 34 S. C. 293, 13 S. E. 537; *Barber v. R. R. Co.*, 34 S. C. 450, 13 S. E. 690; *Hankinson v. Ry. Co.*, 41 S. C. 20, 19 S. E. 206; *Risinger v. Ry. Co.*, 59 S. C. 433, 38 S. E. 1; *Strother v. R. R. Co.*, 47 S. C. 376, 25 S. E. 272.

Track held not to be a traveled place under the facts of *Smalley v. Ry. Co.*, 57 S. C. 243, 35 S. E. 489.

First part of this statute clearly applies to moving trains, and does not apply where boy eight years old leaves highway, and, after being warned, persists in crossing track on shanty car some distance from highway. *Hasting v. Ry.*, 143 Fed. 260, 263. See, also, *Ellis v. Southern R. Co.*, 163 Fed. 686, 689.

Mere failure to slacken speed of train when approaching a crossing is not, in the absence of special circumstances, negligence. *Zeigler v. N. E. R. R. Co.*, 7 S. C. 402; *Fletcher v. Ry. Co.*, 57 S. C. 205, 35 S. E. 515.

Duty prior to statute. *Murray v. R. R. Co.*, 10 Rich. 227.

Although the crossing be such as not to come under the Statute the failure to give the signals may be negligence. *Fletcher v. Ry. Co.*, 57 S. C. 205, 35 S. E. 515.

Failure to give signals may show negligence. *Davis v. Ry.*, 68 S. C. 458, 47 S. E. 723, 63 S. C. 370, 577, 41 S. E. 468, 892; *Goggero v. Ry.*, 64 S. C. 104, 41 S. E. 819; *Bamberg v. Ry.*, 72 S. C. 389, 51 S. E. 988.

Failure to give signals required is negligence per se in action at common law for injury near crossing. *Clifford v. Ry.*, 87 S. C. 324, 69 S. E. 513. See, also, *Bishop v. Southern Railway*, 63 S. C. 532, 41 S. E. 806.

Lowering of gates does not take place of signal required by statute before train is started. *Weaver v. Southern Railway*, 76 S. C. 49, 64, 56 S. E. 657, 114 Am. St. Rep. 934.

Charge as to duty substantially given. *Mercer v. Southern Railway*, 66 S. C. 246, 55, 44 S. E. 750.

Liability hereunder. *Walker v. Ry.*, 77 S. C. 164, 57 S. E. 764, 12 Am. & Eng. Ann. Cas. 591.

Testimony as to omission of statutory signals responsive to charge of recklessness. *Osteen v. Southern Ry.*, Car. Div., 76 S. C. 368, 57 S. E. 196. As evidence of negligence. *Betchman v. S. A. L. Ry.*, 75 S. C. 73, 55 S. E. 140; *Cooper v. Ry.*, 65 S. C. 214, 43 S. E. 682.

Punitive damages for failure to give signals. *Cole v. Ry.*, 75 S. C. 160, 55 S. E. 126.

What is "traveled place" is question for jury. *Euddell v. S. A. L. Ry.*, 75 S. C. 290, 55 S. E. 528.

Continuous ringing or blowing. *Drawdy v. Ry.*, 75 S. C. 308, 55 S. E. 444; 78 S. C. 374, 376, 58 S. E. 980.

Does not apply to dogs hunting near track. *Fowles v. S. A. L. Ry.*, 73 S. C. 306, 53 S. E. 534.

Non suit sustained because of plaintiff's intestate's gross negligence in attempting to cross in front of approaching train. *Dawdy v. S. A. L. Ry. Co.*, 78 S. C. 374, 58 S. E. 980. See *Hughes v. Southern Ry.*, 82 S. C. 45, 61 S. E. 1079, 63 S. E. 5.

Municipal ordinances. *Dyson v. Ry.*, 83 S. C. 354, 65 S. E. 344.

Sanders v. Southern Ry. Co., Carolina Division, 97 S. C. 423, 81 S. E. 786; *Hutto v. Southern Ry. Co. et al*, 100 S. C. 181, 84 S. E. 719; *Tyler v. Atlantic Coast Line R. Co. et al*, 104 S. C. 107, 88 S. E. 541; *Carter v. Seaboard Air Line Ry. Co.*, 114 S. C. 517, 104 S. E. 186.

(4904) § 7. Signs at Crossings — Inscription — Exception.—Every railroad corporation shall cause signs to be placed, and constantly maintained, alongside of each public road or street where the same is crossed by the railroad on the same level. Said sign shall be elevated so as to be easily seen by travelers, and on each side of the same shall be printed in large letters the words "Railroad Crossing." But this Section shall not apply

to streets in cities, towns and villages unless the corporation be required to put up such sign by the officers having charge of such streets.

Civ. '12, § 3223; Civ. '02, § 2133; G. S. 1484; R. S. 1686; 1891, XX, 1116.

White v. R. R. Co., 30 S. E. 218, 9 S. E. 96.

(4905) § 8. Railroads Required to Provide Warning Boards.—Every company, lessee, manager or receiver owning or operating a railroad in this State is hereby required to provide and maintain and place warning boards one mile from all stations, drawbridges and where railroads cross at grade; the boards to have letters of sufficient size to be clearly seen from the engine and to describe the place of danger, said boards to be put not more than eight feet from side of track.

1914, XXVIII, 103.

(4906) § 9. To Be Provided Within One Year.—That each person, partnership, company or receiver who is affected by this law shall, within one year, equip all of their lines or branches in this State in accordance with the provisions of the foregoing Section.

1914, XXVIII, 103.

(4907) § 10. Penalty for Failure to Comply.—Any railroad company, receiver or lessee thereof doing business within this State which shall fail to comply with the provisions of Section 8, after ten days' notice thereof in writing, shall be subject to a fine of \$5.00 per day for every day thereafter that such failure shall continue, and any such railroad, receiver or lessee failing to reerect such warning board, in case any such board for any cause be down or removed, after ten days' notice in writing, shall be subject to the penalty herein provided of \$5.00 per day for each day that such railroad, receiver or lessee shall fail to so reerect such warning boards. This penalty shall be recoverable by any person of this State in any Court of competent jurisdiction, one-half to go to the party bringing the action and one-half to go into the County Treasury in which such action may be brought, to be used for ordinary county purposes.

1914, XXVIII, 103.

(4908) § 11. Leaving Hand or Lever Cars Near Crossings—Penalty—Liability for Damages for Frightened Horses.—It shall be unlawful for any railroad section master or any person in charge of or connected with any hand car or lever car to remove same from any railroad track and continue same stationary within fifty yards of any public crossing other than at any regular railroad section house: except when necessary to avoid an approaching train, or when in charge of employees engaged in actual work upon such crossing, and then only for such a period as is necessary to avoid such train or to perform such work. Any person violating the provisions of this Section shall, upon conviction, be fined not exceeding fifty dollars or be imprisoned not exceeding thirty days. Any railroad company shall be liable for damages for any horse frightened by reason of its employees violating the provisions of this Section.

Civ. '12, § 3224; 1902, XXIII, 1055.

(4909) § 12. **Trains Stop at Stations.**—Every railroad company in this State shall cause all its trains of cars for passengers to entirely stop upon each arrival at a station, advertised by such company as a station for receiving passengers upon such trains, for a time sufficient to receive and let off passengers.

Civ. '12, § 3225; Civ. '02, § 2134; G. S. 1486; R. S. 1687; 1882, XVII, 824.

Duty to assist passenger. *Madden v. Ry. Co.*, 35 S. C. 381, 14 S. E. 713; *Simms v. R. R. Co.*, 27 S. C. 268, 3 S. E. 301.

Negligence in stopping at station. See *Cooper v. Ga., C. & N. Ry.*, 61 S. C. 345, 39 S. E. 543, 56 S. C. 91, 34 S. E. 16; *Appleby v. S. C. & G. Ry.*, 60 S. C. 48, 38 S. E. 237; *Glover v. Ry. Co.*, 57 S. C. 228, 35 S. E. 510; *Johnson v. So. Ry. Co.*, 53 S. C. 303, 31 S. E. 212; *Gillman v. R. R. Co.*, 53 S. C. 210, 31 S. E. 224; *Brodie v. Ry. Co.*, 46 S. C. 203, 24 S. E. 180.

Failure to stop. *Martin v. R. R. Co.*, 32 S. C. 592, 10 S. E. 960.

Carrying passengers beyond destination. *Samuels v. R. & D. Ry. Co.*, 35 S. C. 493, 14 S. E. 943; *Thomas v. G. C. & A. Ry. Co.*, 38 S. C. 485, 17 S. E. 226.

Stopping electric car on signal from passenger. *Ussery v. Aiken-Augusta Ry.*, 79 S. C. 209, 60 S. E. 527.

Does not apply to flag stations. *Roundtree v. Ry.*, 73 S. C. 273, 53 S. E. 424; *Milhous v. Ry.*, 72 S. C. 442, 52 S. E. 41, 110 Am. St. Rep. 620.

This is only for benefit of passengers. *Carter v. C. & W. C. Ry. Co.*, 64 S. C. 316, 42 S. E. 161; *Creech v. Ry.*, 66 S. C. 525, 45 S. E. 86.

Belated passengers. *Pickett v. Southern Ry.*, 69 S. C. 453, 48 S. E. 466.

Belated passenger has no right to require carrier to hold car at flag station of electric road which has stopped to take switch and stood there long enough to let off and take on passengers. *Mitchell v. Augusta & Aiken R. Co.*, 87 S. E. 375, 380, 69 S. E. 664; 31 L. R. A., N. S., 442n.

Sufficient time. *Shealey v. Ry.*, 67 S. C. 65, 45 S. E. 119; *Gyles v. Ry.*, 79 S. C. 176, 60 S. E. 433.

Damages for failure to stop. *Caldwell v. A. C. L. Ry.*, 75 S. C. 74, 55 S. E. 131.

Ejecting through mistake at wrong station. *Ford v. Ry.*, 75 S. C. 286, 55 S. E. 448. Failure to stop at flag station. *Berley v. S. A. L. Ry.*, 83 S. C. 411, 65 S. E. 456; *Davis v. A. C. L. Ry. Co.*, 83 S. C. 66, 64 S. E. 1015.

Injury to passenger boarding train. *Talbert v. C. & W. C. Ry.*, 75 S. C. 136, 55 S. C. 138. Carrying by station. *Carter v. Southern Ry.*, 75 S. C. 355, 55 S. E. 771; *Trapp v. Southern Ry.*, 72 S. C. 343, 51 S. E. 919.

Injuries sustained because of failure to stop entirely at crossing of another railroad, where it was customary to receive passengers. *Creech v. Charleston & West. Car. Railway*, 66 S. C. 528, 535, 45 S. E. 86.

Applies to excursion trains. *Oliver v. Columbia, etc., R. Co.*, 65 S. C. 1, 44, 43 S. E. 307.

Passenger injured in alighting from train before it stopped. *Hollingsworth v. Southern Ry.*, 72 S. C. 114, 51 S. E. 560; *Smith v. Southern Ry.*, 80 S. C. 4, 61 S. E. 205.

Passenger's own negligence. *Hunter v. A. C. L. Ry.*, 72 S. C. 336, 51 S. E. 860, 110 Am. St. Rep. 605. Person intending to take passage. *Webster v. R. Co.*, 24 L. R. A., 521; *Ry. Co. v. Jennings*, 54 L. R. A., 827; *McLean v. R. Co.*, 18 L. R. A., N. S., 763.

(4910) § 13. **Responsible for Damages by Fire.**—Every railroad corporation shall be responsible in damages to any person or corporation whose buildings or other property may be injured by fire communicated by its locomotive engines, or originating within the limits of the right of way of said road in consequence of the act of any of its authorized agents or employees, except in any case where property shall have been placed on the right of way of such corporation unlawfully or without its consent, and shall have an insurable interest in the property upon its route for which it may be so held responsible, and may procure insurance thereon in its own behalf.

Civ. '12, § 3226; Civ. '02, § 2135; G. S. 1511; R. S. 1688; 1882, XVII, 824.

Embraces any kind of property, real or personal, which may be injured by fire. *Dent v. S. B. R. Co.*, 61 S. C. 330, 39 S. E. 529; *Dean v. Ry. Co.*, 55 S. C. 504, 33 S. E. 579; and extends to property beyond right of way. *Thompson v. R. R. Co.*, 24 S. C. 366. Insurance considered. *Id.* If attaches without regard to negligence. *Thompson v. R. R. Co.*, 24 S. C. 366; *Rogers v. Florence R. Co.*, 31 S. C. 378, 9 S. E. 1059; *Gregory v. Layton*, 36 S. C. 93, 15 S. E. 352.

The liability for fires occasioned by negligence exists without reference to this statute. *McCrady v. R. R. Co.*, 2 Strob. 356.

The statutory liability only extends to fire communicated from its own engines, and not to those communicated from the engines of its lessors, lessees, or of a third party. *Rogers v. Florence R. Co.*, 31 S. C. 378, 9 S. E. 1059; *Hunter v. R. R. Co.*, 41 S. C. 86, 19 S. E. 197; *Lipfield v. C. C. & A. Ry. Co.*, 41 S. C. 285, 19 S. E. 497. Railroad company operating railroad and granting trackage privilege to others under its train orders is liable for damages caused by fire communicated by engine of such party. *Bellamy v. Conway, etc., R. Co.*, 85 S. C. 450, 453, 67 S. E. 545, distinguishing preceding cases.

The issue as to title may be raised by the pleadings, and when raised must be determined by competent testimony. *Mayo v. R. R. Co.*, 40 S. C. 517, 19 S. E. 73. May be shown by adverse possession. *Busby v. F., C. & P. R. R. Co.*, 45 S. C. 312, 23 S. E. 51.

Statute constitutional. *McCandless v. Railroad Co.*, 38 S. C. 103, 16 S. E. 429. See *St. Louis etc., R. Co. v. Matthews*, 165 U. S. 1, 21, 41 L. E. 611.

Measure of damages. *Dent v. S. B. Ry. Co.*, 61 S. C. 330, 39 S. E. 529.

Subrogation of insurance company. *Pelzer Mfg. Co. v. Sun Fire Ins. Co.*, 36 S. C. 213, 15 S. E. 562; *Etna Insurance Co. v. C. & W. C. Ry.*, 76 S. C. 101, 56 S. E. 788.

Proviso in lease of warehouse does not protect against storer of goods. *Devlin v. C. & W. C. Ry. Co.*, 79 S. C. 469, 60 S. E. 1123.

Nonsuit. *Brown v. C. M. Ry.*, 64 S. C. 365, 42 S. E. 179. Constitutional. *Brown v. C. M. Ry.*, 67 S. C. 481, 46 S. E. 283, 100 Am. St. Rep. 756.

Action under. *Wilson v. Southern Ry.*, 65 S. C. 423, 43 S. E. 964.

"Its engine;" presumption as to ownership. *Bush v. Southern Railway*, 63 S. C. 96, 40 S. E. 1029.

Cotton deposited at owner's "sole risk." *German-American Ins. Co. v. Southern Railway*, 77 S. C. 467, 58 S. E. 337, 12 Am. & Eng. Ann. Cas. 495.

Statements of agent as to ownership of engine. *Stroud v. Ry.*, 79 S. C. 447, 60 S. E. 963.

Not liable of fire originating from act of employee, while not in performance of his duty. *Southern Railway v. Power Fuel Co.*, 12 L. R. A. 472; *Southern Ry. Co. v. Power Fuel Co.*, 152 Fed. 917, 919.

Allegations substantially stating cause of action. *Brown v. Carolina Mid. Railway*, 67 S. C. 481, 45 S. E. 283, 100 Am. St. Rep. 756.

Complaint may be amended during trial by striking out allegations of negligence and alleging cause of action under statute. *Birt v. Southern Railway*, 87 S. C. 239, 69 S. E. 233.

Not necessary to allege or prove negligence. *Brown v. Seaboard Air Line Railway*, 83 S. C. 557, 559, 65 S. E. 1102.

Presumption of negligence in common law action. *Hutto v. S. A. L. Ry.*, 81 S. C. 567, 62 S. E. 835.

Evidence is sufficient to require submission of case to jury. *Brown v. Carolina Mid. R. Co.*, 64 S. C. 365, 368, 42 S. E. 178.

Evidence held insufficient to show fire communicated by locomotive. *Ragsdale v. Southern R. Co.*, 121 Fed. 924, 925.

Evidence of other fires communicated by other locomotives under approximately same conditions and at or near same time is admissible. *McGill Bros. v. Seaboard Air Line Railway*, 87 S. C. 178, 69 S. E. 156.

Instructions. *Wilson v. Southern Railway*, 65 S. C. 421, 425, 43 S. E. 964.

Bulman et al v. Atlantic Coast Line R. Co., 103 S. C. 512, 88 S. E. 279; *Henry Mercantile Co. v. Georgetown & W. R. Co.*, 104 S. C. 478, 89 S. E. 480; *Williams v. Northwestern R. Co. of South Carolina et al*, 107 S. C. 523, 93 S. E. 183; *Crawford v. Mullins Lumber Co.*, 110 S. C. 318, 96 S. E. 494.

(4911) § 14. New Railroad — When and How Opened.—No railroad, branch, or extension of a railroad, shall hereafter be opened for public use until the Railroad Commissioners, after an examination, certify that all laws relating to the construction thereof have been complied with, and that the road appears to be in a safe condition for operation, unless the said Commissioners shall, after the ten days' written notice to them by the said railroad company of such proposed opening, fail to make such examination and certificate.

Civ. '12, § 3227; Civ. '02, § 2136; G. S. 1516; R. S. 1689; 1882, XVII, 824.

(4912) § 15. Railroad Companies Required to Furnish Shelter for Certain Employees.—That all railway companies having railroad shops in this State at division points, where cars are regularly taken out of trains for repairs or construction work, or where other railroad equipment is regularly made, repaired or constructed, be, and they are hereby, required to furnish or construct a building or shed in said shops or yards, with a suitable and sufficient roof over the repair and construction track or tracks so as to provide that all men or employees employed in the construction and repair of locomotives, cars, trucks or other railroad equipment, excepting slight or minor repairs or when done in an emergency, shall be under shelter and protected during snows, rains, sleet, hot sunshine, and other inclement weather: *Provided*, The Railroad Commission shall have the power to direct the points at which sheds shall be erected, and the character of the sheds: *Provided, further*, That such order shall only be made after a hearing, of which public notice shall have been given.

1914, XXVIII, 706.

(4913) § 16. Penalty.—Any railroad found guilty of violating the provisions of Section 15 shall be subject to a fine of fifty (\$50.00) dollars per day every day of such violation.

1914, XXVIII, 706.

(4914) § 17. Liability of Railroads for Injuries to Employees.—That every common carrier by railroad while engaging in commerce within the State of South Carolina shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or in case of the death of such employee to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, of such employee's parents; and, if none, then of the next of kin, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment. And in every such action the jury may give such damages, as they may think proportioned to the injury or injuries resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered shall be divided among the before-mentioned parties, in such shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate.

1916, XXIX, 970.

(4915) § 18. Contributory Negligence.—That in all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this Article to recover damages for personal injuries to any employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided*, That no such employee who may be injured or killed, shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

1916, XXIX, 970.

(4916) § 19. Assumption of Risk.—That in any action brought against any common carrier under or by virtue of any of the provisions of this Article to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

1916, XXIX, 970.

(4917) § 20. No Exemption from Liability—Proviso.—That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this Article, shall to that extent be void: *Provided*, That in any action brought against any such common carrier under or by virtue of any of the provisions of this Article, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit,

or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action was brought.

1916, XXIX, 970.

(4918) § 21. **Time Limit.**—That no action shall be maintained under this Article unless commenced within two years from the day the cause of action accrued.

1916, XXIX, 970.

(4919) § 22. **Survival of Right of Action.**—That any right of action given by this Article to a person suffering injury shall survive to his or her personal representatives, for the benefit of their surviving widow, or husband and children of such employee; and if none such employee's parents, and if none, then of the next of kin of such employee. But in such case there shall be only one recovery for the same injury.

1916, XXIX, 970.

(4920) § 23. **“Common Carrier” Defined.**—That the term “common carrier” as used in this Article shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

1916, XXIX, 970.

(4921) § 24. **Remedy Herein Not Exclusive.**—That nothing in this Article shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other Act or Acts of the General Assembly of this State not inconsistent with the provisions of this Article, but the remedies and provisions herein shall be held to be in addition to, and cumulative of, existing remedies.

1916, XXIX, 970.

(4922) § 25. **Punitive Damages.**—Punitive damages shall not be recoverable in cases arising under this Article so far as the same are not in conflict with this Article.

1916, XXIX, 970.

(4923) § 26. **Accidents—Notice to Be Given—Penalty.**—Every railroad corporation shall cause immediate notice of any accident which may occur on its road attended with injury to any person, in such cases of accident attended with any injury to any person, as the Railroad Commissioners may by rules and regulations adopted by them, require the giving of such notices, to be given to a physician most accessible to the place of accident and to the Railroad Commissioners, by telegraph, telephone or such other means as may be the quickest under the circumstances, at the same time that notice is given the officials of the road on which the accident occurred, and shall furnish immediate transportation for the Commissioners over its line to the place of accident, free of expense to the Commissioners, and if the Commissioners use another railroad to reach the place of accident, the corporation on whose line the accident occurs shall pay the expense of transportation thereon, and shall also give notice in like manner of any

accident falling within any description of accidents of which said Commissioners may by general regulation require notice to be given. For each omission to give such notice the corporation shall forfeit a sum not exceeding five hundred dollars.

Civ. '12, § 3228; Civ. '02, § 2137; G. S. 1525; R. S. 1690; 1882, XVII, 824; 1905, XXIV, 844.

Adkins v. R. R. Co., 27 S. C. 71, 2 S. E. 849.

(4924) § 27. Lien of Judgments for Personal Injury or Injury to Property—Priorities.—Whenever a cause of action shall arise against any railroad or street railway corporation for personal injury or injury to property sustained by any person, and such cause of action shall be prosecuted to judgment by the person injured, or his or their legal representatives, said judgment shall relate back to the date when the cause of action arose, and shall be a lien as of that date upon the income, property and franchise of said corporation, enforceable in any Court of competent jurisdiction by attachment or levy and sale under execution, and shall take precedence and priority of payment of any mortgage, deed of trust or other security given to secure the payments of bonds made by said railroad or street railway company: *Provided*, Any action brought under this Section shall be commenced within twelve months from the time that said injury was sustained.

Civ. '12, § 3229; Civ. '02, § 2138; G. S. 1528; R. S. 1691; 1897, XXII, 415.

Finance Co. v. Charleston, etc., R. Co., 46 Fed. 508.

Priority of judgment over railroad mortgage. *Southern Ry. Co. v. Bouknight*, 70 Fed. Rep. 442, 80 L. R. A. 823.

This Section is valid. *Central Trust Co. v. Charlotte, etc., R. Co.*, 65 Fed. 257, 258.

Applies to judgment rendered on cause of action arising in another State. *Central Trust Co. v. Charlotte, etc., R. Co.*, 65 Fed. 257.

Such judgment will not have precedence over mortgage issued anterior to passage of Act. *Phinizy v. Augusta, etc., R. Co.*, 63 Fed. 922, 923.

See ante, § (3222), and note.

Mercer v. Southern Railway, 66 S. C. 247, 251, 44 S. E. 750; *Walker v. Southern Railway*, 77 S. C. 161, 164, 57 S. E. 764, 12 Am. & Eng. Ann. Cas. 591.

Allegation as to negligence. *Proctor v. So. Ry. Co.*, 61 S. C. 170, 39 S. E. 351.

The remedy given is cumulative and does not supersede the remedy at common law. *Kaminitsky v. R. R.*, 25 S. C. 53; *Spire v. R. R. Co.*, 47 S. C. 28, 24 S. E. 992; *Burns v. Ry. Co.*, 61 S. C. 404, 39 S. E. 567.

Under the statute there must be an actual collision. *Kinard v. R. R. Co.*, 39 S. C. 514, 18 S. E. 119. "At the crossing" or "on the crossing," which must be a traveled place. *Hutto v. S. B. R. Co.*, 61 S. C. 495, 39 S. E. 710; *Hale v. R. R. Co.*, 34 S. C. 293, 13 S. E. 537; *Neely v. R. R. Co.*, 33 S. C. 136, 11 S. E. 636. "At" a crossing, what is. *Bishop v. Southern Railway*, 63 S. C. 532, 41 S. E. 808. This Section is in derogation of common law, and must be construed strictly. *Whitton v. Richmond, etc., R. Co.*, 57 Fed. 551, 555. One attempting to cross between cars standing on the crossing is within the statute. *Littlejohn v. Ry. Co.*, 49 S. C. 12, 26 S. E. 967.

Does not apply to injuries sustained from being thrown off wagon by team becoming frightened. *Whitton v. Richmond, etc., R. Co.*, 57 Fed. 551, 555.

Does not apply where boy is killed by reason of being thrown off shanty car, which is shoved by engineer engaged in coupling cars, the accident occurring while he was trying to cross railroad some distance from highway which was obstructed and none of railroad's employees had any knowledge of the boy's presence. *Hasting v. Southern R. Co.*, 143 Fed. 260, 265.

But in an action at common law such as *Murray v. R. R. Co.*, 10 Rich. L. 227, on the question of negligence, failure to give the statutory signals at a crossing near the place of injury may be shown in evidence. *Mack v. R. R. Co.*, 52 S. C. 823, 29 S. E. 905; *Mason v. R. R. Co.*, 58 S. C. 70, 36 S. E. 440.

A traveled place is one which persons are accustomed, and have a right to use. *Hale v. R. R. Co.*, 34 S. C. 293, 13 S. E. 537; *Barber v. R. R. Co.*, 34 S. C. 450, 13 S. E. 630; *Hankinson v. R. R. Co.*, 41 S. C. 1, 19 S. E. 206; *Risinger v. R. R. Co.*, 59 S. C. 429, 453, 38 S. E. 1; *Strother v. R. R. Co.*, 47 S. C. 376, 25 S. E. 272.

The omission to give the statutory signal need not be the proximate or efficient cause of the injury, the company is liable if it contributes in any way thereto. *Wragge v. R. R. Co.*, 47 S. C. 105, 25 S. E. 76; *Strother v. R. R. Co.*, 47 S. C. 375, 25 S. E. 272. See *Duncan v. Greenville Company*, 73 S. C. 256, 53 S. E. 367.

But in order to bar recovery the gross or wilful negligence of the plaintiff must be a proximate or efficient cause. *Bowen v. Ry. Co.*, 58 S. C. 222, 36 S. E. 590; *Cooper v. Ry. Co.*, 56 S. C. 91, 34 S. E. 16. And the burden of proof to show this gross negligence of plaintiff is on the defendant. *Nohrden v. R. R. Co.*, 59 S. C. 87, 100, 37 S. E. 228; *Petrie v. R. R. Co.*, 29 S. E. 303, 7 S. E. 515.

The existence of such negligence is a question for the jury. *Carter v. R. R. Co.*, 9 S. C. 20; *Crouch v. R. R. Co.*, 20 S. C. 495; *Kaminitsky v. R. R. Co.*, 25 S. C. 59; *White v. R. R. Co.*, 30 S.

C. 218, 9 S. E. 96; *Strother v. S. C. & Ga. R. R. Co.*, 47 S. C. 375, 25 S. E. 272; *Littlejohn v. R. & D. Ry. Co.*, 45 S. C. 181, 22 S. E. 789.
 As to damages recoverable. *Hart v. R. R. Co.*, 33 S. C. 427, 12 S. E. 9; *Strother v. S. C. & Ga. R. R. Co.*, 47 S. C. 375, 25 S. E. 272.
 Failure to look and listen. *Bamberg v. Ry.*, 72 S. C. 389, 51 S. E. 988; *Drawdy v. A. C. L. Ry. Co.*, 78 S. C. 379, 58 S. E. 980; *Griskell v. Southern Ry.*, 81 S. C. 193, 62 S. E. 205.
 Gross negligence on part of person injured. *Weaver v. Southern Ry.*, 76 S. C. 49, 56 S. E. 657, 114 Am. St. Rep. 934; *Osteen v. Southern Ry.*, Carolina Div., 76 S. C. 368, 57 S. E. 196.
 Crossing track without stopping to look or listen is gross negligence. *Ward v. Richmond, etc., R. Co.*, 43 Fed. 422, 423.
 Wilful injury. *Harbert v. Ry.*, 78 S. C. 538, 59 S. E. 644.
 Contributory negligence. *Hughes v. Southern Ry.*, 82 S. C. 45, 61 S. E. 1079, 63 S. E. 5.
 What is not traveled place. *Haltiwanger v. Ry.*, 64 S. C. 7, 23, 41 S. E. 810; *Ruddell v. S. A. L. Ry.*, 75 S. C. 290, 55 S. E. 528; *Goodwin v. A. C. L. Ry. Co.*, 82 S. C. 330, 64 S. E. 242.
 Traveled place established by adverse use. *Kirby v. Ry.*, 63 S. C. 494, 41 S. E. 765. Duty of traveler on highway. *Edwards v. Southern Ry.*, 63 S. C. 271, 41 S. E. 458.
 Charge. *Bamberg v. Atlantic Coast Line Railroad*, 72 S. C. 389, 394, 51 S. E. 988.
 Charge substantially correct. *Mercer v. Southern Railway*, 66 S. C. 247, 251, 44 S. E. 750; *Osteen v. Southern Railway*, 76 S. C. 368, 381, 57 S. E. 196.
Henry Mercantile Co. v. Graham, Sheriff of Williamsburg County; *Same v. Georgetown & W. R. Co.*, 108 S. C. 125, 93 S. E. 331.

(4925) § 28. Injuries at Crossings—Penalty and Damages.—If a person is injured in his person or property by collision with the engines or any car or cars of a railroad corporation at a crossing, and it appears that the corporation neglected to give the signals required by this Chapter, and that such neglect contributed to the injury, the corporation shall be liable for all damages caused by the collision, or to a fine recoverable by indictment, as provided in the preceding Section, unless it is shown that in addition to a mere want of ordinary care the person injured, or the person having charge of his person or property, was at the time of the collision guilty of gross or wilful negligence, or was acting in violation of the law, and that such gross wilful negligence or unlawful act contributed to the injury.

Civ. '12, § 3230; Civ. '02, § 2139; G. S. 1529; R. S. 1692; 1882, XVII, 824; 1919, XXXI, 102.

Sanders v. Southern Ry. Co., Carolina Division, 97 S. C. 423, 81 S. E. 786; *Folk v. Seaboard Air Line Ry.*, 99 S. C. 284, 83 S. E. 452; *Dobbins v. Seaboard Air Line R. Co.*, 108 S. C. 254, 93 S. E. 932.

(4926) § 29. County Supervisors to Examine Crossings.—The County Supervisors of the respective counties in this State shall hereafter, at least once in every year, examine all the railroad crossings of the public highways in this State outside of the corporate limits of cities, towns, and villages; and if they find that any of the said crossings, within the right of way of any railroad company, are unsafe as to the lives of persons, or as to the protection of property, they shall forthwith give written notice thereof to any officer or agent of the railroad within said county.

Civ. '12, § 3231; Civ. '02, § 2140; G. S. 1487; R. S. 1693; 1882, XVII, 824.

Does not require railroad corporations to keep in repair bridges on public highways on their rights of way but not on their roadbeds. *Felder v. Southern Railway*, 76 S. C. 554, 57 S. E. 524.

(4927) § 30. Powers and Duties of Supervisors as to Unsafe Crossings.—Said County Supervisors, in said notices, shall point out the location of the crossings considered by them unsafe, and shall indicate how and in what manner such crossing shall be constructed so as to secure safety; and shall have power to require such construction to be made within sixty days.

Civ. '12, § 3232; Civ. '02, § 2141; G. S. 1488; R. S. 1694; 1882, XVII, 826.

Felder v. Southern Railway, 76 S. C. 554, 555.

(4928) § 31. Flagmen to Be Stationed at Crossings.—The Railroad Commissioners shall have authority, upon the application of the County Super-

visors, if they deem it necessary, to require any railroad corporation to have a stationary flagman at any crossing, the importance of which may demand it.

Civ. '12, § 3233; Civ. '02, § 2142; G. S. 1489; R. S. 1695; 1882, XVII, 826.

Miley v. Deer et al. *Eaves v. Same*, 93 S. C. 66, 76 S. E. 27.

(4929) § 32. Appeal from Railroad Commissioners—Appointment of Civil Engineer.—The said railroad company, after receiving such notice, and within ten days after such reception, may apply to the Circuit Court of the respective Circuit in which such crossing is situated, or to a Judge thereof if the Court be not in session, and claim a reexamination of the said locality, and a revision of the action of the said Railroad Commissioners, and the said Court or Judge, as the case may be, shall appoint forthwith some civil engineer, not connected with any railroad, to examine into the matter forthwith, and he may either affirm the demand of said Railroad Commissioners, or modify it, and his determination shall be final.

Civ. '12, § 3234; Civ. '02, § 2143; G. S. 1490; R. S. 1696; 1882, XVII, 826.

(4930) § 33. Compliance by Railroad With Orders of Commissioners as to Crossings or Flagmen.—All railroad companies shall within the time indicated as aforesaid by the Railroad Commissioners or County Supervisor, as the case may be, or within the time given by the said civil engineer to said corporation upon reexamination, maintain and construct said crossing in the manner demanded of them by said Railroad Commissioners or County Supervisor, as the case may be, or civil engineer, or station a flagman, if such should be required, at the locality where such has been found necessary, as aforesaid.

Civ. '12, § 3235; Civ. '02, § 2144; G. S. 1491; R. S. 1697; 1882, XVII, 826.

(4931) § 34. County Supervisors to Report Examinations—Compensation.—The County Supervisor shall make a report of his yearly examination to the Clerk of the Court of Common Pleas for such county, which is to be laid before the said Court, together with a copy of all notices given by them as aforesaid; and they shall be allowed compensation by the county for any services rendered under this Chapter, at the same rate per day as is now provided for other services rendered by them; and the said civil engineer, appointed as aforesaid, shall also be paid a reasonable compensation for his services by the said county, if the recommendations of such County Supervisor are not in whole or in part adopted; but if such recommendations be so adopted, then the railroad company shall pay the compensation of such engineer.

Civ. '12, § 3236; Civ. '02, § 2145; G. S. 1492; R. S. 1698; 1882, XVII, 826.

(4932) § 35. Supervisors to Keep Record of Duties Performed.—The County Supervisor shall keep a record of the duties performed, and copies of notices served under the provisions of this Chapter, which shall become a part of the records of his office.

Civ. '12, § 3237; Civ. '02, § 2146; G. S. 1493; R. S. 1699; 1882, XVII, 826.

(4933) § 36. **Sign Boards—Duty of County Commissioners.**—It shall be the especial duty of the County Supervisors to see that sign boards, as prescribed in this Chapter, are at all times properly put up at railroad crossings.

Civ. '12, § 3238; Civ. '02, § 2147; G. S. 1496; R. S. 1700; 1882, XVII, 826.

(4934) § 37. **Penalty for Neglect of Duty by Supervisors.**—If any of the County Supervisors neglect or fail to comply with any of the provisions of this Chapter applicable to County Supervisors, the County Supervisor so offending shall be liable to be indicted for neglect of duty, and, on conviction, fined in a sum not less than one hundred dollars nor more than five hundred dollars, and as a part of the judgment his office shall be declared vacant.

Civ. '12, § 3239; Civ. '02, § 2148; G. S. 1497; R. S. 1701; 1882, XVII, 826.

(4935) § 38. **Railroads to Maintain Bridges, Etc.**—Every railroad corporation shall, at its own expense, construct, and afterwards maintain and keep in repair, all bridges, with their approaches or abutments, which it is authorized or required to construct over or under any turnpike road, canal, highway, or other way; and any city or town may recover of the railroad corporation whose road crosses a highway or town way therein, all damages, charges and expenses incurred by such city or town by reason of the neglect or refusal of the corporation to erect or keep in repair all structures required or necessary at such crossing; but if, after the laying out and making of a railroad, the County Commissioners have authorized a turnpike, highway, or other way, to be laid out across the railroad, all expenses of and incident to constructing and maintaining the turnpike or way at such crossing shall be borne by the turnpike corporation, or the county, city, town or other owner of the same.

Civ. '12, § 3240; Civ. '02, § 2149; G. S. 1498; R. S. 1702; 1882, XVII, 826.

The width of bridges not prescribed. *Rembert v. S. C. Ry. Co.*, 31 S. C. 309, 9 S. E. 968; *Snipes v. A. C. L. Ry. Co.*, 76 S. C. 207, 56 S. E. 959; *Thompson v. S. A. L. Ry.*, 78 S. C. 386, 58 S. E. 1094, overruling *Brown v. Ry.*, 57 S. C. 434, 35 S. E. 731.

Does not require railroad corporations to keep in repair bridges on public highways on their rights of way but not on their road beds. *Felder v. Southern Railway*, 76 S. C. 554, 57 S. E. 524.

(4936) § 39. **Transportation of Explosive Compounds—Railroad Commissioners to Fix Maximum.**—No railroad corporation, or other association, copartnership, person or persons, engaged in the transportation of passengers within this State, shall knowingly transport within the territorial limits of this State, or transport into such limits for sale, storage or use therein, any explosive compound in quantities exceeding the amounts hereinafter provided for, in any vehicle containing passengers, or in any vehicle attached to any railroad train or vehicle conveying passengers, nor in any case, unless the said explosive compounds be plainly and legibly marked with the names of such compounds, and the words "*Explosive—Dangerous.*" It shall be the duty of the Railroad Commissioners, from time to time, to make such rules fixing the maximum amounts of various explosive compounds which may be so carried in any public vehicle, or in a railroad train containing passengers, or in a vehicle attached to such train. The said rules shall also define the method of packing such compounds to ensure the greatest safety, and shall prescribe

how the same shall be carried as freight on railroads, steamboats, and by common carriers.

Civ. '12, § 3241; Civ. '02, § 2150; G. S. 1504; R. S. 1703; 1882, XVII, 826.

(4937) § 40. Explosives to Be Packed, Marked, Etc.—No person shall deliver for transportation to any railroad corporation, street railway company, or other association, copartnership, persons or person engaged in the transportation of passengers within this State, or take or place upon or in any car, boat, or other vehicle of any such corporation, company, association, copartnership, or person, with intent that the same shall be carried or transported on such car, boat, or other vehicle, any explosive compound mentioned in this Chapter, unless the same is packed and marked as herein provided, and notice of the dangerous nature thereof is expressly given to the agent, servant, or person, to whom it is delivered, or to the agent, servant, or person, having at the time the management and control of the car, boat, or other vehicle in or upon which the same is to be carried or transported. And any common carrier may decline to receive to transport any such explosive compound in any manner whatever.

Civ. '12, § 3242; Civ. '02, § 2151; G. S. 1505; R. S. 1704; 1882, XVII, 829.

(4938) § 41. Punishment for Violations of Provisions as to Explosives.—Whoever knowingly violates or knowingly causes or permits the violation of any provision of the two preceding Sections (39, 40), or knowingly transports or causes or permits the transportation of any explosive compound, in any manner other than in conformity with the rules made by the Railroad Commissioners, shall be punished by a fine of not less than fifty nor more than five thousand dollars, or by imprisonment in the State prison not exceeding five years.

Civ. '12, § 3243; Civ. '02, § 2152; G. S. 1506; R. S. 1705; 1882, XVII, 830.

(4939) § 42. Magistrates May Issue Search Warrants for Explosives.—Upon complaint made under oath to a Magistrate, that the complainant has probable cause to believe, and does believe, that an explosive compound is had, kept, or to be found, in any city, town, or other place within the jurisdiction of such Magistrate, by any railroad corporation, contrary to law, a warrant may issue, directed to the Sheriff of the county, or his Deputy, or to any Constable of such city or town, commanding him to enter any building, vehicle, ship, or other vessel specified in the warrant, and there make diligent search for and seize such explosive compound, and to make return of his doings to said Magistrate forthwith.

Civ. '12, § 3244; Civ. '02, § 2153; G. S. 1507; R. S. 1706; 1882, XVII, 830.

(4940) § 43. Explosives Forfeited When Seized.—Any explosive compound had, kept, or transported contrary to the provisions of this Chapter, and seized under the preceding Section, may be adjudged forfeited after due notice and hearing, and may be ordered to be destroyed in such manner as the Court or Magistrate may direct.

Civ. '12, § 3245; Civ. '02, § 2154; G. S. 1508; R. S. 1707; 1882, XVII, 830.

(4941) § 44. **Damages for Injury by Explosives.**—Any person who shall suffer injury by the explosion of any explosive compound, while the same is being kept or transported contrary to the provisions of this Chapter, or the ordinances, rules, or by-laws made in conformity to it, may recover damages for the injury thus sustained, in an action against the parties so violating the provisions of this Chapter, or the ordinances, rules or by-laws made in conformity therewith.

Civ. '12, § 3246; Civ. '02, § 2155; G. S. 1509; R. S. 1708; 1882, XVII, 830.

(4942) § 45. **"Explosive Compound" Defined.**—By the words "explosive compound," as used in this Chapter, shall be understood gun cotton, nitroglycerine, or any other compound of the same; any fulminate, or, generally, any substance intended to be used, by exploding or igniting the same, to produce a force to propel missiles or to rend apart substances, except gunpowder.

Civ. '12, § 3247; Civ. '02, § 2156; G. S. 1510; R. S. 1708; 1882, XVII, 830.

ARTICLE VIII.

Regulations as to Passengers.

(4943) § 1. **Accommodation for Passengers—Penalty.**—Every railroad corporation shall furnish reasonable accommodations for the convenience and safety of passengers; and for every wilful neglect to provide the same shall forfeit not less than five nor more than twenty dollars, to be recovered in an action against such corporation.

Civ. '12, § 3248; Civ. '02, § 2157; G. S. 1502; R. S. 1710; 1882, XVII, 830.

This duty extends to "persons who are on the premises to welcome the coming or speed the parting guests." *Izlar v. Ry. Co.*, 57 S. C. 336, 35 S. E. 583.

Passengers on freight trains assume the incident risks. *Steele v. Southern Ry. Co.*, 55 S. C. 389, 33 S. E. 509. Negligence in requiring passenger to change cars. *Oliver v. Ry. Co.*, 55 S. C. 541, 33 S. E. 584. Dangerous premises. *Izlar v. Ry. Co.*, *supra*; *Johns v. C. C. & A. Ry. Co.*, 39 S. C. 162, 17 S. E. 698.

Duty toward passengers. *Taber v. S. A. L. Ry.*, 81 S. C. 317, 62 S. E. 311; *Anderson v. S. C. & G. R. R. Co.*, 81 S. C. 1, 61 S. E. 1096, 77 S. C. 434, 58 S. E. 149, 122 Am. St. Rep. 591; *Hasseltine v. Southern Ry. Co.*, 75 S. C. 141, 55 S. E. 142, 6 L. R. A., N. S., 1009n; *Franklin v. R. R. Co.*, 74 S. C. 334, 54 S. E. 578.

Alighting from or boarding trains. *Sevier v. Southern Ry.*, 82 S. C. 311, 64 S. E. 390; *Norton v. Ry.*, 83 S. C. 26, 64 S. E. 962; *Horn v. Southern Ry.*, 78 S. C. 67, 58 S. E. 963; *Smith v. Southern Ry.*, 80 S. C. 1, 61 S. E. 205; *Richardson v. Ry. Co.*, 79 S. C. 535, 61 S. E. 83.

Johnson v. Ry. Co., 53 S. C. 303, 31 S. E. 212; *Madden v. Ry. Co.*, 35 S. C. 384, 14 S. E. 713; *Hollingsworth v. Ry. Co.*, 72 S. C. 114, 51 S. E. 560; *Crosby v. S. A. L. Ry.*, 81 S. C. 24, 61 S. E. 1064; *Dubose v. Ry. Co.*, 81 S. C. 271, 62 S. E. 255. Duty to person assisting passenger to board. *Cooper v. Ry. Co.*, 78 S. C. 562, 59 S. E. 704.

Passenger changing cars. *Oliver v. Ry. Co.*, 55 S. C. 584. Duty continues until passenger leaves station. *Taylor v. A. C. L. R. R. Co.*, 78 S. C. 552, 59 S. E. 641. Who are passengers. *McCarter v. Traction Co.*, 72 S. C. 134, 51 S. E. 545, 5 Am. & Eng. Ann. Cas. 42; *Kirkland v. Ry. Co.*, 79 S. C. 273, 60 S. E. 668, 128 Am. St. Rep. 848, 15 L. R. A., N. S., 425n.

Rules as to transacting passenger business. *Funderburg v. Ry. Co.*, 81 S. C. 149, 61 S. E. 1075, 21 L. R. A., N. S., 868n.

"Reasonable" accommodations a question for jury. *Anderson v. R. R. Co.*, 81 S. C. 1, 61 S. E. 1096.

As to presumption from injury to passenger. *Anderson v. R. R. Co.*, 77 S. C. 434, 58 S. E. 149, 122 Am. St. Rep. 591, 81 S. C. 1, 61 S. E. 1096; *Brown v. R. R. Co.*, 83 S. C. 53, 64 S. E. 961; *Sutton v. So. Ry.*, 82 S. C. 345, 64 S. E. 401.

Davis v. Ry. Co., 83 S. C. 66, 64 S. E. 1015. Dangerous premises. *Izlar v. Ry. Co.*, 57 S. C. 336, 35 S. E. 583; *Johns v. Ry. Co.*, 39 S. C. 162, 17 S. E. 698.

Passenger out of his proper place. *McLean v. R. R. Co.*, 81 S. C. 100, 61 S. E. 900, 1071, 128 Am. St. Rep. 892, 18 L. R. A., N. S., 763.

Passenger on freight train. *McLean v. R. R.*, *supra*; *Steele v. So. Ry.*, 55 S. C. 389.

(4944) § 2. **Separate Coaches for White and Colored—Separate Compartments for Males and Females.**—All railroad and steam ferries and railroad companies engaged in this State as common carriers of passen-

gers for hire, shall furnish separate coaches or cabins for the accommodation of white and colored passengers: *Provided*, Equal accommodations shall be supplied to all persons without distinction of race, color or previous condition, in such coaches or cabins: *Provided, further*, That all first-class coaches and cabins shall be provided with a toilet compartment at each end of such coaches or cabins; on one of which compartments shall be placed the word "Women," and on the other compartment shall be placed the word "Men;" the toilet compartment for women shall be provided with seats for at least two persons in addition to the hopper seat. The Railroad Commission of this State shall, at a hearing upon due notice to all railroads, steam ferries and railroad companies engaged in this State as common carriers of passengers for hire, to which this Section shall apply, determine when said carriers shall make the changes contemplated and provided for in this Article.

Civ. '12, § 3249; Civ. '02, § 2158; 1898, XXII, 777; 1900, XXIII, 457; 1904, XXIV, 438; 1912, XXVII, 563.

Flood v. News and Courier Co., 71 S. C. 112, 118, 50 S. E. 637, 4 Am. & Eng. Ann. Cas. 685.
Equality of accommodations *Smith v. Chamberlain*, 38 S. C. 529, 17 S. E. 371.

(4945) § 3. Penalty for Officer or Employee Violating Provision as to White and Colored.—It shall be unlawful for the officers or employees having charge of such railroad cars as are provided for by this Chapter to allow or permit white and colored passengers to occupy the same car except as herein permitted and allowed.

Civ. '12, § 3250; Civ. '02, § 2160; 1898, XXII, 777; 1900, XXIII, 457.

(4946) § 4. White and Colored Allowed in Same Coach When Unavoidable.—In case the coach for either white or colored passengers should be full of passengers, and another coach cannot be procured at the time, then the conductor in charge of the train shall be, and he is hereby, authorized to set apart so much of the other coach as may be necessary to accommodate the passengers on said train.

Civ. '12, § 3251; Civ. '02, § 2161; 1898, XXII, 777; 1900, XXIII, 457.

(4947) § 5. Exceptions to Provisions.—The provisions of Sections 2 to 4 shall not apply to nurses on trains, nor to narrow gauge roads, or branch lines, nor roads under forty miles in length, or to relief trains in case of accident, or to through vestibule trains not intended or used for local travel, nor to regular freight trains with a passenger coach attached for local travel, nor to officers or guards transporting prisoners, nor to prisoners or lunatics being so transported: *Provided*, That all railroads operated by steam under forty miles in length shall furnish separate apartments for white and colored passengers: *Provided, further*, That where said railroads under forty miles in length operate both a daily passenger train and a freight train, with or without a coach attached, said railroad shall be required to furnish separate apartments for white and colored passengers only on the said passenger trains: *Provided, also*, That the provisions hereof shall not apply to electric railroads.

Civ. '12, § 3252; Civ. '02, § 2159; 1898, XXII, 777; 1900, XXIII, 457; 1903, XXIV, 84.

(4948) § 6. Penalty for Violation of Provisions as to Separate Accommodations.—Should any railroad or railroad company, its agents or employees, violate the provisions of the last four Sections, such railroad or railroad company shall be liable to a penalty of not more than five hundred dollars nor less than three hundred dollars for each violation, to be collected by suit of any citizen of this State, and the penalty recovered shall, after paying off proper fees and costs, go into the general fund of the State Treasury.

Civ. '12, § 3253; Civ. '02, § 2162; 1898, XXII, 777; 1900, XXIII, 457.

Action by citizen barred in one year. *Sturkie v. Southern Ry.*, 71 S. C. 208, 50 S. E. 782.

(4949) § 7. Railroads to Discharge Passengers at Certain County Seats from All Trains.—That all passenger trains operated by and upon any railroad in this State shall stop to let off a passenger or passengers or upon signal to take on a passenger or passengers at any and all stations located at any county seat within this State. That in case the county seat is not located on the main line of such railroad, but is served by a branch line therefrom, then such passenger trains shall stop at the junctional point of said branch line with said main line where said junctional point is not more than twenty-three miles distant from said county seat, and the provisions of this Section shall apply as to each junctional point in said county where the said junctional points are more than thirty (30) miles apart.

That any railroad company operating a passenger train upon any railroad in this State which shall fail or refuse to stop any passenger train at a county seat or such junctional point as aforesaid to let off a passenger or passengers or upon signal to take on a passenger or passengers shall pay a penalty of one hundred (\$100.00) dollars for each and every offense; one-half of said penalty to go to any person who shall sue for the same and one-half to the county in which the offense occurs. Nothing herein contained shall bar any action for actual or punitive damages growing out of any violation of this Section, and any such causes of action may be united in the same complaint.

Civ. '12, § 3254; 1907, XXV, 658; 1914, XXVIII, 730; 1919, XXXI, 170.

See *Herndon v. Chicago, etc., R. Co.*, 218 U. S. 135.

(4950) § 8. All Steam Railroads to Equip Coaches With Cinder Deflectors.—That all railroad companies operating passenger trains or coaches by steam, within or through this State, are hereby required to put cinder deflectors that will effectually keep cinders from engines entering the cars upon all windows of passenger coaches, so as to protect passengers when windows are raised; said deflectors shall extend from the bottom of windows the entire length and three inches above the top of sash, and shall be six inches wide and permanently fastened to each outside edge of each window: *Provided*, It shall be the duty of the Railroad Commission to see that this Section is enforced. Any railroad company refusing or neglecting to comply with the provisions of Section 8 shall be subject to a penalty of not less than five hundred dollars nor more than one thousand dollars, for each coach not screened as required by this Section, to be recovered by the Attorney General, or any Solicitor at the request of any aggrieved by

such refusal or neglect, for the benefit of State: *Provided, however*, The provisions of this Section shall not be construed to apply to Pullman or sleeping cars operated in this State, which are equipped with deflectors that effectually prevent cinders from entering cars.

Civ. '12, § 3255; 1908, XXV, 1052; 1909, XXVI, 119; 1912, XXVII, 777.

(4951) § 9. Meals to Be Furnished White and Colored Passengers Apart.

—No persons, firms or corporations, who or which furnish meals to passengers at station restaurants or station eating houses, in times limited by common carriers of said passengers, shall furnish said meals to white and colored passengers in the same room, or at the same table, or at the same counter.

Civ. '12, § 3256; 1906, XXV, 76.

(4952) § 10. Spittoons on Passenger Cars.—It shall be unlawful for any railroad company doing business in this State as a common carrier, to use any car for the purpose of carrying passengers, without first providing at least one spittoon for every two seats in such car. If any railroad company violate the provisions of this Section, such railroad company shall forfeit the sum of twenty-five dollars for each offense, to be recovered by any citizen of a county through which the railroad passes.

Civ. '12, § 3257; 1902, XXIII, 1056.

(4953) § 11. Railroad Commissioners to Regulate Schedule of Passenger Trains—Hearing and Appeal.—It shall be the duty of the Railroad Commissioners, from time to time, to examine into the schedule of all the railroads in this State for the carriage of persons or passengers, with a view to ascertain if said roads can reasonably make close connection with intersecting roads; and wherever, in their opinion, such close connection can be made without injustice or material injury to such road or roads, they shall make the appropriate orders to effect the same. And, the better to secure connections, they may require all persons, associations or corporations operating any railroad or railroads (except such as may be in the hands of receivers) to run at least one unmixed daily passenger train each way, over such railroad or railroads, and may likewise require such persons, associations or corporations to furnish to the traveling public facilities for passage over such railroads twice each way daily. For the foregoing purposes, said Commissioners shall have power to summon witnesses and take testimony, and any road shall have the right of appeal, as in other cases of appeal from inferior Courts.

Civ. '12, § 3258; Civ. '02, § 2163; 1896, XXII, 115; 1897, XXII, 455; 1901, XXIII, 718.

(4954) § 12. Forfeiture for Failure to Obey Orders.—Any railroad in this State refusing to obey any order of the Railroad Commissioners made under this Chapter shall forfeit not less than the sum of five hundred dollars nor more than two thousand dollars, to be recovered by the suit of said Commissioners in a suit in the Court of Common Pleas, which sum, if recovered, shall go to the general fund of this State.

Civ. '12, § 3259; Civ. '02, § 2164.

(4955) § 13. **Passenger Rates on Railroads.**—The rate for transportation of passengers on all railroads to which the provisions of this Chapter shall apply shall not exceed three cents per mile for every mile traveled; and such railroads shall not be required to have second-class coaches or to sell second-class tickets: *Provided*, That no railroad shall be required to charge a fare of less than five cents for the entire distance traveled: *Provided, however*, That any railroad not over forty miles in length and operated independently may be allowed by the Railroad Commission to charge and receive four cents per mile for the transportation of passengers: *Provided, further*, That any railroad not over twenty-five miles and operated independently may be allowed by the Railroad Commission to charge and receive five cents per mile for the transportation of passengers.

Civ. '12, § 3260; 1906, XXV, 44; 1920, XXXI, 900.

Weber v. Southern R. Co., 65 S. C. 356, 371, 43 S. E. 888.

Rate of passenger fare. Kibler v. Southern Railway, 62 S. C. 252, 40 S. E. 556.

Attempting to evade payment of fare is a misdemeanor. See Crim. Code. As to the payment of excess charge where ticket is not bought prior to the passage of above Act. See Moore v. C. & G. R. Co., 38 S. C. 1, 16 S. E. 781; Fulmer v. Ry. Co., 67 S. C. 262, 45 S. E. 196; Kibler v. So. Ry. Co., 62 S. C. 252, 40 S. E. 556. Legal tender of fare. Funderburg v. Ry. Co., 81 S. C. 149, 61 S. E. 1075, 21 L. R. A., N. S., 868n.

Stipulations in tickets. Sellers v. A. C. L. R. Co., 77 S. C. 361, 57 S. E. 1102; Bethea v. R. R. Co., 26 S. C. 91, 1 S. E. 372; Daniels v. Ry. Co., 62 S. C. 1, 39 S. E. 762. Tickets over connecting lines. Seibels v. Ry. Co., 80 S. C. 134, 61 S. E. 435, 16 L. R. A., N. S., 1026n.

(4956) § 14. **Mileage Tickets Shall Be Good for Members of Purchaser's Families.**—Every mileage ticket sold by any railroad company doing business in this State shall be valid and good for the carriage over the lines of said railroad, both for the purchaser and the actual members of his or her family living with the purchaser at the time of purchase: *Provided*, That the name of any person so entitled to use said ticket shall be furnished in writing to the railroad selling the same by the purchaser at the time of the purchase, and shall be inserted in the ticket.

Civ. '12, § 3262; 1904, XXIV, 439.

(4957) § 15. **Coupons from Mileage Books Receivable for Fare—Baggage Checked.**—That any railroad company selling mileage books for transportation is hereby required to receive coupons from mileage books sold by said railroad company, on its trains for transportation within the State, and to check baggage upon presentation of said mileage books: *Provided*, That any railroad company or companies selling or honoring mileage books for transportation which are interchangeable may require the holder thereof to present them in exchange for tickets, all other conditions of the interchangeable mileage books now sold shall remain of force: *Provided, further*, That no railroad company selling such interchangeable mileage books shall discontinue the use of local mileage, but that the sale of interchangeable mileage books shall not be extended to the members of the purchaser's family unless such selling company shall so elect.

1912, XXVII, 778; 1915, XXIX, 102.

(4958) § 16. **To Check Baggage—Penalty for Refusal.**—Every railroad corporation, when requested, shall give checks to passengers for their baggage when delivered for transportation in good shipping order, and shall redeliver the same to the passengers upon the surrender of their

checks. Any corporation which wilfully refuses to comply with the provisions of this Section shall forfeit ten dollars for each offense.

Civ. '12, § 3263; Civ. '02, § 2166; G. S. 1503; R. S. 1711; 1882, XVII, 829.

Remedy herein provided is not exclusive. *Sullivan v. Southern Railway*, 74 S. C. 377, 392, 54 S. E. 586.

(4959) § 17. Railroads to Transport Free Baggage of Passengers Not Exceeding Two Hundred Pounds.—All common carriers of passengers in this State using steam as a motive power shall safely transport to the destination of any passenger personal baggage or sample trunks or sample cases, not to exceed two hundred pounds in weight, for any one passenger holding a ticket or paying ordinary passenger fare, free of charge for such personal baggage or sample trunks or sample cases, and shall issue checks for such personal baggage or sample trunks or sample cases on request.

Civ. '12, § 3264; 1904, XXIV, 379.

Fleischman, etc., Co., v. Southern Railway, 76 S. C. 237, 56 S. E. 974, 9 L. R. A., N. S., 519.

(4960) § 18. Bicycles and Baby Carriages to Be Deemed Baggage.—Bicycles and baby carriages shall be deemed baggage for the purpose of transportation by steam railroads and steam ferries. Steam railroads and steam ferries shall carry bicycles and baby carriages under the same rules and subject to the same liabilities as govern trunks and other separate baggage of passenger. No person shall be required to crate, cover, lock, box or otherwise protect bicycles or baby carriages as baggage, under the provisions of this Section. But said steam railroads and steam ferries shall not be required to carry more than one bicycle or baby carriage for any one person.

Civ. '12, § 3265; Civ. '02, § 2167; 1897, XXII, 427; 1904, XXIV, 417.

(4961) § 19. To Keep Rooms for Passengers.—Every railroad company owning or operating a railroad in this State shall erect and keep at every office where tickets are sold for travel over its road, two good rooms or apartments of reasonable size for the amount of travel at such office, which shall be furnished with comfortable seats for the accommodation of passengers. Such rooms to be in charge of an employee of such company, and kept open at such hours as to accommodate passengers traveling over such road on any of its passenger trains; and it shall be the duty of the Railroad Commissioners to enforce the provisions of this Section.

Civ. '12, § 3266; Civ. '02, § 2168; G. S. 1494; R. S. 1712.

Includes persons who are there to meet passengers. *Izlar v. Ry. Co.*, 57 S. C. 336, 35 S. E. 583. Damages for failure to provide proper accommodation. *Pickens v. Ry. Co.*, 54 S. C. 498, 32 S. E. 571.

Separate accommodations for colored persons. *Smith v. Chamberlain*, 38 S. C. 529, 17 S. E. 371. *Bessinger et al v. Seaboard Air Line Ry.*, 99 S. C. 256, 83 S. E. 457.

(4962) § 20. Railroads to Build Two Separate Closets When Ordered by Railroad Commission—Penalty for Failure.—All railroads, railroad companies, or other companies or individuals operating or running any system of cars, carriages or other conveyances for the purpose of transporting passengers for hire, are hereby required, when ordered so to do by the Railroad Commissioners, who are hereby empowered to make such order, to build, keep and maintain at all passenger stations, and other places where people are regularly taken on and put off of said cars, car-

riages, or other conveyances, two separate and distinct water-closets—that is to say, one for female passengers and one for male passengers—and said closets shall be kept in fit and suitable condition for the use and convenience of passengers: *Provided*, This Section shall not be construed to have reference to flag stations on railroad lines where there is no regularly kept passenger station. Any company, organization or individual refusing, failing or neglecting to observe the provisions of this Section, shall be liable to pay a penalty of fifty dollars for each and every day said company, organization, individual or individuals, shall fail, refuse or neglect to provide said water-closets as herein provided, said penalty to be recovered by any citizen or citizens who will sue therefor, one-half of said penalty to go to the school fund of the county in which said suit is brought, and the other half to the citizen or citizens suing for same.

Civ. '12, § 3267; 1906, XXV, 4.

(4963) § 21. Railroad Commissioners May Require Railroads to Erect Depots.—The Railroad Commissioners of this State are hereby invested with authority to require all railroads at junctional points, and at such other points as the travel and public interest in their judgment shall justify in this State, to erect Union or other depots for the convenience and accommodation of the public, and if any railroad company shall refuse or fail so to do, when required by the said Railroad Commissioners, within the time as specified by them, it shall forfeit and pay a sum of not less than fifty (\$50.00) dollars per day after expiration of time as set forth in the order or circular of said Railroad Commission, to be recovered in an action in any county in this State where such violation has occurred, and shall be in the name of the State of South Carolina. The Commission shall institute such action through the Attorney General or any of the Solicitors of the State. The said Railroad Commissioners shall have the right to fix the time for the erection of depots.

Civ. '12, § 3268; Civ. '02, § 2169; 1897, XXII, 418; 1907, XXV, 504; 1906, XXV, 9.

(4964) § 22. Railroads to Keep Grade at Stations Level With Track—Penalty.—All railroad companies operating railroads within this State shall keep the grade of its right of way at all stations level with the ties and four feet wide on station side, for a distance of one hundred and fifty feet on each side of such station or stopping place: *Provided, however*, That in cases of terminal stations, the provisions aforesaid shall be operative only as to so much of the territory as is opposite to those portions of said terminal stations used for passenger service and the approaches thereto, on one side. Any railroad company violating the provisions of this Section shall be liable to a penalty of not more than one hundred dollars, on complaint of any person aggrieved thereby, one-half of penalty shall go to complainant and the other half thereof to the use of the public schools in the county in which complaint is made.

Civ. '12, § 3269; 1910, XXVI, 680.

(4965) § 23. Proceedings as to Trains Behind Time.—Whenever any passenger train on any railroad in this State shall be more than one-half of

one hour behind its schedule time it shall be the duty of such railroad company to keep posted at every telegraph station along its line, when a telegraph operator is on duty at such station, the time such train is behind its schedule, and shall change such bulletin every quarter hour until such train arrives, stating therein the time such train is behind and the hour at which it is expected to arrive: *Provided*, Such bulletins shall not be required to be posted at any station until one-half hour before the regular schedule time at which such train is to arrive at the station at which such bulletin is required to be kept. Any railroad company which shall refuse or neglect to comply with the provisions of this Section shall forfeit and pay the sum of ten dollars for each and every such refusal or neglect; said sum to be sued for and recovered by any person aggrieved in any Court of competent jurisdiction in the county where such refusal or neglect occurs.

Civ. '12, § 3270; Civ. '02, § 2170; G. S. 1495; R. S. 1714; 1887, XIX, 811; 1903, XXIII, 80; 1908, XXV, 1075.

(4966) § 24. Change of Time Table to Be Published.—Notice of any change in passenger schedules, or time tables, shall be published at least three days before such change goes into effect.

Civ. '12, § 3271; Civ. '02, § 2171; R. S. 1715; 1889, XX, 378.

(4967) § 25. Badges to Be Worn by Employees.—Every conductor, baggagemaster, engineer, brakeman, or other servant of any railroad corporation employed on a passenger train, or at stations for passengers, shall wear on his hat or cap a badge which shall indicate his office, and the initial letters of the style of the corporation by which he is employed. No conductor or collector without such badge shall have any authority to meddle or interfere with any passenger, his baggage, or property. And it is the duty of said railroad corporation to see that such badges as aforesaid are worn.

Civ. '12, § 3272; Civ. '02, § 2172; G. S. 1485; R. S. 1716.

(4968) § 26. Police Powers of Conductors and Station Agents.—Conductors of railroad trains and station or depot agents are hereby declared to be conservators of the peace, and they and each of them shall have the common law power of constables to make arrests, except that the conductors shall only have such power on board of their respective trains, and the agents at their respective places of business; and said conductors and agents may cause any person or persons so arrested by them to be detained and delivered to the proper authorities for trial as soon as practicable.

Civ. '12, § 3273; Civ. '02, § 2173; G. S. 1516; R. S. 1717; 1898, XXII, 776.

Conductors may arrest without warrant for offences committed within view. *Loggins v. Southern Ry.*, 64 S. C. 321, 42 S. E. 163.

(4969) § 27. Conductor May Eject Disorderly Passenger—Assistance of Other Passengers—Force Employed.—When any passenger shall be guilty of disorderly conduct, or use any obscene or grossly profane language, to the annoyance and vexation of passengers, or play any game of cards or other game of chance for money or other valuable thing, upon any rail-

road train, the conductor of such train is hereby authorized to stop his train at any place where such offense has been committed and eject such passenger from the train, using only such force as may be necessary to accomplish such removal, and may command the assistance of the employees of the railroad company, or any of the passengers, to assist in such removal.

Civ. '12, § 3274; Civ. '02, § 2174; G. S. 1516a; R. S. 1718; 1882, XXVIII, 17.

Right to eject passenger for disorderly conduct. *Loggins v. Southern Ry.*, 64 S. C. 321, 42 S. E. 163.

(4970) § 28. Company Must Give Receipts for Freight Upon Request of Shipper—Penalty.—Whenever any person delivers to a railroad corporation for transportation any commodity not extra hazardous in its character, such corporation shall give to the shipper thereof, if requested at the time of the delivery of such commodity, a receipt for the same, describing such commodity, or the marks and numbers on packages so received for transportation, and no additional charge shall be made for giving such receipt. Any railroad corporation which refuses to give such receipt shall pay to the person entitled to the same the sum of fifty dollars, to be recovered in an action in any Court of competent jurisdiction.

Civ. '12, § 3275; Civ. '02, § 2175; G. S. 1512; R. S. 1719; 1882, XVII, 831.

(4971) § 29. Liability for Loss or Damage, as Between Connecting Roads—How Discharged, Etc.—Proviso.—In case of the loss of or damage to any article or articles delivered to any railroad corporation for transportation over its own and connecting roads, the initial corporation, or corporation first receiving the same, shall, in every case, be liable for such loss or damage, but may discharge itself from such liability by the production of a receipt, in writing, for the said article or articles from the corporation to whom it was its duty to deliver such article or articles in the regular course of transportation. In which event, the said connecting road or roads shall be severally so liable, but may in succession and in like manner discharge themselves respectively therefrom; but if any such corporation shall wilfully fail or refuse, upon reasonable demand being made to it by any party interested in the production of such receipt, to produce the same, then it shall not be entitled to claim the benefit of such exemption in any action against the said railroad corporation to render it liable for such loss or damage.

Civ. '12, § 3276; Civ. '02, § 2176; G. S. 1513; R. S. 1720; 1882, XVII, 831.

Chitty v. Pennsylvania R. Co., 62 S. C. 526, 40 S. E. 944.
Must be liberally construed. *Miller Bros. v. R. R.*, 33 S. C. 359, 11 S. E. 1093. Requires initial railroad company to produce proper receipt from "steamship company" next connecting line of transportation. *Id.* But it is not "wilful failure or refusal" to furnish proper receipt, when the receipt of railroad to which steamship company delivered is furnished. *Id.* Initial road cannot, unless authorized, bind connecting roads by special contract for freight. *Lewis v. R. R.*, 25 S. C. 249. Railroad not liable for damage to goods in hands of connecting carrier; application of statute to absolute contracts. *Hill v. G. & N. R. Co.*, 43 S. C. 461, 21 S. E. 337.
Applied to baggage. *Adger v. Blue Ridge Railroad Co.*, 71 S. C. 213, 50 S. E. 783. Presumption that terminal carrier delivered. *Willett v. Ry.*, 66 S. C. 477, 45 S. E. 93. Delay. *Salley v. S. A. L. Ry.*, 76 S. C. 173, 56 S. E. 782.

Constitutional. *Skipper v. S. A. L. Ry.*, 75 S. C. 276, 55 S. E. 454, 117 Am. St. Rep. 901, 9 Am. & Eng. Ann. Cas. 808, 7 L. R. A., N. S., 388n; *Venning v. A. C. L. R. R.*, 78 S. C. 48, 58 S. E. 933, 125 Am. St. Rep. 768, 12 L. R. A., N. S., 1217; *Jonesville Mfg. Co. v. Southern Ry.*, 77 S. C. 431, 58 S. E. 422.
Production by initial carrier of per diem sheet showing delivery to connecting carrier of cars and goods each day, signed by connecting carrier, is receipt in writing. *Jonesville Mfg. Co. v. Southern Railway*, 77 S. C. 480, 483, 58 S. E. 422.

It is duty of initial carrier to give connecting carrier proper routing instructions and is liable for loss on connecting carrier on failure to do so, burden being on initial carrier to show proper routing information was given. *Chartrand v. Southern Railway*, 85 S. C. 479, 481, 67 S. E. 741.

Held, error, under the issues and evidence to charge that initial carrier was liable whether loss occurred on its own line or that of connecting carrier. *Whittle v. Southern Railway*, 88 S. C. 172, 178.

(4972) § 30. Common Carriers Denying Liability to Return Claims and Accompanying Papers—Carrier May Retain Copies—Notice of Demand for Return.—That it shall be the duty of common carriers doing business in this State, with whom a claim has been filed for loss of, or damage to, freight, when the carrier denies liability, or fails to notify claimant of its disposition of claims as now required by law, to return to the claimant with the letter or statement denying liability, said claim and all papers connected therewith, filed by the claimant, or copies thereof: *Provided*, That the carrier may retain copies thereof, which at the time of the return of said papers, the claimant may be required to admit in writing to be true copies: *Provided*, That the claimant shall give thirty days' notice in writing to the carrier that he demands the return of all papers filed with the claim.

1921, XXXII, 162.

(4973) § 31. Penalty for Violation.—Any common carrier violating the provisions of this Article shall forfeit and pay to the party aggrieved the sum of fifty (\$50.00) dollars to be recovered in any Court of competent jurisdiction.

1921, XXXII, 162.

(4974) § 32. Not to Affect Any Other Right of Claimant.—That nothing herein shall be construed to affect any other rights that the claimant may now have against the carrier arising from its failure to promptly return any or all of said papers.

1921, XXXII, 162.

(4975) § 33. Merchandise Must Be Promptly Forwarded According to Directions, Etc.—Every railroad corporation shall promptly forward merchandise consigned or directed to be sent over another road connecting with its road, according to the directions contained thereon or accompanying the same, and shall not receive and forward over its road any merchandise consigned, ordered or expressly directed to be received and forwarded by a different route.

Civ. '12, § 3277; Civ. '02, § 2177; G. S. 1514; R. S. 1721; 1882, XVII, 832.

Forwarding to directions. *Venning v. Ry.*, 78 S. C. 55, 58 S. E. 983, 125 Am. St. Rep. 768, 12 L. R. A. N. S., 1217. Contract to forward by particular route; liability in case of deviation. *Davis v. Blue Ridge Ry. Co.*, 81 S. C. 466, 62 S. E. 856.

(4976) § 34. Attachment of Cars and Engines Precluded Under Certain Conditions.—Whenever railroad cars and engines are in use on railroads and making regular passage thereon, they shall not be attached upon mesne process in any suit within forty-eight hours previous to their fixed time of departure, unless the officer making such attachment shall have first demanded of the owners or managers of such engines or cars, or any of the agents of such railroad, other property equal in value to the *ad damnum* in the writ upon which to make such attachment, and such owners or managers shall have refused or neglected to comply with said demand. And any officer making such attachment shall on his return upon the process upon which it is made, certify that he has made such demand

for such other property, and that such demand has been refused or neglected; otherwise such attachment shall be wholly void.

Civ. '12, § 3278; Civ. '02, § 2178; G. S. 1524; R. S. 1722; 1882, XVII, 834.

Seibels v. Ry., 80 S. C. 133, 144, 61 S. E. 435, 16 L. R. A., N. S., 1026n; Chitty v. Ry., 62 S. C. 526, 40 S. E. 944.

(4977) § 35. **Railroad Companies to Construct Sidetracks—Cost to Be Borne by Enterprise.**—Whenever any manufacturing or industrial enterprise is proposed to be located or is already located along the line of any railroad company in this State, and within one-half mile thereof, the corporation or corporations owning or operating the said line of railroad be, and they hereby are, required to build, construct, operate and maintain such connecting track or tracks as may be necessary to effect an actual connection with the said manufacturing or industrial enterprise, and such said line of railway, for the purpose of interchanging, receiving, delivering and handling for said enterprise cars and freight in carload lots; and such manufacturing or industrial enterprise shall file with the railroad company an application in writing, giving to the company thirty days' notice of its demand for said track, together with the location of the said enterprise: *Provided*, That the cost of construction, together with the costs and expenses paid and incurred in obtaining the rights of way, shall be borne by the said enterprise, payable to the said railroad company upon the completion of the said track, which payment shall be guaranteed to the company by a good and sufficient bond, entered into by said enterprise, with surety, to be approved by the Clerk of Court of the county in which the said enterprise is or is to be located: *And provided, further*, That before any manufacturing or industrial enterprise shall be required to pay for the construction of any track the railroad company shall file with the said manufacturing or industrial enterprise a sworn itemized statement of the actual cost of obtaining the right of way, and costs of construction, which shall be paid by said manufacturing or industrial enterprise: *Provided, however*, That after the railroad company, with whose line of railroad a manufacturing or industrial enterprise desires to connect, has procured the right or rights of way for the enterprise desiring to connect therewith, and shall have furnished to such enterprise the detailed statement of the cost of the construction of the proposed sidetrack, such enterprise shall have the option to build and construct the sidetrack by it desired, on its own account, and in such event the railroad company, with which said sidetrack is to connect, shall, in addition to procuring the right or rights of way for the said sidetrack or sidetracks, furnish and provide all necessary material in the manner herein required, for the construction of the said sidetrack, and the enterprise so constructing its sidetrack shall not be chargeable with the cost of construction by it done, and shall not to that extent be required to give bond: *Provided, further*, That before any railroad company shall be required to operate its cars over such track when so built, same shall have been first accepted by one or more of the Railroad Commissioners, and said Commissioners, one or more, are hereby required to inspect said sidetrack within ten days after written notice that the same has been completed.

Civ. '12, § 3279; 1905, XXIV, 956.

(4978) § 36. **Refunding Certain Per Cent. of Revenue to Enterprise for Cost of Constructing Tracks.**—The said railroad company shall each year refund and repay to the said enterprise, twenty (20) per cent. of the revenue derived by it from freight received from and delivered to the said enterprise, until the entire cost paid by it for the construction of the said track shall have been refunded and repaid.

Civ. '12, § 3280; 1905, XXIV, 956.

(4979) § 37. **Construction of Industrial Tracks to Be Entered Upon After Notice.**—Upon receiving notice as herein provided that such track is required or desired, the said railroad shall forthwith proceed to have the proposed line surveyed and the costs of construction estimated, and furnish said enterprise with a detailed statement of the same within thirty (30) days after it has received said notice; and thereupon the said enterprise shall enter into the bond required by Section 35, and upon receipt of the same, said railroad company shall proceed within ten (10) days thereafter to enter upon the construction of the said sidetrack, which shall be completed without delay.

Civ. '12, § 3281; 1905, XXIV, 956.

(4980) § 38. **Powers of Railroad Commissioners' as to Construction of Sidetracks.**—If on application in this behalf the Railroad Commissioners shall decide that said sidetrack shall not be placed, then the said railroad company shall not be required to build the same: *Provided, however,* That in such application to the said Railroad Commissioners, it shall be incumbent upon the railroad company resisting the construction of the proposed sidetrack to show that the necessity for the construction of said connecting track or sidetrack does not exist: *Provided, further,* That the Railroad Commissioners shall, and they are hereby, required to render their decision upon said application within thirty days from the date of said application.

Civ. '12, § 3282; 1905, XXIV, 956.

(4981) § 39. **Penalty for Failure to Comply With This Article.**—Any railroad company failing to comply with the requirements of Sections 35, 36, 37, 38, and 39, shall be subject to a penalty of \$10.00 per day for each day it fails so to comply, to be recovered in an action by any person, firm or corporation aggrieved, of the county in which the said enterprise is proposed to be located; one-half for the benefit of the party bringing said action, and one-half for the benefit of the State of South Carolina.

Civ. '12, § 3283; 1905, XXIV, 956.

Chitty v. Pennsylvania R. Co., 62 S. C. 526, 40 S. E. 944.

ARTICLE IX.

Railroad Crossings—Cattle Guards.

(4982) § 1. **Railroad Commissioners' Regulations as to Crossings.**—No railroad shall be constructed to cross another railroad at the same level therewith, or across navigable or tide waters, without the consent, in writ-

ing, of the Railroad Commissioners, and in such manner as they shall prescribe. It shall be unlawful for any corporation proceeding to construct a branch or extension, or otherwise to take any proceedings contemplating a new crossing of one railroad with another, at the same level therewith, unless such crossing shall first have been approved, in writing, by the Railroad Commissioners, and the preliminary approval of any plan for such crossing shall always be made subject to revision by the Commissioners. And the Court of Common Pleas shall have full equity jurisdiction of the provisions of this Section.

Civ. '12, § 3284; Civ. '02, § 2179; G. S. 1530; R. S. 1723; 1882, XVII, 834.

If consent be granted upon conditions precedent, no consent is given until the performance of such conditions. *Seaboard Air Line Ry. v. Atlantic Coast Line R. Co.*, 88 S. C. 477, 479.

(4983) § 2. Not to Obstruct Highways at Crossings.—When a railroad is laid out across a highway or other way, it shall be constructed so as not to obstruct the same.

Civ. '12, § 3285; Civ. '02, § 2180; G. S. 1531; R. S. 1724; 1882, XVII, 836.

Navigable streams not to be obstructed. *State v. R. R. Co.*, 9 Rich. 247; *State v. R. R. Co.*, 28 S. C. 23, 4 S. E. 796. Public roads. *Murray v. R. R. Co.*, 10 Rich. 227. Private ways. *Ross v. R. R. Co.*, 33 S. C. 477, 12 S. E. 101.

Sandifer et al v. Southern Ry. Co., 109 S. C. 347, 96 S. E. 120; *Brown v. Southern Ry. Co. et al*, 111 S. C. 140, 96 S. E. 701.

(4984) § 3. Railroad Companies May Raise or Lower Highways.—A railroad corporation may raise or lower any highway or other way for the purpose of having its road pass over or under the same; but before proceeding to cross, alter, or excavate for the purpose of crossing the way, it shall obtain from the County Commissioners a decree prescribing what alteration may be made in the way, and the manner and time of making the alterations or structures the Commissioners may require at the crossing; and before entering upon, excavating, or altering the way, shall give security satisfactory to the Commissioners of the county in which the crossing is situated that it will faithfully comply with the requirements of the decree to the acceptance of the Commissioners, and indemnify the city or town from all damages and charges by reason of any failure so to do: *Provided*, That where such highway or other way shall be within the corporate limits of any city, town, or village, such permission shall be obtained from, and security be given to, the proper municipal authorities thereof, instead of from and to the said County Commissioners.

Civ. '12, § 3286; Civ. '02, § 2181; G. S. 1532; R. S. 1725; 1882, XVII, 836.

Brown v. Southern Ry. Co. et al, 111 S. C. 140, 96 S. E. 701.

(4985) § 4. May Alter Course of Highway—When and How.—A railroad corporation may alter the course of a highway or other way, other than a street in any incorporated city, town or village, for the purpose of facilitating the crossings of the same by its roads, or permitting its road to pass at the side thereof without crossing, upon obtaining a decree of the County Board of Commissioners prescribing the manner and time of such alteration. The corporation shall pay all damages occasioned to private property by the alteration, as in the case of land taken for its road.

Civ. '12, § 3287; Civ. '02, § 2182; G. S. 1533; R. S. 1726; 1882, XVII, 836; 1893, XXI, 481.

Nickles v. S. A. L. Ry., 74 S. C. 102, 128, 54 S. E. 255.

(4986) § 5. Crossing on Level to Be Protected—How.—A railroad corporation whose road is crossed by a highway or other way on a level therewith shall, at its own expense, so guard or protect its rails by plank, timber or otherwise as to secure a safe and easy passage across its road; and if, in the opinion of the County Board of Commissioners, or if such highway or other way be within the corporate limits of any city, town or village, then the proper municipal authorities thereof, any subsequent alteration of the highway or other way, or any additional safeguards, are required at the crossing, they may order the corporation to establish the same.

Civ. '12, § 3288; Civ. '02, § 2183; G. S. 1534; R. S. 1727; 1882, XVII, 837.

Violation of this Section is negligence *per se*. *Williams v. S. A. L. Ry.*, 76 S. C. 1, 56 S. E. 652. Does not apply to private crossings. *Morgne v. C. & W. C. Ry. Co.*, 77 S. C. 437, 58 S. E. 150. Proximate cause of injury; punitive damages. *Thompson v. S. A. L. Ry.*, 81 S. C. 335, 62 S. E. 396, 20 L. R. A., N. S., 426n.

(4987) § 6. Highway or Town Way Across Railroad—How May Be Laid Out.—A highway or town way may be laid out across a railroad previously constructed when the County Board of Commissioners adjudge that the public convenience and necessity require the same; and in such case, after due notice to the railroad corporation, and hearing all parties interested, they may thus lay out a highway across a railroad, or may authorize a city or town, on the petition of the Mayor and Aldermen thereof, to lay out a way across a railroad in such manner as not to injure or obstruct the railroad.

Civ. '12, § 3289; Civ. '02, § 2184; G. S. 1535; R. S. 1728; 1882, XVII, 837.

Hill v. R. R. Co., 31 S. C. 393, 10 S. E. 91.

(4988) § 7. Stock Guards to Be Constructed.—The several railroad companies whose line of road lies wholly or partly in this State are hereby required to construct and keep in repair an adequate stock guard or cattle gap at every point where the line of said railroad of any such company crosses or may hereafter cross the line of any fence in this State.

Civ. '12, § 3290; Civ. '02, § 2185; G. S. 1536; R. S. 1729; 1882, XVII, 837.

Where the company has acquired not a mere right of way over land, but the title to the land itself, as by conveyance in fee, §§ (4988) and (4989) do not apply. *Anderson v. Ry. Co.*, 59 S. C. 350, 37 S. E. 944.

Refers to fences built after construction as well as before. *Burnett v. Southern Ry.*, 62 S. C. 281, 40 S. E. 679.

(4989) § 8. Penalty for Violation.—For every violation of Section 7 the railroad company so violating it shall pay to the owner or owners of the fence upon the line of which such stock guard or cattle gap should have been constructed and kept in repair, the sum of one hundred dollars, to be recovered by action in the Court of Common Pleas for the county in which such stock guard or cattle gap should have been constructed and kept in repair.

Civ. '12, § 3291; Civ. '02, § 2186; G. S. 1537; R. S. 1730; 1882, XVII, 837.

ARTICLE X.

Right of Way.*

(4990) § 1. Written Notice to Landowner—Time—Service—Presumption of Consent.—Whenever any person or corporation shall be authorized by charter to construct a railway, canal or turnpike in this State, such

person or corporation, before entering upon any lands for the purpose of construction, shall give the owner thereof (if he be *sui juris*) notice, in writing, that the right of way over said lands is required for such purpose, which notice shall be given at least thirty days before entering upon said lands; and such notice shall be served upon such owner in the same manner as may be required by law for the service of the summons in civil actions. If the owner shall not, within the period of thirty days after service of said notice, signify, in writing, his refusal or consent, it shall be presumed that such consent is given; and such person or corporation may thereupon enter upon said lands; but the owner of said lands may move for an assessment of compensation in the manner hereinafter directed.†

Civ. '12, § 3292; Civ. '02, § 2187; G. S. 1550; R. S. 1743.

*The special proceedings authorized in this Article were held constitutional in *Atlantic Coast Line R. Co. v. S. B. R. Co.*, 57 S. C. 317, 35 S. E. 533.

Public railroads have power to cross private railroads. *Alderman & Sons Co. v. Wilson Lumber Co.*, 77 S. C. 165, 168, 169, 57 S. E. 756.

†Two classes of cases do not fall within this statute: (1) Where the right to compensation is disputed; (2) where the entry on the land was without consent or permission of the owner, either actual or constructive. *Glover v. Remley*, 62 S. C. 52, 39 S. E. 780; *Tutt v. Ry. Co.*, 28 S. C. 388, 5 S. E. 831.

This statute, §§ (3292) to (3301), affords no remedy to determine the right of the owner to demand compensation; hence where that is denied, he must bring his action at law. *Cureton v. S. B. R. Co.*, 59 S. C. 371, 37 S. E. 914; *Ry. Co., v. Ridlehuber*, 38 S. E. 308, 17 S. E. 24; *Aull v. R. R. Co.*, 42 S. C. 431, 20 S. E. 302; *Boyd v. Winnsboro Granite Co.*, 66 S. C. 431, 45 S. E. 10. Does not apply where the right to compensation is disputed. *South Bound R. Co. v. Burton*, 63 S. C. 348, 41 S. E. 451; *Charleston, etc., R. Co. v. Reynolds*, 69 S. C. 481, 504, 48 S. E. 476; *In re Rugheimer*, 36 Fed. 369.

The owner is the owner at the time the road was finished through the land. *Lewis v. R. R.*, 11 Rich. 91. And the owner having claimed compensation his donee cannot afterwards recover the land. *Same v. R. R. Co.*, 15 S. C. 484. One having absolute control may give the consent as owner. *Tutt v. R. R.*, 16 S. C. 365; *Thompkins v. R. R.*, 21 S. C. 420. Owner is a general term and applies to any one having a legal interest in the land. *Ry. Co. v. Scott*, 38 S. C. 34, 16 S. E. 185. Consent of owner may be presumed from circumstances. *Verdier v. R. R.*, 15 S. C. 476; *Rankin v. S. & K. Ry. Co.*, 58 S. C. 542, 36 S. E. 997. Consent not required for entry. *Tomkins v. R. Co.*, 33 S. C. 216, 11 S. E. 692. Proceedings for compensation may be barred by Statute of Limitations. *Waring v. R. R.*, 16 S. C. 416. One co-tenant having granted her interest to railroad company, other co-tenants cannot recover compensation for right of way until partition. *R. R. v. Leech*, 33 S. C. 175, 11 S. E. 631. Where the grantor co-tenant died and her share descended to the others they took same burdens with the easement growing thereout. *Ross v. R. Co.*, 33 S. C. 477, 12 S. E. 101. This remedy includes all other remedies for compensation, and is exclusive as to those cases falling within its provisions. *McLaughlin v. R. R. Co.*, 5 Rich. 597; *Fuller v. Edings*, 11 Rich. 245; *Sams v. R. R. Co.*, 15 S. C. 484; *Glover v. Remley*, 62 S. C. 52, 39 S. E. 780. As to notice to landowner. *Tompkins v. A. & K. R. Co.*, 37 S. C. 382, 16 S. E. 149.

Remaindermen are owners within the meaning of the Constitution, Art. I, § 17, and where they refused consent to entry, and the company entered, without condemning the right of way, under deed from the life tenant, the remaindermen may bring an action at common law, after the falling in of the life estate to recover compensation. *Cureton v. S. B. R. Co.*, 59 S. C. 371, 37 S. E. 914; *Glover v. C. & S. Ry.*, 72 S. C. 381, 51 S. E. 917. See, also, *Tutt v. Ry. Co.*, 28 S. C. 388, 5 S. E. 831, as to effect of conveyance by life-tenant. Distinction between action for damages, and proceedings for compensation. *Ragsdale v. So. Ry. Co.*, 60 S. C. 381, 38 S. E. 611. Where the company enters on land without exercising the right to condemn, an action for damages at common law will lie. *Sims v. Ohio R. & C. Ry. Co.*, 56 S. C. 30, 33 S. E. 746. Acquisition of land for right of way by contract to purchase, with proceedings by interpleader to determine right of contending parties to purchase money. *Chamberlain v. N. E. R. Co.*, 41 S. C. 399, 19 S. E. 743. Where private corporation has power to exercise right of eminent domain to build a private road the general laws as to highway crossings apply. *Ex parte Bacot*, 36 S. C. 125, 15 S. E. 204.

Foreign corporation cannot condemn. *Burnett v. Postal Telegraph Co.*, 79 S. C. 462, 60 S. E. 1116. Condemnation proceedings are proper where co-tenant permits entry. *Granger v. Telegraph Co.*, 70 S. C. 528, 50 S. E. 193, 106 Am. St. Rep. 750.

Damages where permission of entry was obtained by fraud. *Mason v. Telegraph Co.*, 74 S. C. 557, 54 S. E. 763.

Compensatory damages for an unintentional trespass. *Baldwin v. Telegraph Co.*, 78 S. C. 419, 59 S. E. 67; *Wood v. Paolet Mfg. Co.*, 80 S. C. 49, 61 S. E. 95.

Estoppel to claim easement. *C. N. & L. R. Co. v. Laurens Cotton Mills*, 82 S. C. 24, 61 S. E. 1089, 62 S. E. 1119.

When demand is not a prerequisite to recovery of compensation. *Dobson v. Telegraph Co.*, 79 S. C. 429, 60 S. E. 948.

Ellison et al v. Greenville, S. & A. Ry. Co., 94 S. C. 425, 77 S. E. 723; *Moore v. North & South Carolina Ry. Co.*, 94 S. C. 243, 77 S. E. 926.

(4991) § 2. Mode of Acquiring Right of Way—Assessment of Damages—Duty of Clerk.—If the owner of said lands shall signify his refusal of consent to entry thereon without previous compensation, or shall remain silent in reference thereto, the person or corporation requiring such right of way shall apply, by petition, to the Judge of the Circuit wherein such

lands are situated, for the empanelling of a jury to ascertain the amount which shall be paid as just compensation for the right of way required, in which petition shall be set forth a description of the lands, the names of the owner, the purposes for which the lands are required, and such other facts as may be deemed material. On the hearing of such petition the Circuit Judge shall order the same to be filed in the office of the Clerk of the Court of Common Pleas for said county, and shall further order the said Clerk to empanel a jury of twelve to ascertain the compensation for the use of the lands required. The Clerk, immediately on receiving such order, must give to the owner of the lands notice thereof, in writing, and of the day which shall be assigned. On the day assigned, the Clerk, in the presence of the parties, if they shall attend, shall select the names of twenty-four disinterested freeholders of the county, and shall draw therefrom the names of twelve to act as jurors and shall cause those so drawn to be forthwith summoned to meet at such place and at such time as he may assign, for the purpose of examining the said lands and ascertaining the compensation to be made for the right of way over the same. It shall further be the duty of said Clerk, in person or by his deputy, to attend at the same time and place for the purpose of organizing the jury; and he shall have power to summon from the vicinage other disinterested freeholders to act as jurors in the stead of any of those first summoned who shall fail to attend or who shall be objected to by either party on the ground of disqualification on account of interest. It shall further be the duty of said Clerk to act as Master or Referee and preside at and over all such hearings, swearing all the witnesses and jurors in the same manner as is now required in all matters before Masters in Equity or Referees, and the said Clerk, or his deputy, shall conduct all of the said hearings, exercising all the powers, authority and duties that are now conferred by law on Masters in Equity and Referees in so far as the same may be necessary and requisite for a proper and speedy determination of the issues involved.

Civ. '12, § 3293; Civ. '02, § 2188; G. S. 1551; R. S. 1744; 1899, XXIII, 83; 1920, XXXI, 746.

Powers of Circuit Judge are judicial, not ministerial; he may exercise common law powers in the execution of his duties. *State v. R. R. Co.*, 1 S. C. 46. Though description of land in petition be insufficient, the Judge has jurisdiction to empanel a jury. *Ex parte Bennett*, 26 S. C. 317, 2 S. E. 389; *Ex parte Bacot*, 36 S. C. 125, 15 S. E. 204. Does not require service of the petition upon parties in interest. *Ex parte Bacot*, 36 S. C. 125, 15 S. E. 204; *Charleston, etc., R. Co., v. Reynolds*, 69 S. C. 504, 48 S. E. 476; *In re Rugheimer*, 36 Fed. 369, 374.

(4992) § 3. Procedure Where Clerk is Interested—Substitution of Probate Judge.—In all cases where the Clerk of the Court of Common Pleas shall be the owner of any lands over which it is sought to obtain a right of way in such county, or shall hold the legal title thereof as trustee, guardian or committee, or have any other interest therein, the proceedings for obtaining the right of way through such lands shall be had as provided in Section 2 hereof, except that the Judge of Probate for such county shall be substituted for the Clerk of the Court of Common Pleas and shall assume all of the duties of the Clerk contained in Section 2 and the following Sections of said Article.

Civ. '12, § 3294; Civ. '02, § 2189; G. S. 1551a; R. S. 1745; 1887, XIX, 867.

(4993) § 4. Jury to Inspect Premises, Fix Compensation, Etc.—The jury so empanelled, after being first sworn faithfully and impartially to

determine the question of compensation submitted to them, shall proceed to inspect the premises, and to take testimony in reference to the construction of the proposed highway, and the quantity of land which shall be required therefor; and, irrespective of any benefit which the owner may derive from the proposed highway, and with respect alone to the quantity and value of the land which may be required, and to the special damage which the owner may sustain by reason of the construction of the highway through his lands, they shall ascertain the amount of compensation which shall be made to the owner thereof, and shall render their verdict in writing for the same.

Civ. '12, § 3295; Civ. '02, § 2190; G. S. 1552; R. S. 1746; 1868, XIV, 90.

As to estimate of compensation. *R. R. v. Partlow*, 5 Rich. 428; *White v. R. R.*, 6 Rich. 47; *R. v. Sineath*, 8 Rich. 185; *R. R. v. Blake*, 12 Rich. 634. The value of the land and special damages are only to be estimated under this Section. *Bowen v. R. R. Co.*, 17 S. C. 574; *Tompkins v. R. R.*, 21 S. C. 420. Supposed benefits from railroad cannot be considered. *R. R. Co. v. Leech*, 33 S. C. 175, 11 S. E. 681.

Compensation includes special damages. *Johnson v. Southern Ry.*, 71 S. C. 241, 50 S. E. 775, 110 Am. St. Rep. 572.

Valuation of rights of remaindermen. *C. & W. C. Ry. v. Reynolds*, 69 S. C. 481, 508, 48 S. E. 476. Verdict. *Ex parte Davis*, 83 S. C. 259, 65 S. E. 234.

Lockhart Power Co. v. Askew, 110 S. C. 449, 96 S. E. 685.

(4994) § 5. Right of Appeal to Circuit Court—Amount of Verdict to Be Deposited.—From the verdict so rendered it shall be the right of either party to appeal to the first term of the Circuit Court next ensuing in the county, giving to the opposite party fifteen days' notice of such intended appeal, with the grounds thereof; and, upon the hearing of such appeal, an issue shall be ordered, in which the appellant shall be the actor, and the question of compensation shall be thereupon submitted to a jury in open Court, whose verdict shall be final and conclusive, unless a new trial shall be ordered by the Supreme Court. But in no case of appeal shall the progress of the work of construction be stayed: *Provided*, The person or corporation requiring the right of way shall deposit with the Clerk of the Court the amount of the verdict from which the appeal is taken.

Civ. '12, § 3296; Civ. '02, § 2191; G. S. 1553; R. S. 1747; 1868, XIV, 90.

Measure of damages. *R. R. Co. v. Sineath*, 8 Rich. 185. Special damages. *Bowen v. R. R. Co.*, 17 S. C. 574. The service of both the notice and grounds of appeal within fifteen days essential to the appeal. *Atlantic C. L. R. Co. v. S. B. R. Co.*, 57 S. C. 317, 35 S. E. 553. The order of Court allowing the appeal is reviewable on appeal from the final order. *Ib.* But on such appeal the Supreme Court will not review the finding of the Circuit Court as to the sufficiency of the grounds of appeal. *Chesterfield & K. R. Co. v. Johnson*, 58 S. C. 560, 36 S. E. 919. As to right of trial by jury in Circuit Court on appeal. *Ib.* Order in Circuit Court granting new trial is appealable. *Atlantic Coast Line R. R. Co. v. S. B. R. Co.*, *supra*.

Verdict apparently irregular vacated. *Ex parte Davis*, 83 S. C. 259, 65 S. E. 234.

When Circuit Court declares it is not satisfied with reasonable sufficiency of grounds for trial *de novo*, this Court can grant no relief. *Southern Power Co. v. Williams*, 85 S. C. 172, 177, 57 S. E. 136.

Constitutionality of provision as granting trials *de novo* cannot be attacked here by petitioner below, because he invoked statute and no such question was made on circuit.

(4995) § 6. Lands for Depots, Etc.—Whenever any lands shall be required for the location of depots, stations, turnouts, section houses, or other necessary uses of a highway, and from want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner, the same may be taken at an assessed valuation, to be made by a jury in like manner as hereinbefore directed for ascertaining the compensation for right of way.

Civ. '12, § 3297; Civ. '02, § 2192; G. S. 1554; R. S. 1748; 1868, XIV, 90.

Gaffney v. Wood, 74 S. C. 323, 54 S. E. 573. *Ragsdale v. Railway*, 60 S. C. 381, 38 S. E. 609.

(4996) § 7. Notice to Trustees in Certain Cases—Published Notice Sufficient for Nonresidents.—When the owner, or any one of the several

owners, of the lands is an infant, or *non compos mentis*, the required notices shall be served upon the trustee, guardian, or committee of such persons; and if there be no trustee, guardian, or committee, the Clerk of the Court of Common Pleas shall have power, and he is hereby authorized, to appoint for such person a guardian *ad litem*, upon whom the service shall be made, and who shall represent the interest of such infant, or person *non compos mentis*. And if any owner of lands shall reside beyond the State, or his or her place of residence be unknown, such owner shall be served by publication as in civil actions.

Civ. '12, § 3298; Civ. '02, § 2193; G. S. 1555; R. S. 1749; 1868, XIV, 90.

(4997) § 8. Right of Way—Vesting of Title—Fee to Remain in Owner.

—Upon payment of the compensation thus ascertained by a jury, the right of way over said lands, or the use of said lands for the purposes for which the same were required, shall vest in the person or corporation who shall hold the charter of such highway, so long as the same shall be used for such highway, and no longer; but the fee in such lands, subject to such special uses, shall remain in the owner thereof, and nothing herein contained shall be construed to confer upon such person or corporation any right in, or power over, the lands so condemned, other than such as may be within the particular purpose for which such lands were condemned.

Civ. '12, § 3299; Civ. '02, § 2194; G. S. 1556; R. S. 1750; 1868, XIV, 91.

The right of way does not rest until payment of the compensation; how payment is enforced. *Gillson v. R. R. Co.*, 7 S. C. 173; *Buckner v. R. R. Co.*, 7 S. C. 325. Right of owner to recover damages on account of use of land for other purposes. *Ragsdale v. So. Ry. Co.*, 60 S. C. 381, 38 S. E. 609. Injoining such use. *Id.*

Southern Ry. Co. v. Gossett, 79 S. C. 372, 60 S. E. 956; *Southern Ry. v. Howell*, 79 S. C. 286, 60 S. E. 677; *Harman v. Ry.*, 72 S. C. 228, 51 S. E. 689; *Columbia, Newberry & Laurens Ry. v. Laurens Cotton Mills*, 82 S. C. 24, 61 S. E. 1089, 62 S. E. 1119; *Matthews v. Seaboard Air Line Railway*, 67 S. C. 499, 505, 46 S. E. 335, 65 L. R. A. 286.

(4998) § 9. Liability to Condemnation.—No lands or right of way which have heretofore been, or may hereafter be, procured for the construction or use of any highway shall be considered exempt from liability to condemnation; but the right of way over said land and across or along such right of way may be condemned for the construction of any other highway: *Provided*, That in the construction of such other highway there be no hindrance to the use and enjoyment of the highway for which such lands or right of way were previously procured; and in all such cases notice of the application for a jury shall be served upon the president of the corporation whose lands or right of way shall be required, or upon any director or local agent of the corporation.

Civ. '12, § 3300; Civ. '02, § 2195; G. S. 1557; R. S. 1751; 1868, XIV, 91.

Over existing right of way. *Wilson v. Alderman*, 69 S. C. 176, 48 S. E. 81; *Alderman v. Wilson*, 69 S. C. 156, 48 S. E. 85, 71 S. C. 64, 50 S. E. 643; *Alderman & Sons Co. v. Wilson Lumber Co.*, 77 S. C. 139, 57 S. E. 756.

Acquiescence in use of right of way by pedestrians. *Matthews v. Seaboard Air Line Railway*, 67 S. C. 499, 506, 46 S. E. 335, 65 L. R. A. 286.

Railroad may obtain right to cross another when it appears such crossing would not be unreasonable hindrance of the right of way to be crossed and consent of Railroad Commission is first obtained. *Seaboard Air Line Railway v. Atlantic Coast Line R. Co.*, 88 S. C. 477, 479.

(4999) § 10. Right of Entry for Survey—Proviso.—Nothing herein

contained shall be construed to prevent entry upon any lands for purposes of survey and location; and if in any case the owner of any lands shall permit the person or corporation requiring the right of way over the same to enter upon the construction of the highway without previous compensation,

the said owner shall have the right, after the highway shall have been constructed, to demand compensation, and to petition for an assessment of the same in the manner hereinbefore directed: *Provided*, Such petition shall be filed within twelve months after the highway shall have been completed through his or her lands.

Civ. '12, § 3301; Civ. '02, § 2196; G. S. 1558; R. S. 1751; 1868, XIV, 91.

C. & W. C. Ry. v. Garlington, 74 S. C. 161, 54 S. E. 208; Matthews v. Ry., 67 S. C. 505, 46 S. E. 335, 65 L. R. A. 286; C. & W. C. Ry. v. Reynolds, 69 S. C. 508, 48 S. E. 476; Aull v. Ry., 42 S. C. 435, 20 S. E. 302; Seitzly v. Water Power Co., 47 S. C. 483, 25 S. E. 751; Verdier v. Ry., 15 S. C. 476; Tutt v. Ry., 28 S. C. 400, 5 S. E. 331; Granger v. Telephone Co., 70 S. C. 531, 50 S. E. 193, 106 Am. St. Rep. 750; Ingleside Mfg. Co. v. Charleston Light & Power Co., 76 S. C. 95, 56 S. E. 664; Ex parte Postal Telegraph & Cable Co., 72 S. C. 554, 52 S. E. 676.

Remaindermen who are minors when life tenant conveys right of way to railroad company may have damages to their lands assessed against railroad company for such taking, after death of life tenant, and after more than one year from completion of road, by procedure in Court of Common Pleas. Charleston, etc., R. Co. v. Reynolds, 69 S. C. 481, 504, 48 S. E. 476.

Ellison et al v. Greenville, S. & A. Ry. Co., 94 S. C. 425, 77 S. E. 723; Willis v. Alcolu R. Co., 111 S. C. 172, 97 S. E. 56.

(5000) § 11. Proceedings Relating to Condemnation to Be Filed With Clerk of Court.—All proceedings in relation to the condemnation of lands for the right of way, or for other necessary uses of any chartered highway, shall be filed in the office of the Clerk of the Court of Common Pleas for the county in which such proceedings were had, and shall be there of record. If the lands required, or over which the right of way be required, shall be partly in one county and partly in another, the proceedings shall be instituted in that county in which the owner, or a majority of the owners, reside; and if the owner or owners shall reside in neither of the counties, or if there shall be an equal number of the several owners in each county, the proceedings shall be instituted in that county in which shall lie the greater part of the lands in reference to which such proceedings are instituted.

Civ. '12, § 3302; Civ. '02, § 2197; G. S. 1559; R. S. 1753; 1868, XIV, 92.

(5001) § 12. Clerk's, Sheriff's and Juror's Fees—By Whom Paid.—The Clerk of the Court shall be entitled to a fee of ten dollars in every case instituted for the condemnation of lands under this Article; the same to cover all charges incident thereto prior to appeal, including all fees for recording, but not including costs of advertising; to which shall be added, in cases of appeal, an additional fee of two dollars, the same to cover all charges incident to the appeal; the Sheriff shall be entitled to a fee of one dollar, and mileage at the rate of five cents per mile for each service of notice or other paper; and for the summoning of jurors, the same fee by law allowed for the summoning of jurors for the Courts of Common Pleas; and the jurors shall be entitled to the same per diem and mileage by law allowed for attendance as jurors at the Court of Common Pleas; all of which costs, except the cost of appeal, shall be paid by the person or corporation requiring the lands or right of way; and the costs of appeal shall in all cases be paid by the losing party.

Civ. '12, § 3303; Civ. '02, § 2198; G. S. 1560; R. S. 1754.

(5002) § 13. Penalty for Failure of Jurors to Attend.—Any juror duly summoned to attend at the time and place designated, who shall fail to attend, shall be proceeded against in the same manner, and be subject to the same penalties, which are or may be prescribed by law for default in attending as jurors at the Court of Common Pleas.

Civ. '12, § 3304; Civ. '02, § 2199; G. S. 1561; R. S. 1755.

(5003) § 14. **All Railroads, Whether Steam or Electric, Entitled to Condemn Land.**—The right and power to condemn a right of way for the purposes and in the manner provided in this Article for railroads operated by steam shall be, and the same are hereby, extended to and vested in all railroads, whether operated by steam, electricity or other motive power.

Civ. '12, § 3305; 1908, XXV, 1045.

ARTICLE XI.

Penalties and Forfeitures to and by Railroads.

(5004) § 1. **Penalty for Injuring Railroad, Etc.**—Whoever wilfully and maliciously injures in any way any railroad or anything appertaining thereto, or any materials or implements for the construction or use thereof, or aids or abets in such trespass, shall forfeit to the use of the corporation for each offense treble the amount of damages proved to have been sustained thereby, to be recovered in an action of tort in the name of the corporation.

Civ. '12, § 3306; Civ. '02, § 2200; G. S. 1518; R. S. 1733.

(5005) § 2. **Penalty for Obstructing Engine, Etc.**—Whoever wilfully does, or causes to be done, anything with intent to obstruct any engine or carriage passing upon a railroad, or with intent to endanger the safety of persons conveyed in or upon the same, or aids or assists therein, shall forfeit to the use of the corporation for each offense treble the amount of damages proved to have been sustained thereby, to be recovered in an action in any Court of competent jurisdiction.

Civ. '12, § 3307; Civ. '02, § 2201; G. S. 1521; R. S. 1734.

(5006) § 3. **Acts Declared Unlawful Prohibited—Damages and Penalty—Actions—Limit of Recovery.**—Each and every act, matter or thing in this Chapter declared to be unlawful is hereby prohibited; and in case any person or persons as defined in this Chapter engaged as aforesaid shall do, suffer or permit to be done any act, matter or thing in this Chapter prohibited or forbidden, or shall omit to do any act, matter or thing in this Chapter required to be done, or shall be guilty of any violation of the provisions of this Chapter, such person or persons shall, where no specific penalty is hereinbefore already provided for such violation, forfeit and pay to the person or persons who may sustain damage thereby a sum equal to three times the amount of the damages so sustained, to be recovered by the person or persons so damaged by suit in any Circuit Court in this State where the person or persons causing such damage can be found, or may have an agent, office or place of business; but in any such case of recovery the damage shall not be assessed at a less sum than two hundred and fifty dollars; and the person or persons so offending shall, for each offense, forfeit and pay a penalty of not less than one thousand dollars, to be recovered by the State by action in any Circuit Court aforesaid, to be brought by the Attorney General upon the request of the Railroad Commissioners.

Civ. '12, § 3308; Civ. '02, § 2202; G. S. 1539; R. S. 1735; 1882, XVII, 18.

Only action allowed for obstructing a way is under this Section for the specific penalty. *Ross v. R. R.*, 33 S. C. 477, 12 S. E. 101; *Roundtree v. Ry.*, 73 S. C. 269, 53 S. E. 424.

(5007) § 4. Action Regarded as Subject of Equity Jurisdiction—Affirmative Relief—Injunction, Etc.—Any action brought, as provided in the preceding Section, to recover any penalty or damages, may be considered, and, if so brought, shall be regarded, as a subject of equity jurisdiction, and discovery and affirmative relief may be sought and obtained therein. In any such action so brought a case of equitable cognizance, preliminary or final injunctions may, without allegation or proof of damage to the plaintiff or complainant, be granted upon proper application, restraining, forbidding and prohibiting the commission or continuance of any act, matter or thing within the terms or purview of this Article prohibited or forbidden.

Civ. '12, § 3309; Civ. '02, § 2203; G. S. 1539; R. S. 1736; 1882, XVII, 18.
Railroad Commissioners v. R. R. Co., 26 S. C. 353, 2 S. E. 127.

(5008) § 5. Officers, Employees, Etc., Compellable to Testify—Production of Books, Papers, Etc.—In any action aforesaid, and upon any application for any injunction provided for in the two preceding Sections, any director, officer, receiver or trustee of any corporation or company aforesaid, or any receiver, trustee or person aforesaid, or any agent of any such corporation or company, receiver, trustee or person aforesaid, or of any of them alone or with any other person or persons, party or parties, may and shall be compelled to attend, appear and testify and give evidence; and no claim that any such testimony or evidence might or might not tend to criminate the person testifying or giving evidence shall be of any avail; but such evidence of testimony shall not be used as against such person on the trial of any indictment against him. The attendance and appearance of any of the persons who, as aforesaid, may be compelled to appear or testify, and the giving of the testimony or evidence by such persons, respectively, and the production of books and papers by them, may and shall be compelled, the same as in the case of any other witness; and if such deposition or evidence or the production of any books or papers may be desired or required for the purpose of applying for or sustaining any injunction aforesaid, the same and the production of books and papers may and shall be had, taken and compelled by or before the Clerk of the Court in which said action is pending, or in any manner provided by the laws of this State as to the taking of other depositions or evidence, or the attendance of witnesses or the production of other books or papers.

Civ. '12, § 3310; Civ. '02, § 2204; G. S. 1539; R. S. 1737; 1882, XVII, 18.

(5009) § 6. Limitation of Action—Judgments—Against Whom to Be Rendered.—No action provided for in the three preceding Sections shall be sustained unless brought within two years after the cause of action shall accrue. And any judgment under the provisions of this Article shall be rendered against the person or persons violating its provisions, and against the corporation or corporations in whose service or under whose authority they perform such unlawful acts.

Civ. '12, § 3311; Civ. '02, § 2205; G. S. 1539; R. S. 1738; 1882, XVII, 18.

(5010) § 7. Penalty for Violation.—Any director or officer of any corporation or company acting or engaged as aforesaid, or any receiver or trustee, lessee, or person acting or engaged as aforesaid, or any agent of

any such corporation or company, receiver, trustee, or person aforesaid, or of one of them alone, or with any other corporation, person, or party, who shall directly or indirectly do, or cause or willingly suffer or permit to be done, any act, matter, or thing in this Chapter prohibited or forbidden, or directly or indirectly aid or abet therein, or shall directly or indirectly omit or fail to do any act, matter, or thing in this Chapter required to be done, or cause or willingly suffer or permit any act, matter or thing so directed or required to be done, not to be so done, or shall directly or indirectly aid or abet any such omission or failure, or shall directly or indirectly be guilty of any infraction of this Chapter, or directly or indirectly aid or abet therein, shall, unless otherwise hereinbefore specially provided, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars.

Civ. '12, § 3312; Civ. '02, § 2206; G. S. 1540; R. S. 1739; 1882, XVII, 18.

(5011) § 8. Fines and Forfeitures—How Collected.—In the case of all fines or forfeitures provided for or prescribed in this Chapter, such fines or forfeitures shall be collected by an action to be brought in the name of the State against the offending person or corporation in any Court of competent jurisdiction, by the Attorney General of this State, or the Solicitor of the Circuit in which the offense is in whole or in part committed. And upon recovery in any such action the Attorney General, or the Solicitor, as the case may be, conducting such proceedings, shall be entitled to a compensation of ten per cent. of the amount so recovered and actually collected, and the balance shall go to the State.

Civ. '12, § 3313; Civ. '02, § 2207; G. S. 1542; R. S. 1740; 1882, XVII, 839.

Sullivan v. Ry., 74 S. C. 392, 54 S. E. 586.

(5012) § 9. Persons Injured — Rights of — Remedy Cumulative.—This Chapter shall not be so construed as to waive or affect the right of any person injured by the violation of any law in regard to railroad corporations from prosecuting or proceeding for his private damages in any manner allowed by law. But the remedies hereby given persons injured shall be regarded as cumulative to any and all the remedies now given by or existing at law against railroad corporations.

Civ. '12, § 3314; Civ. '02, § 2208; G. S. 1543; R. S. 1741; 1882, XVII, 839.

Kaminitsky v. R. R. Co., 25 S. C. 53; Sullivan v. Southern Railway, 74 S. C. 377, 392, 54 S. E. 586.

(5013) § 10. Proceedings in Case of Repeated Violations.—Whenever any of the railroad corporations of this State have repeatedly and wilfully violated any of the provisions of this Chapter, and have been found guilty, or judgment had against them within this State, of such violation more than once, or penalties have been recovered in penal actions for such violations more than once, the Commissioners may, if they think it consistent with the public interest, instruct the Attorney General to proceed against such corporation, in any Court of competent jurisdiction, by an information in the nature of a *quo warranto*, alleging such conviction or recoveries as cause of forfeiture of their respective charters of incorporations, and upon proof of the same there shall be judgment of ouster and final execution as in other cases of proceedings by *quo warranto*.

Civ. '12, § 3315; Civ. '02, § 2209; G. S. 1546; R. S. 1742; 1882, XVII, 841.

(5014) § 11. **Penalty for a Railroad Company Operating Competing Lines.**—Any railroad company owning, leasing or operating competing railroad lines within this State in violation of law shall be subject to a penalty of one hundred dollars for every day that such competing lines are owned, leased or operated, such penalty to be recovered in any Court of competent jurisdiction in any county through which either of such competing lines may pass, by any citizen thereof who may sue for the same, one-half of such penalty to go to the party suing therefor and the other half to the State: *Provided*, That the provisions of this Chapter shall be without prejudice to any remedy which the State may be entitled to in its own behalf.

Civ. '12, § 3316; Civ. '02, § 2210; 1897, XXII, 492.

Edwards v. Ry., 66 S. C. 2, 77, 44 S. E. 748; State v. Southern R. Co., 82 S. C. 12, 18, 62 S. E. 1116.

CHAPTER LIII.

Telegraph, Telephone, and Express Companies.*

(5015) § 1. **Telegraph and Telephone Companies—Powers Regulated.**—**Penalty.**—Any telegraph or telephone company incorporated under the laws of this or any other State, upon complying with the laws of this State regulating foreign corporations, and by becoming a domestic corporation, may construct, maintain and operate its line through, upon, over and under any of the public lands of this State, under, over, along and upon any of the highways or public roads of the State; over, through or under any of the waters of this State; on, over and under the lands of any person, company or corporation in this State; and along, upon and over the right of way of any railroad or railway company in this State: *Provided*, The same are constructed so as not to endanger the safety of persons or to interfere with the use of such highways or public roads, the navigation of such waters, or the operation and running of the engines and cars of such railroads or railways, and just compensation is first paid such land-owners and railroad or railway companies for such right and privilege, to be ascertained in the manner hereinafter provided for: *Provided, further*, That no telegraph, telephone, electric light or power wire shall be erected or maintained within fifty yards of any public road or highway in this State, unless the same shall be so constructed, erected and maintained and provided with sufficient lightning guards or arresters (and in case of electric light or power wires, with such automatic cut-offs and other devices), as may be necessary for the protection of persons and property. Any person, firm or corporation erecting or maintaining any such wire or wires in violation of the provisions hereof, shall forfeit and pay as a penalty therefor five dollars a day for each day in default, after the expiration of thirty days' written notice, specifying the fault or defect in the manner of erection, construction or maintenance thereof, to be recovered at the suit of any citizen in any county in which such violation shall occur, and the sum so recovered, after paying therefrom all the

expenses incurred in the prosecution of such suit, shall be paid into the County Treasurer for such county for ordinary county purposes.†

Civ. '12, § 3317; Civ. '02, § 2211; 1899, XXIII, 61; 1904, XXIV, 490.

*A telephone company may be required by mandamus to afford equal facilities to persons desiring to use same. *Gwynn v. Citizens' Tel. Co.*, 61 S. C. 83, 39 S. E. 262.

†A foreign corporation cannot exercise the right of eminent domain, unless domesticated. *Baldwin v. Telegraph Co.*, 78 S. C. 422, 59 S. E. 67; *Duke v. Postal Tel. Co.*, 71 S. C. 99, 50 S. E. 675. Damages. *Phillips v. American Tel. & Tel. Co.*, 71 S. C. 571, 51 S. E. 247.

(5016) § 2. Rights of Way—How Obtained.—Whenever any telegraph or telephone company desires to construct its lines on, over or under the lands of any person, company or corporation other than railroad or railways, and fails to agree with the owners of such lands upon the compensation to be paid as damages for such right and use, such company may secure such right and privilege by the institution and prosecution of condemnation proceedings against such landowners, as provided for and authorized in Article X of Chapter LII of this Code, providing for securing to railroads a right of way in this State.

Civ. '12, § 3318; Civ. '02, § 2212; 1899, XXIII, 61.

Duke v. Postal Tel. Cable Co., 71 S. C. 95, 99, 50 S. E. 675.

(5017) § 3. How Rights of Way May Be Obtained from Railroad Companies.—Any telegraph or telephone company authorized to construct its lines upon the right of way of the railroad or railway companies in this State are hereby authorized to contract with such companies for such right and privilege; but failing to make such contract, may file its petition in the office of the Clerk of the Court of Common Pleas of any county into or through which said railroad or railway runs, or is constructed, at any time not less than thirty days before a term of said Court, setting out therein where it is incorporated, and that it made an effort to agree with the defendant railroad or railway company for the right to construct, maintain and operate its lines upon the right of way of such railroad or railway company in the State of South Carolina and failed; and that it has given bond for costs in the sum of two hundred dollars, approved by the Clerk of said Court, and how and in what manner it proposes to construct its lines upon such right of way; and offering in said petition to remove, at its own expense, any of its poles, wires, structures or appurtenances, if at any time their construction interferes with the right of defendant railroad or railway company, to construct additional tracks, switches, crossings, warehouses, depots, turntables, water tanks or any other structures for the use of said railroad or railway company, upon reasonable notice given it, at its expense, to such other points or places upon said right of way as may be agreed by said companies; also not to interfere or come in contact with any other telegraph or telephone lines already constructed on said right of way; and there shall be but one such proceeding by the petitioner against the same railroad or railway company, and the damages to be paid shall be ascertained for its entire length in this State for such rights and privileges by said proceedings: *Provided*, That the defendant in all such cases shall have the

right to apply for a removal of such case for trial to any other county through which said railroad runs, as provided by law in other cases.

Civ. '12, § 3319; Civ. '02, § 2213; 1899, XXIII, 61.

Condemnation, where co-tenant permits entry. *Granger v. Tel. Co.*, 70 S. C. 528, 50 S. E. 193, 106 Am. St. Rep. 750.

Remedy inadequate. *Ry. Co. v. Tel. Co.*, 63 S. C. 199, 41 S. E. 307.

Permit for entry obtained by fraud. *Baldwin v. Tel. Co.*, 78 S. C. 419, 59 S. E. 67; *Voyles v. Tel.*, 78 S. C. 430, 50 S. E. 68; *Burnett v. Tel. Co.*, 71 S. C. 146, 59 S. E. 780; *Mason v. Tel. Co.*, 71 S. C. 150, 153, 50 S. E. 781, 782; *Brown v. Tel. Co.*, 82 S. C. 178, 63 S. E. 744.

(5018) § 4. Clerk to Summon Railroad Companies on Filing of Petition—Assessing Damages, Etc.—It shall be the duty of the Clerk of said Court, upon the filing of said petition, to issue summons, directed to said railroad or railway company, which, with a copy of said petition, shall be served upon the same, by serving it upon any agent in said county, as other civil process is by law authorized to be served upon railroad or railway companies in this State; and the Clerk shall docket said cause, which shall be tried at the next ensuing term of said Court as other civil causes are tried; except that the Court shall first hear proof of the allegations of said petition as to its incorporation, and its failure to agree with the defendants, which, if satisfactory to the Court, an order to that effect shall be entered, when the issue of fact involved therein, together with question as to the amount of damages to be paid the defendant by the petitioner, shall be immediately submitted to a jury, which shall be sworn as follows: "You, and each of you, do solemnly swear (or affirm) that you will assess just compensation to which the defendant is entitled from the petitioner for the construction, maintenance and operation of its lines upon the right of way of the defendant in the manner set out in the petition on file in this cause."

Civ. '12, § 3320; Civ. '02, § 2214; 1899, XXIII, 61.

Remedy by appeal against judgment on defective service, etc. *Ex parte Postal Tel. Co.*, 72 S. C. 552, 52 S. E. 676.

(5019) § 5. Manner of Trial and Form of Verdict.—Testimony as to the issues of fact involved, and irrespective of any benefit which the railroad company may derive from the proposed telegraph or telephone lines, the railroad or railway company will suffer by reason of the construction, maintenance and operation of the telegraph or telephone lines upon its right of way, in the manner set out in the petition, will be admissible; and after argument of counsel for the petitioner and the defendant, if the respective parties are so represented, and the Judge's charge, the jury shall return into Court their verdict, in writing, in the form following: "We, the jury, find for the defendant, and assess the damages to which it is entitled from the Company for the right to construct, maintain and operate its lines upon the right of way of the defendant, in the manner set out in its petition, through the Counties of....., ... dollars." The Court shall give to the jury the written form of the verdict, leaving blank only the amount of damages; which verdict, with the judgment of the Court thereon, shall be entered as other judgments of said Court. The judgment of the Court shall authorize the petitioner, upon the payment of the amount of the verdict to said defendant, or to the Clerk of said Court, subject to the order of said defendant,

to construct, maintain and operate its lines in the manner set out in its petition and not otherwise.

Civ. '12, § 3321; Civ. '02, § 2215; 1899, XXIII, 61.

(5020) § 6. **Empanelling Another Jury on Mistrial.**—In the event the jury in said cause fails to agree upon a verdict and is discharged by the Court it shall be the duty of the Court to cause another jury to be empanelled at the same term of said Court, and again try the issue in said cause: *Provided*, Sufficient time therefor remain, and if not, then at the next term thereof.

Civ. '12, § 3322; Civ. '02, § 2216; 1899, XXIII, 61.

(5021) § 7. **Right of Appeal.**—Either party feeling itself aggrieved at the verdict of the jury may appeal said cause to the Supreme Court of the State, which shall be docketed, heard and determined as other civil causes appealed to said Court. But the telegraph or telephone company may proceed to construct its lines, notwithstanding an appeal may be taken, upon the payment into Court the amount of the verdict of the jury as hereinbefore authorized.

Civ. '12, § 3323; Civ. '02, § 2217; 1899, XXIII, 61.

(5022) § 8. **When Condemnation Proceedings May Be Had.**—If any agent or attorney for the telegraph or telephone company shall, in writing, offer or propose to the president or general manager of any railroad or railway company to agree upon terms to construct its lines upon the right of way of such railroad or railway company, and no definite response of consent or refusal be given him within thirty days, then such company may proceed to condemn in accordance with the provisions of this Chapter without further effort to agree upon terms for such right of way for its use and benefit.

Civ. '12, § 3324; Civ. '02, § 2218; 1899, XXIII, 61.

(5023) § 9. **Bond for Costs on Institution of Proceedings.**—The telegraph or telephone company, before instituting proceedings under this Chapter, shall give a bond for costs in the sum of two hundred dollars, to be approved by the Clerk of the Court in which its petition is filed, and shall pay all costs of the proceedings, unless, upon appeal by the railroad or railway company, the judgment of the Court appealed from is sustained by the Supreme Court; then, in such case, the railroad or railway company shall pay all the costs of such appeal.

Civ. '12, § 3325; Civ. '02, § 2219; 1899, XXIII, 61.

(5024) § 10. **Electric Light Companies to Have Right to Condemn, Etc.**—Subject to the same duties and liabilities, all the rights, powers and privileges conferred upon telegraph and telephone companies under Sections 1 to 9, both inclusive, of this Chapter, be, and the same are hereby, granted unto electric lighting and power companies incorporated under the laws of this State or any other State upon complying with the laws of this State regulating foreign corporations and by becoming a domestic corporation.

Civ. '12, § 3326; 1904, XXIV, 489.

(5025) § 11. **Express and Telegraph Companies Placed Under Powers of Railroad Commission—Powers.**—All companies or persons owning, controlling or operating, or that may hereafter own, control or operate, a line or lines of express or telegraph, whose line or lines is or are in whole or in part in this State, shall be under the control of the Railroad Commissioners of this State, who shall have full power to regulate the prices to be charged by any company or person or persons owning, controlling or operating any line or lines of express and telegraph for any service performed by such company, person or persons; and all the powers given to said Commissioners over railroads in this State, and all the penalties prescribed against railroad companies or persons operating railroads by existing laws are hereby declared to be of force against corporations, companies or a person or persons owning, controlling or operating a line or lines of express and telegraph doing business in this State, whose line or lines is or are wholly or in part in this State, so far as said provisions of the law can be applicable to any corporation, company, person or persons owning, controlling or operating a line or lines of express and telegraph.

The powers of the Commissioners to regulate charges by corporations, companies and persons herein referred to shall apply to charges by express for transportation from one point to another in this State and messages sent by telegraph from one point to another in this State.

Civ. '12, § 3327; Civ. '02, § 2220; 1898, XXII, 780.

(5026) § 12. **How Salaries of Railroad Commissioners Are Paid—Pro Rata Assessments.**—The telegraph and express companies shall bear their *pro rata* part of the salaries of the Railroad Commissioners based on their gross earnings. The said assessment against the express companies and telegraph companies shall be charged up against the said corporations, respectively, under the order and direction of the Comptroller General, and shall be collected by the several County Treasurers in the manner prescribed by law for the collection of taxes from such corporations, and shall be paid by them as collected into the Treasury of the State in like manner as other taxes collected by them for the State: *Provided*, The Comptroller General shall be empowered and instructed to assess and collect from the express and telegraph companies and the said companies required to pay the sum of five hundred dollars to be apportioned between the said companies according to their gross earnings, and to pay the same over to the Railroad Commissioners as a contingent fund to be used by the said Railroad Commission for the purpose of organizing their new departments and informing themselves upon matters pertaining thereto.

Civ. '12, § 3328; Civ. '02, § 2221; 1898, XXII, 780.

(5027) § 13. **Unreasonable Discrimination by Telephone Companies Prohibited—Penalty.**—No telephone company doing business in this State shall make any difference in the rates at which they furnish telephones and telephone service to its patrons or subscribers at its different offices or places of business, in the several cities or towns, more than is necessary on account of the difference in the cost of supplying such telephones

and telephone service, the number of its subscribers at its different offices or places of business being taken into consideration.

Any telephone company which shall violate the provisions of this Section shall pay and forfeit to each of its subscribers or patrons when it charges such higher rate double the difference between the rate so unlawfully charged and the rate which should be charged according to the provisions of this Section, to be recovered by suit in any Court of competent jurisdiction.

Civ. '12, § 3329; Civ. '02, § 2222; 1898, XXII, 779.

Gwynn v. Citizens' Tel. Co., 61 S. C. 83, 39 S. E. 257.

(5028) § 14. Transmission of Messages Between Points in This State, Regulated.—Any message delivered to a telegraph or telephone company within this State for transmission to any other point within this State shall be as a matter of fact, and regarded as a matter of law, as and for an intrastate transaction, and shall be transmitted by such company by the most direct and practical route within this State.

1919, XXXI, 651.

(5029) § 15. Penalty for Violation.—That any violation of the provisions of the preceding Section said corporation shall be subject to a penalty of five hundred dollars for each violation, to be recovered by the party aggrieved and forfeit its right to do business in the State.

1919, XXXI, 651.

(5030) § 16. Act No Bar to Actions for Damages—Joinder of Causes of Action.—Nothing herein contained shall bar any action for actual or punitive damages growing out of any violations of the provisions of Section 14 above, and any cause of action may be united in the same complaint.

1919, XXXI, 651.

(5031) § 17. Duties of Electric Companies as to Receipt and Transmissal of Messages—Penalty—Other Remedies Not Affected—Joinder of Causes for Penalty and for Damages.—That every electric telegraph company with a line of wires, wholly or partly in this State, and engaged in telegraphing for the public, shall, during the usual office hours, receive dispatches, whether from other telegraphic lines or from individuals, and, on payment of the usual charges according to the regulations of such company, shall transmit and deliver the same with impartiality and good faith, and with due diligence, under penalty of one hundred dollars, which penalty may be recovered by suit in a Magistrate or other Court having jurisdiction thereof, by either the sender of the dispatch or the person to whom sent or directed, whichever may first sue: *Provided*, That nothing herein shall be construed as impairing or in any way modifying the right of any person to recover damages for any such breach of contract or duty by any telegraph company, and said penalty and said damages may, if the party so elect, be recovered in the same suit.

1920, XXXI, 725.

(5032) § 18. Delivery of Messages.—That such companies shall deliver all dispatches to the persons to whom the same are addressed or to their

agents, on payment of any charges due for the same: *Provided*, Such persons or agents reside within one mile of the telegraphic station or within the city or town in which such station is.

1920, XXXI, 725.

(5033) § 19. Telegraph Companies to Deliver Messages Free of Delivery Charges in Municipalities.—That on and after the passage of this Act any electric telegraph company operating within this State is hereby required to deliver messages within the limits of any city now having a population of more than thirty thousand, of the State, free of delivery charges, and without additional cost to the consignees of such messages, notwithstanding any rules or regulations now in force by any of such companies.

1921, XXXII, 209.

(5034) § 20. Penalty for Charge—Disposition.—Any company requiring a collection of delivery charges in violation of any of the provisions of the preceding Section shall be subject to a penalty of at least three hundred (\$300.00) dollars, and, upon conviction thereof, one-half of which shall be paid to the person aggrieved and the other half into the general school fund of the county in which such city is located.

1921, XXXII, 209.

(5035) § 21. Liability for Messages in Cipher.—That in all cases the liability of said companies for messages in cipher, in whole or in part, shall be the same as though the same were not cipher.

1920, XXXI, 725.

(5036) § 22. Telegraph Companies to Be Liable in Damages for Negligence Causing Mental Anguish.—All telegraph companies doing business in this State shall be liable in damages for mental anguish or suffering, even in the absence of bodily injury, for negligence in receiving, transmitting or delivering messages, without regard to relationship by blood or marriage, or whether such messages afforded notice of such relationship or otherwise, or that injury or damage would result if such anguish or suffering resulted as a matter of fact. Nothing contained in this Section shall abridge their rights or remedies now provided by law against telegraph companies, and the rights and remedies provided for by this Section shall be in addition to those now existing. In all actions under this Section the jury may award such damages as they conclude resulted from negligence, wantonness, wilfulness or recklessness of said telegraph companies: *Provided*, That when a telegram shows on its face that it relates to sickness or death, the real party for whose benefit the telegram was sent and who suffered mental anguish by reason of the negligence or wilfulness of the telegraph company, may recover damages as hereinbefore provided, without being required to allege or prove that the telegraph company had notice or knowledge at the time the message was sent of his or her relation to it, or of the extent or scope of his or her damage: *Provided*, That nothing contained in this Section shall affect cases now pending in the Courts.

Civ. '12, § 3330; Civ. '02, § 2223; 1901, XXIII, 748; 1909, XXVI, 84; 1911, XXVII, 226.

Action at common law for actual damages. Wallingford v. W. U. Tel Co., 60 S. C. 201, 38 S. E. 443; Gist v. Western Union Tel Co., 45 S. C. 344, 23 S. E. 143; Hill v. Western Union Tel. Co., 42 S. C. 367, 20 S. E. 135; Mood v. Western Union Tel. Co., 40 S. C. 524, 19 S. E. 67.

Condition precedent to suit. *Smith v. W. U. Tel. Co.*, 77 S. C. 378, 58 S. E. 6, 12 Am. & Eng. Ann. Cas. 654; *Toale v. W. U. Tel. Co.*, 83 S. C. 41, 64 S. E. 963.

Office hours. *Smith v. Tel. Co.*, 77 S. C. 378, 58 S. E. 6; *Ogilvie v. Tel. Co.*, 83 S. C. 8, 64 S. E. 860.

Delay in delivery. *Dempsey v. W. U. Tel. Co.*, 77 S. C. 399, 58 S. E. 9; *Kirby v. W. U. Tel. Co.*, 77 S. C. 405, 58 S. E. 10, 122 Am. St. Rep. 580; *Cloy v. W. U. Tel. Co.*, 78 S. C. 109, 58 S. E. 972; *Fail v. W. U. Tel. Co.*, 80 S. C. 207, 60 S. E. 697, 61 S. E. 258; *Johnson v. W. U. Tel. Co.*, 82 S. C. 87, 63 S. E. 1.

Special damages from delay. *Cloy v. Tel. Co.*, 78 S. C. 109, 58 S. E. 972; *Amos v. Tel. Co.*, 79 S. E. 259, 60 S. E. 660, 128 Am. St. Rep. 845; *McDowell v. W. U. Tel. Co.*, 79 S. C. 257, 60 S. E. 662; *Little v. Tel. Co.*, 79 S. C. 255, 60 S. E. 663; *Johnson v. W. U. Tel. Co.*, 81 S. C. 235, 62 S. E. 234, 128 Am. St. Rep. 905, 17 L. R. A., N. S., 1002; *Fass v. W. U. Tel. Co.*, 82 S. C. 461, 64 S. E. 235.

Punitive damages. *Cloy v. W. U. Tel. Co.*, 78 S. C. 109, 58 S. E. 972; *Glover v. Tel. Co.*, 78 S. C. 502, 59 S. E. 526; *Balderston v. W. U. Tel. Co.*, 79 S. C. 160, 60 S. E. 435; *Ogilvie v. Tel. Co.*, 83 S. C. 8, 64 S. E. 860, 137 Am. St. Rep. 790; *Strauss v. Tel. Co.*, 83 S. C. 22, 64 S. E. 913; *Mims v. W. U. Tel. Co.*, 82 S. C. 247, 64 S. E. 236; *Oxner v. W. U. Tel. Co.*, 82 S. C. 510, 63 S. E. 545; *Sullivan v. W. U. Tel. Co.*, 82 S. C. 569, 64 S. E. 752, 129 Am. St. Rep. 903, 17 Am. & Eng. Ann. Cas. 238, 22 L. R. A., N. S., 1214n.

Delivery must be to addressee or one having authority to receive. *Glover v. Tel. Co.*, 78 S. C. 502, 59 S. E. 526.

Failure to deliver telegram. *Balderston v. Tel. Co.*, 79 S. C. 160, 60 S. E. 435; *Martin v. W. U. Tel. Co.*, 81 S. C. 432, 62 S. E. 838.

Mistake in transmitting commercial telegram; special damages. *Baird v. W. U. Tel. Co.*, 79 S. C. 310, 60 S. E. 695.

Principal and agent—operator—evidence. *Fail v. W. U. Tel. Co.*, 80 S. C. 207, 60 S. E. 697, 61 S. E. 258; *Mitchiner v. W. U. Tel. Co.*, 75 S. C. 182, 55 S. E. 222; *DuBose v. W. U. Tel. Co.*, 73 S. C. 218, 53 S. E. 175.

Filing claim within 60 days; sufficiency. *Toale v. W. U. Tel. Co.*, 76 S. C. 248, 57 S. E. 117; *Smith v. W. U. Tel. Co.*, 77 S. C. 378, 58 S. E. 6, 12 Am. & Eng. Ann. Cas. 654.

Waiver. *Toale v. Tel. Co.*, 76 S. C. 248, 57 S. E. 117; *Edgefield Mfg. Co. v. Maryland Casualty Co.*, 78 S. C. 73, 58 S. E. 969; *McMillan v. Ins. Co.*, 78 S. C. 433, 58 S. E. 1020, 1135; *Roberts v. W. U. Tel. Co.*, 73 S. C. 520, 53 S. E. 985, 114 Am. St. Rep. 100; *Campbell v. W. U. Tel. Co.*, 74 S. C. 300, 54 S. E. 571. Damages—measure actual. *Key v. Tel. Co.*, 76 S. C. 301, 56 S. E. 962; *Lathan v. W. U. Tel. Co.*, 75 S. C. 129, 55 S. E. 134; *Bowie v. W. U. Tel. Co.*, 78 S. C. 424, 59 S. E. 65.

Nonsuit; damage too remote. *Bird v. W. U. Tel. Co.*, 76 S. C. 345, 56 S. E. 973; *Johnson v. W. U. Tel. Co.*, 75 S. C. 54, 54 S. E. 826; *Clio Gin Co. v. W. U. Tel. Co.*, 82 S. C. 405, 64 S. E. 426.

Mental anguish—Negligence—Wilfulness. *Roberts v. Tel. Co.*, 73 S. C. 520, 53 S. E. 985, 114 Am. St. Rep. 100; *Smith v. Tel. Co.*, 72 S. C. 116, 51 S. E. 537; *Walker v. Tel. Co.*, 75 S. C. 512, 56 S. E. 83; *Machen v. W. U. Tel. Co.*, 73 S. C. 256, 51 S. E. 697; *Tinsley v. Tel. Co.*, 72 S. C. 350, 51 S. E. 913; *Hughes v. W. U. Tel. Co.*, 73 S. C. 516, 52 S. E. 107; *Smith v. W. U. Tel. Co.*, 77 S. C. 378, 58 S. E. 6, 12 Am. & Eng. Ann. Cas. 654; *Dempsey v. W. U. Tel. Co.*, 77 S. C. 399, 58 S. E. 9; *Kirby v. Tel. Co.*, 77 S. C. 405, 58 S. E. 10, 122 Am. St. Rep. 580; *Doster v. Tel. Co.*, 77 S. C. 56, 57 S. E. 671; *Bowen v. Tel. Co.*, 77 S. C. 132, 57 S. E. 674; *Butler v. Tel. Co.*, 77 S. C. 148, 57 S. E. 757; *Foster v. Tel. Co.*, 77 S. C. 155, 57 S. E. 760; *Cason v. W. U. Tel. Co.*, 77 S. C. 157, 57 S. E. 722; *Lyles v. W. U. Tel. Co.*, 77 S. C. 174, 57 S. E. 725, 12 L. R. A., N. S., 534; *Marsh v. Western Union Tel. Co.*, 65 S. C. 480, 439, 43 S. E. 953.

Mental anguish—physical suffering—intentional wrong. *Marsh v. Western Union Tel. Co.*, 65 S. C. 430, 43 S. E. 953.

Mental anguish—relationship of parties. *Johnson v. W. U. Tel. Co.*, 81 S. C. 235, 62 S. E. 244, 128 Am. St. Rep. 905, 17 L. R. A., N. S., 1002. Ordinary suspense and suffering due to relationships not mental anguish. *Ogilvie v. Western Union Tel. Co.*, 83 S. C. 8, 64 S. E. 860, 137 Am. St. Rep. 790; *Talbert v. W. U. Tel. Co.*, 83 S. C. 68, 64 S. E. 862, 916.

Damages sustained by one related by affinity are special and defendant must have notice of facts from which such damages would be expected to arise. *Lewis v. Western Union Tel. Co.*, 84 S. C. 54, 65 S. E. 941.

Conflict of laws—mental anguish. *Fail v. W. U. Tel. Co.*, 80 S. C. 207, 60 S. E. 697, 61 S. E. 258.

Right of action under contract. *Poteet v. Tel. Co.*, 74 S. C. 491, 55 S. E. 113; *Hughes v. W. U. Tel. Co.*, 72 S. C. 516, 52 S. E. 107; *Rogers v. W. U. Tel. Co.*, 72 S. C. 290, 51 S. E. 773.

Damages for nondelivery of telegram sent from without into this State is governed by law of this State. *Hughes v. Tel. Co.*, 72 S. C. 516, 52 S. E. 107.

Mental anguish confined to social and personal matters. *Capers v. W. U. Tel. Co.*, 71 S. C. 29, 50 S. E. 537; *Amos v. W. U. Tel. Co.*, 79 S. C. 259, 60 S. E. 660, 128 Am. St. Rep. 845. Constitutional. *Simmons v. Tel. Co.*, 63 S. C. 425, 41 S. E. 521; *Butler v. W. U. Tel. Co.*, 62 S. C. 222, 40 S. E. 162. No difference between originated and prolonged mental suffering. *Willis v. W. U. Tel. Co.*, 69 S. C. 531, 48 S. E. 538, 104 Am. St. Rep. 828, 2 Am. & Eng. Ann. Cas. 52, 73 S. C. 379, 53 S. E. 639. Complaint for mental anguish. *Bonner v. Tel. Co.*, 71 S. C. 303, 51 S. E. 117; *Harrison v. W. U. Tel. Co.*, 71 S. C. 386, 51 S. E. 119; *Fass v. W. U. Tel. Co.*, 82 S. C. 461, 64 S. E. 235; *Arial v. W. U. Tel. Co.*, 70 S. C. 418, 50 S. E. 6; *Willis v. Tel. Co.*, 69 S. C. 531, 48 S. E. 538, 104 Am. St. Rep. 828, 2 Am. & Eng. Ann. Cas. 52; *Butler v. Tel. Co.*, 62 S. C. 222, 40 S. E. 162; *Poteet v. Tel. Co.*, 74 S. C. 491, 55 S. E. 113; *Carter v. Tel. Co.*, 73 S. C. 430, 53 S. E. 539. Limitation of time to present claim. *Broom v. Tel. Co.*, 71 S. C. 506, 51 S. E. 259, 4 Am. & Eng. Ann. Cas. 611; *Eaker v. W. U. Tel. Co.*, 75 S. C. 97, 55 S. E. 129. Mental anguish caused by suffering of relative. *Jones v. W. U. Tel. Co.*, 70 S. C. 539, 50 S. E. 198; *Doster v. Tel. Co.*, 77 S. C. 56, 57 S. E. 671. Punitive damages. *Hellams v. Tel. Co.*, 70 S. C. 87, 49 S. E. 12; *Toale v. W. U. Tel. Co.*, 76 S. C. 248, 57 S. E. 117; *Lathan v. W. U. Tel. Co.*, 75 S. C. 129, 55 S. E. 134; *Mitchiner v. W. U. Tel. Co.*, 75 S. C. 182, 55 S. E. 222; *Jones v. W. U. Tel. Co.*, 75 S. C. 208, 55 S. E. 318; *Harrison v. W. U. Tel. Co.*, 75 S. C. 267, 55 S. E. 450; *Murray v. Tel. Co.*, 74 S. C. 64, 54 S. E. 209. Mental anguish. *Toale v. W. U. Tel. Co.*, 76 S. C. 248, 57 S. E. 117; *Roberts v. W. U. Tel. Co.*, 76 S. C. 275, 56 S. E. 960; *Key v. Tel. Co.*, 76 S. C. 301, 56 S. E. 962; *Amos v. Tel. Co.*, 79 S. C. 259, 60 S. E. 660, 128 Am. St. Rep. 845; *Little v. Tel. Co.*, 79 S. C. 255, 60 S. E. 663; *McDowell v. Tel. Co.*, 79 S. C. 257, 60 S. E. 662.

Gossett et al v. Western Union Telegraph Co., 95 S. C. 397, 79 S. E. 309; *Greer v. Western Union Telegraph Co.*, 105 S. C. 147, 89 S. E. 782.

(5037) § 23. **Unlawful for Common Carriers of Intelligence to Require Contract Limiting Liability.**—It shall be unlawful for any common carrier of intelligence for hire doing business in this State to require the sender of any message over its lines to enter into any agreement limiting its (the carrier's) liability from any loss or damage to the sender of any message.

1921, XXXII, 120.

CHAPTER LIV.

Street and Interurban Railways.

(5038) § 1. **Fellow Servants—Employees of Street Railways.**—Every employee of any street railway doing business in this State shall have the same rights and remedies for an injury suffered by any person from the acts of omission of said corporation or its employees as are provided by the Constitution for employees of railroad corporations.

Civ. '12, § 3948; Civ. '02, § 2848; 1901, XXIII, 716.

See Constitution Art. IX, § 15.

(5039) § 2. **Certain Street Railway Companies to Affix Enclosed Vestibules to Cars in Certain Months.**—Electric railway companies shall affix to their cars or coaches enclosed vestibules of wood, iron or glass, and maintain side doors on vestibules for the protection of motormen and passengers during the months of December, January, February and March: *Provided*, That the failure of any such company to comply with the provisions of this Section shall be subject to a penalty of ten dollars per day, to be recovered by any citizen in the city or town where such company does business, one-fourth ($\frac{1}{4}$) thereof to go to the person bringing suit to enforce the law and the remaining three-fourths ($\frac{3}{4}$) for the benefit of the State.

Civ. '12, § 3949; 1902, XXIII, 1057; 1904, XXIV, 423; 1909, XXVI, 120; 1910, XXVI, 565; 1914, XXVIII, 461.

(5040) § 3. **Certain Street Railway Companies to Affix Fenders.**—All electric street railway companies, subject to the provisions of the terms of Section 2, shall have attached to its cars or coaches good and sufficient fenders, and, failing to do so, shall be subject to the same penalty as provided in Section 2.

Civ. '12, § 3950; 1910, XXVI, 566.

Thomas v. Spartanburg Ry., Gas & Electric Co. et al, 100 S. C. 478, 85 S. E. 50.

(5041) § 4. **"Street Railway" and "Interurban Railway" Defined.**—In the construction of this Section and Section 5 the phrases "Street Railroad" or "Street Railway" shall be construed to include all railroads and railways operated by electricity, whose main business consists in the transportation of passengers between different points within the limits of a municipality; and the phrases "Interurban Railroad" or "Interurban Railway" shall be construed to include all railroads and railways operated

by electricity whose main business consists in the transportation of passengers from one municipality to another.

Civ. '12, § 3951; 1910, XXVI, 761.

(5042) § 5. Interurban Railways to Have Vestibules — Penalty.—All interurban railways operating in this State shall affix to their cars or coaches enclosed vestibules of wood, iron or glass for the protection of motormen and passengers during the months of November, December, January, February and March: *Provided*, That the failure of any such company to comply with the provisions of this Article from and after the 1st day of November, A. D. 1910, shall be subject to a penalty of ten dollars per day for each car, to be recovered by any citizen of any county in which such company does business; one-fourth thereof to go to the person bringing the suit to enforce the law and the remaining three-fourths for the benefit of the county.

Civ. '12, § 3952; 1910, XXVI, 761.

(5043) § 6. All Electric Street Railway Companies to Heat Their Cars—That all electric street railway companies doing business in this State shall provide and furnish all their street cars or electric cars with sufficient heat for all passengers and employees.

1914, XXVIII, 594; 1918, XXX, 822.

(5044) § 7. Penalty.—Any street car company violating the provisions of Section 6 shall be liable to a fine of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars.

1914, XXVIII, 594; 1918, XXX, 822.

(5045) § 8. Interurban Railways to Furnish Heating Appliances—Provision.—That all interurban railroads or interurban railways operating within this State shall furnish their cars and the vestibule portions of their cars, for the carriage of passengers, with heating apparatuses or appliances necessary to the comfort of all passengers and operators using the same: *Provided*, This Section shall not apply to any railway whose direct line is more than fifty miles long.

1918, XXX, 725.

(5046) § 9. Penalty.—That any interurban railroad or interurban railway failing or refusing to comply with the provisions of Section 8 shall be subject to a fine of not exceeding one hundred dollars for each day of such failure or refusal, to be recovered in any Court of competent jurisdiction; said fine shall be paid into the County Treasury of the county in which said action or suit is brought, to be applied to the public school fund of said county.

1918, XXX, 725; 1919, XXXI, 216.

(5047) § 10. "Interurban Railroads and Railways" Defined.—The term "interurban railroads and railways" in this Chapter shall have the same definition as is provided in Section 4 of this Chapter.

1918, XXX, 725.

(5048) § 11. **Separate Accommodations for White and Colored Passengers on Street Cars.**—That all street railway companies now operating or hereafter to operate lines of street railways in the State of South Carolina be, and they are hereby, required to provide separate accommodations for the white and colored passengers on their cars by reserving the two rear seats and spaces between all cross-seated cars for colored passengers, and the remaining seats and spaces for white passengers; but should the two rear seats thus reserved for colored passengers become filled with passengers, then, and in that event, any colored person or persons offering as passengers may be assigned to a seat or seats next in front, providing sufficient room in front remain to accommodate the white passengers then on the cars in seats separate from the colored passengers. In such case conductor or person in charge of car shall have the authority for this purpose to move forward the white passengers to vacant places nearer the front, and in this manner make additional room for the additional colored passengers. In like manner, should that portion of the car assigned to white passengers become filled, then, and in that event, any white person or persons offering as passengers may be assigned to a seat or seats next in rear, provided sufficient room in addition remains to accommodate the colored passengers then on the car in seats separate from the white passenger or passengers; and the conductor or other person in charge of the car shall have authority to move back colored persons for this purpose to vacant places further back. On closed cars having longitudinal seats the white passengers shall be assigned to seats front of the car toward the rear in order in which said passengers shall enter the car until the intervening space between the white and colored passengers shall be filled.

1919, XXXI, 143.

(5049) § 12. **Provisions as to Persons Standing in Aisles.**—That the conductor or other person in charge of the car in his discretion may permit a reasonable number of persons to stand in the aisle between the seats when an emergency for so doing arises, but in every such case the races must be kept in the portion of the car assigned to each, so that white and colored passengers shall be kept separate as far as practicable.

1919, XXXI, 143.

(5050) § 13. **Duties of Conductors and Employees—Police Powers—Violation by Employee a Misdemeanor—Penalty.**—That conductors or other employees of said car shall be required, and are hereby empowered, to assign all passengers on the car in their charge in the manner aforesaid, so as to separate the white and colored races as much as practicable; and all conductors and other employees of said railway company shall have, and are hereby invested with, police power of a peace officer of this State to carry out said provisions, and for a violation of Sections 11, 12 or 13 herein any such employees or officers shall be deemed guilty of a misdemeanor, and, on conviction, be fined in the sum of not to exceed one hundred (\$100.00) dollars, or imprisoned or sentenced to work on the county chaingang for a term not to exceed thirty days.

1919, XXXI, 143.

(5051) § 14. **Violation of Regulations by Passengers a Misdemeanor—Penalty — Proviso.**—That any passenger or passengers refusing to be assigned to the seats or space in accordance with the foregoing regulations shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in the sum not exceeding one hundred (\$100.00) dollars, or imprisoned or sentenced to work on the county chaingang for a term not to exceed thirty days: *Provided, always,* That any person in immediate charge of any white child or children or any sick or infirm white person shall be permitted to ride with the said child or children or any sick or infirm white person in the portion of the car assigned to the use of white persons.

1919, XXXI, 143.

(5052) § 15. **Operators of Cars May Arrest.**—That the officers or agents of any street railway company operating cars in this State are hereby clothed with authority to arrest any person or persons failing to comply with the terms of this Chapter, and deliver them over to any peace officer of this State.

1919, XXXI, 143.

(5053) § 16. **Superintendent or Employee Failing to Enforce Separation of Races Subject to Penalty.**—That the superintendent of said company and any officer, agent or employee who shall fail or refuse to provide for and enforce separation of the races upon the cars of said company operating in this State shall pay a penalty not to exceed one hundred (\$100.00) dollars, or imprisoned or sentenced to work on the chain-gang for a term not to exceed thirty days.

1919, XXXI, 143.

(5054) § 17. **Chapter Not to Prevent Separation of Races by Use of Separate Cars.**—That nothing in this Chapter shall be construed as prohibiting the railway companies from separating the races by means of separate cars on such lines or schedules as they may see fit, or from running cars exclusively for either race.

1919, XXXI, 143.

(5055) § 18. **Use of Signs.**—That street railway companies may provide and use in all cars movable signs to indicate which seats are to be occupied by white passengers and which are to be occupied by colored passengers, and these signs, if provided, shall be placed and moved by the conductors as conditions of traffic may require to best provide for the separation of the races.

1919, XXXI, 143.

(5056) § 19. **Signs on Electric Railway Cars.**—Each and every railway car operated by electricity in this State for the purpose of carrying passengers shall have and keep prominently displayed on the front thereof a sign in prominent letters not less than four inches high showing the destination thereof, and such sign shall be illuminated after sunset so as to be distinctly readable for a distance of three hundred feet, and all

cars carrying exclusively white or colored people shall have similar signs displayed with the word "White" or "Colored" thereon, as the said car may be carrying white or colored persons.

1920, XXXI, 742.

(5057) § 20. Notice of Transfer Points.—Upon the approach to a transfer point by an electric car carrying passengers thereof the conductor shall announce the approach to such transfer point before arrival and again upon arrival at such point, together with such other information as may advise passengers of the destination of connecting cars.

1920, XXXI, 742.

(5058) § 21. Cars Not to Be Delayed to Check Up Fares.—No electric car shall be held at any point for checking up passengers or other method used that will necessitate such holding to determine whether fares have been registered or otherwise accounted for.

1920, XXXI, 742.

(5059) § 22. Condition of Cars—Number—Duties of Railway Commission—Tracks and Structures.—No electric car shall be operated for the purpose of carrying passengers which has a flat wheel, broken window or window panes, broken door or door panes, or having leaky roof, side or other part thereof. All corporations operating electric railways shall have and keep in constant operation a sufficient number of cars, convenient and comfortable and clean cars to transport the usual number of persons desiring transportation; and shall, in addition thereto, keep in reserve a sufficient number of cars, power, equipment, ways, means and facilities to supply transportation in case of emergency, and when demand for transportation shall temporarily increase it shall be the duty of the Railroad Commission to prescribe the number and condition of cars, power, equipment, ways, means and facilities that may be reasonably necessary under the circumstances. And said Commission shall have power to enforce its orders as may now or hereafter be provided by law in other cases. It shall be the duty of all persons, firms or corporations owning or operating electric railways to keep and maintain all of its tracks, roadbed, and all structures along its line in a secure, safe and substantial condition, capable of bearing such burden as it may reasonably be subject to. Any such person, firm or corporation having cars defective in any respect shall commence forthwith to repair the same and shall continue such repairs until the cars are in compliance with the terms of this Chapter and otherwise meet the requirements of the law, the said repairs to be completed within six months after the approval of this Act, and thereafter all cars kept and maintained as herein and as otherwise required by law. That in case it is necessary to procure additional cars to comply with the general or special provisions of this Chapter, all such cars shall be procured and put into service within six months after the approval of this Chapter: *Provided*, That the Railroad Commission, upon investigation and hearing, may extend the time for compliance herewith not more than an additional six months: *Provided, further*, That the penalties provided for the enforcement of this Section shall

not apply where it can be shown the damaged equipment was used only on the day such damage occurred.

1920, XXXI, 742.

(5060) § 23. Duties of Railroad Commission as to Charleston Navy Yard Line—Enforcement of Rules.—The Railroad Commission shall formulate and promulgate reasonable rules governing the operation of the suburban electric line between the Charleston Navy Yard and the City of Charleston within the hours of 6 a. m. and 8:30 a. m. and 4 p. m. and 6 p. m., which rule shall prescribe the routing of the cars, the schedules to be maintained, the number of passengers allowed to be carried beyond the seating capacity and shall require that the cars between said points shall be operated during the time above mentioned in accordance with the rules so formulated by them and at intervals of not more than ten minutes: *Provided*, That said rules so formulated by the said Railroad Commission shall provide that sufficient number of cars be operated on said line to furnish a seat for each person desiring transportation with the privilege of carrying not more than forty per cent. more passengers than seats will accommodate in case of crowded conditions, and said rules when promulgated by the Railroad Commission shall have the force and effect of a statutory requirement, and may be enforced as provided in Section 26 of this Article.

1920, XXXI, 742.

(5061) § 24. Shelters for Passengers.—That the said corporation shall construct and maintain a comfortable shelter with capacity of not less than twenty-five persons, divided between white and colored persons, on which is known as Gadsden Loop, at the connection point with the Navy Yard line; and shall construct at Columbus Street a suitable waiting room to accommodate not less than eighty persons with proper divisions to separate the races and sexes.

1920, XXXI, 742.

(5062) § 25. Trackage.—That the said corporation shall construct such additional trackage as shall be necessary to maintain a double track line between the Navy Yard and Columbus Street, in the City of Charleston, to be completed within six months.

1920, XXXI, 742.

(5063) § 26. Penalty — Provisos. — Any person, firm or corporation owning and operating an electric railway or electric cars carrying passengers shall, for failure to perform any duty herein prescribed, be liable to a penalty of two hundred and fifty (\$250.00) dollars per day for each day during which such nonperformance shall happen or continue, and any person or persons feeling aggrieved by the violation of this Article by any corporation, or who may ascertain that such violation exists, may bring an action at law or in equity to enforce the provisions herein contained, and shall, upon collection of the penalty or penalties herein provided for, be entitled to such part thereof as may be sufficient to defray the actual expenses of the action at law, said amount to be fixed by the presiding Judge, the balance to be turned into the County Treasury for county purposes. That action may be brought in any county wherein such violation of

this Chapter occurs, and when so brought shall not be merged or destroyed by any action thereafter brought by the Attorney General: *Provided*, That only one penalty shall be imposed for any one violation of the provisions of this Article: *And provided, further*, That none of the provisions of this Chapter shall apply to electric interurban railways operating more than fifty miles in length.

1920, XXXI, 742.

(5064) § 27. Sections of Chapter Independent.—The various Sections of this Chapter are hereby declared to be independent of each other; and in the event any Section or part of a Section hereof shall hereafter be declared unconstitutional, it is the intent and meaning hereof that such Section, or part of a Section, alone shall be eliminated herefrom, without affecting any other portion of this Chapter.

1920, XXXI, 742.

CHAPTER LV.

Unincorporated Joint Stock and Other Associations.

(5065) § 1. Recordation of Article of Agreement or Association of Certain Joint Stock Companies.—Every joint stock company issuing scrip or certificate for shares transferable at the will of the holder thereof hereafter formed shall, within thirty days after its formation, cause the articles of their agreement or association to be recorded in the office of the Clerk of the Court of Common Pleas of the County, with the names of the stockholders and the numbers of the shares held by each in every county in which it has an office or agency at which its business is carried on.

Civ. '12, § 3331; Civ. '02, § 2224; G. S. 1405; R. S. 1771; 1879, XVII, 70.

(5066) § 2. How Suits May Be Brought—On Whom Service May Be Made.—Actions by or against such companies so recorded may be brought by or against them in the name of the company or association, without naming the shareholders therein; and in suits brought against any such company service upon the president, chief manager, purser or other principal officer named in the said articles of agreement shall be good service upon each and every one of the said company or association at that time recorded as shareholders therein, or who were so at the time the cause of action arose and no change or transfer of the shares pending the said action shall cause any abatement thereof.

Civ. '12, § 3332; Civ. '02, § 2225; G. S. 1406; R. S. 1772; 1879, XVII, 70.

(5067) § 3. Liability of Shareholders for Debt After Transfer—How Discharged.—No transfer of stock or shares shall avail to discharge the shareholders transferring the same from liability to third person for debts contracted after such transfer until it has been reported to the Clerk of the Court where any such company is recorded and by him or his deputy been entered in a column to be kept for that purpose annexed or in connection with the list of shareholders previously recorded.

Civ. '12, § 3333; Civ. '02, § 2226; G. S. 1407; R. S. 1773; 1879, XVII, 70.

(5068) § 4. Clerk to Keep Books for Recording Articles—His Fees.—

The Clerks of the Courts of the respective counties shall be required to keep proper books for recording such articles of agreement and association, and shall be entitled to the same fees to which the Register of Mesne Conveyances are entitled for recording papers, and twenty-five cents for registering each transfer of shares.

Civ. '12, § 3334; Civ. '02, § 2227; G. S. 1408; R. S. 1774; 1879, XVII, 70.

(5069) § 5. Not Applicable to Chartered Companies.—The provisions of the foregoing Sections shall not apply to companies chartered by Act of the General Assembly.

Civ. '12, § 3335; Civ. '02, § 2228; G. S. 1409; R. S. 1775; 1879, XVII, 70.

(5070) § 6. Unincorporated Associations — By What Name May Be Sued.—All unincorporated associations may be sued and proceeded against under the name and style by which they are usually known, without naming the individual members of the association.

Civ. '12, § 3336; Civ. '02, § 2229; G. S. 1410; R. S. 1776; 1865, XIII, 315.

Appeal of Baylor et al. Long v. Union Burial Aid of Greenwood, 93 S. C. 414, 77 S. E. 59.

(5071) § 7. On Whom Process May Be Served.—Process served on any agent of any unincorporated association doing business in this State, under the name and style by which it is usually known, shall be sufficient to make such association a party in any Court of record in the county in which such agent may be served.

Civ. '12, § 3337; Civ. '02, § 2230; G. S. 1411; R. S. 1777; 1863, XIII, 215.

(5072) § 8. Liability Under Final Process.—On judgment being obtained against such association under such process, final process may issue to recover satisfaction of such judgment, and any property of the said association, and the individual property of any copartner or member thereof, found in the State, shall be liable to judgment and execution for satisfaction of any such judgment.

Civ. '12, § 3338; Civ. '02, § 2231; G. S. 1412; R. S. 1778; 1863, XIII, 215.

Appeal of Baylor et al. Long v. Union Burial Aid of Greenwood, 93 S. C. 414, 77 S. E. 59.

TITLE XIII.

Of the Internal Police of the State.

CHAPTER LVI. The Insane and Feeble-minded, 1536.

CHAPTER LVII. Estrays, 1552.

CHAPTER LVIII. Of Wrecks and Shipwrecked Goods, 1554.

CHAPTER LIX. Of Immigrants and Seamen, 1556.

CHAPTER LX. Gambling Contracts and Contracts of Sale for Future Delivery, 1558.

CHAPTER LXI. Licenses, 1562.

CHAPTER LXII. Board of Conciliation, 1567.

CHAPTER LVI.**The Insane and Feeble-minded.**

ARTICLE 1. The State Hospital for the Insane, 1536.

ARTICLE 2. State Training School for Feeble-minded, 1547.

ARTICLE I.**The State Hospital for the Insane.**

(5073) § 1. **Board of Regents, Appointment and Term of Office—Superintendent.**—The Governor shall, with the advice and consent of the Senate, appoint a Board of Regents, consisting of five members, whose term of office shall be so designated that the term of one member shall expire each year, subject to the removal by the Governor, for cause; which Board shall have charge of such institution or institutions as may be maintained by the State for the care of the insane. The Board of Regents shall have exclusive power to appoint, and, in its discretion, remove one Superintendent thereof, and the Superintendent, who shall be a physician, shall have the power, in his discretion, to appoint and remove all other officers and employees of such institution or institutions, subject to the approval of the Board of Regents.

Civ. '12, § 3354; Civ. '02, § 2247; G. S. 1584; R. S. 1779; 1877, XVI, 249; 1891, XXI, 1117; 1896, XXII, 180; 1915, XXIX, 147; 1920, XXXI, 704.

(5074) § 2. **Regents a Body Corporate—Powers.**—The said Regents, by the name of "The Regents of the South Carolina State Hospital," shall form a body corporate in deed and in law, for all the purposes of the said institution, with all the powers incident to corporations; and are hereby authorized and empowered to make and establish all rules, regulations and by-laws for the government of the institution: *Provided, however,* That any person affected thereby shall have the right to appeal therefrom to any Court of competent jurisdiction; and to fix the amount of the salaries or emoluments of the officers and employees, and to establish the rates of admission, maintenance and medical attendance for the patients of the said institution other than beneficiary.

Civ. '12, § 3355; Civ. '02, § 2248; G. S. 1585; R. S. 1780; 1827, XI, 322; 1871, XIV, 672; 1915, XXIX, 147; 1920, XXXI, 704.

(5075) § 3. **Annual Reports.**—The Regents shall report annually to the Governor the state and condition of the hospital, and set forth fully the financial affairs, in such form as the Governor may require, and give such statistical information as is usually required in an institution for the insane, and make such recommendations as in their opinion will better the condition of the patients thereof.

Civ. '12, § 3382; Civ. '02, § 2271; G. S. 1597; R. S. 1798; 1827, VI, 323; 1920, XXXI, 704.

(5076) § 4. **Visiting Board — Duties — Compensation.** — The Governor shall appoint a Visiting Board for the State Hospital for the Insane, the said Board to be composed of three members, one physician, one Minister of the Gospel, and one layman. It shall be the duty of the said Board to

visit and inspect the said Hospital for the Insane, to see that the rules of the institution are enforced, and report to the Governor once each month. Each member of the Board shall receive five dollars per day and traveling expenses for not exceeding four days in any one month. Said per diem and expenses of each member of the Visiting Board shall be paid by the Superintendent out of the maintenance fund.

1915, XXIX, 147; 1918, XXX, 736.

(5077) § 5. Regents Not to Be Interested in Purchase of Supplies, Etc.—

No member of the Board of Regents or officer of the Hospital for the Insane shall be directly, or indirectly, interested in any contract or purchase of supplies or material of any kind whatsoever made by the hospital.

1915, XXIX, 147.

(5078) § 6. Hospital to Be Maintained Only for Persons Mentally Diseased.—The South Carolina State Hospital shall be maintained solely for the support, custody and treatment of persons with mental diseases. No other class of patients shall be admitted except those making voluntary application, in accordance with the provisions of Section 9, and those persons accused of crime who have been committed to the hospital for observation in accordance with the provisions of Section 28. The hospital shall not be imposed upon by the admission of dotards and paralytics who can be cared for at home or at the County Home, and any county committing such persons shall be held responsible for the cost of maintenance at the regular rate of pay patients, and these accounts shall be collected in the manner now prescribed by law for the collection of claims against the county.

1920, XXXI, 704.

(5079) § 7. Preferences.—In order of admission into the hospital when its means of accommodation are crowded, preference shall be given to recent curable cases over chronic or incurable cases. Among those to whom preference shall be last given shall be idiots or any who have been imbeciled or weak-minded from childhood, to those who are subject to epileptic convulsions, and to those whose temporary insanity is produced by the injurious use of alcoholic drinks or opiates.

Civ. '12, § 3357; Civ. '02, § 2250; 1894, XXI, 825.

(5080) § 8. Commitment of Patients—Emergencies.—No patient shall be received into the hospital without the proper papers properly filled out by the Judge of Probate of the county in which the patient resides, unless the commitment be an emergency one, in which case the Superintendent may, without an order of the Judge of Probate, receive into his custody and detain in the hospital for not more than ten days, any person whose case is certified by two regularly licensed physicians to be one of violent and dangerous insanity, or who for other reasons is in urgent need of treatment. This certificate shall conform in all respects to the provisions of law required in the medical certificate of insanity, and said certificate may, if the commitment of such person as insane shall be duly completed, be used as a certificate of insanity required by law. The person applying for such admission shall within ten days cause the alleged insane person to

be duly committed as insane or removed from the institution, and failing therein, be liable to the institution for the expense incurred and a penalty of fifty dollars, which may be recovered by the institution by an action brought in any Court of competent jurisdiction.

1920, XXXI, 704.

(5081) § 9. Voluntary Commitments.—The Superintendent may, in his discretion, receive and detain in the hospital as a patient any person who is desirous of submitting himself for treatment, and who voluntarily makes written application therefor, and whose mental condition in the opinion of the Superintendent is such as to render him competent to make the application. Notice of the reception of such voluntary patients shall be given the Board of Regents at its next regular monthly meeting. Such patient shall not be detained for more than ten days after having given notice in writing of his intention or desire to leave the hospital. The charge for support for such voluntary patients shall be governed by the rules of the hospital applicable thereto.

1920, XXXI, 704.

(5082) § 10. Proceedings Before Probate Judge for Commitment.—When a relative, friend, or other citizen interested is desirous of placing a person in the State Hospital as a patient, he shall apply to the Judge of Probate of the county in which such person resides, make the affidavit in the manner and form required by the Board of Regents, and the Judge of Probate, without delay, shall proceed to investigate the case, and if in his opinion, further investigation is necessary, he shall summon two duly licensed physicians to examine such person, and they shall under oath fill out and sign the medical certificate of insanity contained in the application for commitment, and if they agree that the person's mental condition is such as to necessitate commitment to the State Hospital, the Judge of Probate shall then complete the paper required of him by the Board of Regents and immediately forward it to the Superintendent for his approval. The Superintendent is hereby authorized to receive, at his discretion, persons transmitted from other hospitals, and to detain them for a period not longer than ten days, provided the person interested in the transfer makes application as required by the Board of Regents. The person making application shall, within the prescribed time, furnish the Superintendent with the necessary papers or remove the patient from the institution, and failing therein, be liable to the hospital for the expense incurred and penalty of fifty dollars, which may be recovered by the hospital in an action in any Court of competent jurisdiction. On receiving the application and the answers to the specified interrogatories, the Superintendent shall promptly forward a reply to the Judge of Probate stating whether or not the person can be received. If the application is not approved the Superintendent shall accompany its return to the Judge of Probate with a written statement giving his reasons therefor. And if to be received, whether as a paying patient in full or part, or a beneficiary, and if in part, what part, or how much expense to be borne by the patient, and if necessary the Superintendent may refer the application to the Board of Regents before final answer.

Civ. '12, §§ 3358, 3359; Civ. '02, §§ 2251, 2252; 1894, XXI, 825; 1920, XXI, 704.

(5083) § 11. **Transportation of Patients to Hospital.**—When the Superintendent of the hospital has received such exemplification proceedings and determines that the person can be received as a patient he shall immediately send a trained nurse or attendant from the hospital for such insane person. In all cases he shall send a female nurse or attendant for female persons, and a male attendant for male persons, to conduct such insane person to the hospital: *Provided*, If from unusual cases, or other circumstances the Superintendent is unable to send a nurse or attendant for such insane person or persons, it shall be the duty of the Probate Judge, at the request of the Superintendent, to deputize a suitable person or persons to conduct such insane person to the hospital, and if the insane person be a female the Judge of Probate shall, unless she is accompanied by some member of her family, designate a woman of reputable character and mature age to accompany her. The Judge of Probate must see that a certified copy of the commitment accompanies the person; the original shall be kept on file in his office. Should any Judge of Probate fail to provide the attendant accompanying the person for commitment with a copy of the order of commitment, unless arrangement has previously been made with the Superintendent, the county from which the patient is committed shall be held responsible for the cost of the maintenance until the proper commitment paper is provided.

Civ. '12, § 3363; Civ. '02, § 2253; 1894, XXI, 825; 1915, XXIX, 117; 1916, XXIX, 822; 1920, XXXI, 704.

(5084) § 12. **Fees of Persons Transporting Patients for Probate Judge—Fees of Probate Judge.**—If such person is sent by the Probate Judge as prescribed in the foregoing Section, the following fees and charges shall be paid for the conveying of said insane party to the officer or person conveying such insane party, five dollars per day and twelve cents per mile one way, out of which said mileage herein allowed shall be paid all the costs and expenses of said insane person. If it shall be necessary to employ an extra attendant in conveying such insane person, such attendant shall receive five dollars per day and his or her actual railroad fare. Said charges shall be paid out of the County Treasury on proper warrant. For the duties required, under the provisions of this Chapter, of the Judge of Probate, he shall be allowed the sum of ten dollars: *Provided*, That the County Boards of Commissioners, or other proper authority, for the several counties in this State be, and are hereby, authorized and empowered to fix the compensation, charges and expenses to be paid and incurred in the examination of insane persons, and in conveying them to the State Hospital, and to audit and pay claims therefor: *Provided*, That the same shall not be greater than now allowed by law.

Civ. '12, § 3364; Civ. '02, § 2254; 1894, XXI, 825; 1900, XXIII, 419; 1920, XXXI, 704.

(5085) § 13. **Nonresidents Admitted Only in Emergency Cases.**—No person shall be admitted to the State Hospital from any county in the State unless shown in the exemplification proceedings to be at the time a *bona fide* resident or citizen of the State, except as provided for, in cases of emergency, in Section 14.

Civ. '12, § 3368; 1902, XXIII, 1026; 1920, XXXI, 704.

(5086) § 14. **Procedure in Regard to Citizens of Other States—Citizens of Foreign Countries.**—If any person not a citizen or resident of this State, but a citizen or resident of another State of the United States, shall be ascertained to be insane, the Judge of Probate of the county in which such person is found shall immediately notify the Governor of the State of which the insane person is a citizen of the facts and circumstances, and if the State of his citizenship shall not provide for his removal from this State to his proper State within a reasonable length of time, the county authorities of the county in which he shall have been ascertained to be insane shall cause him to be conveyed to the State of which he is a citizen, and delivered to the Superintendent of a State Hospital, or the officials authorized by law to care for patients pending their commitment to hospitals for the insane. The cost of such proceedings and conveyance away from this State shall be borne by the county in which the person shall have been adjudged to be insane: *Provided, however,* That the Judge of Probate may, if the examining physicians certify that the case is an emergency one, commit said person to the State Hospital until the necessary arrangements can be made for his transfer to the State of which he is a citizen. When such person is committed by any county, said county shall be responsible for the cost of his maintenance so long as he remains in the hospital at the regular rate of maintenance in addition to bearing all the expense of his transfer. If any person not a citizen of the United States shall be ascertained to be insane, the Judge of Probate of the county in which the person is found shall immediately notify the Governor of this State of the name of the insane person together with all ascertainable information as to race, nativity, date of last arrival in the United States, and if it can be ascertained, the name of the vessel on which he arrived and port at which he landed or the name of the steamship company transporting him. The Governor shall transmit said information to the United States Commissioner General of Immigration at Washington, D. C. If the Judge of Probate ascertains that the case is an emergency one, and the examining physicians so certify, the person may be committed to the State Hospital for treatment pending arrangements for his deportation.

Civ. '12, § 3369; 1902, XXIII, 1026; 1920, XXXI, 704.

(5087) § 15. **How Insane Persons to Be Examined.**—Whenever a relative, friend or other person interested is desirous of having a committee appointed for a person believed by him to be insane, such person shall apply by petition to the Probate Judge in the county in which such insane person resides, and the Probate Judge shall proceed without delay to investigate the case, by the examination of the alleged insane person or lunatic, if practicable, and of such other witnesses as may be deemed necessary, at least two of whom shall be practicing physicians.

Civ. '12, § 3359; 1910, XXVI, 754.

(5088) § 16. **Committee May Be Appointed.**—If such examination convinces the Judge of Probate that such person is a lunatic of unsound mind, a committee may be appointed for such person, and the Probate Judge may

make such further orders as may be necessary for the custody and control of the estate of such person.

Civ. '12, § 3360; 1910, XXVI, 754.

(5089) § 17. Appeal.—An appeal may be taken from the decision of the Probate Court to the Court of Common Pleas, but the same shall not act as a supersedeas unless the Circuit Judge shall so order upon the hearing the testimony taken before the Probate Court: *Provided*, That upon such appeal there may be a trial *de novo* before a jury.

Civ. '12, § 3361; 1910, XXVI, 754.

(5090) § 18. Financial Standing of Patients to Be Ascertained—Bond and Certificate for Pay Patients.—At the same time that the Judge of Probate investigates the fact of the mental condition of a person alleged to be insane the Judge shall also make a thorough examination of disinterested, reliable witnesses under oath, and of records, as to the financial standing of the patient, taking the testimony in writing and showing the actual value of all property, real, personal or mixed, owned by such patient, and the actual value of property, whether real, personal or mixed, owned by the husband, the wife, the father, the mother, the sons, the daughters of such patient, and also a statement of all debts due to and due by such patient and such relatives, and for this purpose the Probate Judge shall have all the powers of a special referee as to summoning, swearing witnesses, compelling attendance and ruling for contempt, which examination, reduced to writing, he shall certify and transmit to the Superintendent of the hospital together with the report as to mental condition, as provided in Section 10. And the Superintendent, if the question by a plain one, or the Board of Regents, if it be referred to them, shall decide whether such patient can be received as a beneficiary or as a paying patient, in whole or in part, and if in part, what payments will be required, and the terms thereof, and the Probate Judge shall be notified of the decision with no unnecessary delay, and the patient shall then be disposed of according to such decision; and if to be a paying patient, in whole, the Judge of Probate shall cause the following bond to be made by at least two solvent and responsible parties, which bond shall be sent, together with the certificates of insanity, to the Superintendent of the hospital, to wit: Know all men by these presents: That we and of the County of, in the State of South Carolina, are held and firmly bound unto the State Hospital for the Insane, of South Carolina, in the penal sum of three hundred dollars, for the payment of which we hereby bind ourselves jointly and severally. Sealed with our seal, and dated this day of, A. D. The condition of the above obligation is as follows:

Whereas, ... of the County of, State of South Carolina, is about to be admitted as a paying patient into the State Hospital for the Insane, of South Carolina, now, if while he or she shall remain therein, the undersigned shall constantly supply him or her with suitable clothing and pay all charges of said hospital against him or her quarterly in advance, and whenever his or her removal shall be required, immediately remove him or her, and if he or she die therein, pay all rea-

sonable expenses incurred for his or her funeral, and in case of failure to perform promptly and faithfully any of the above conditions, pay all losses that accrue to said hospital by litigation, collector's fees or otherwise, then this obligation shall be null and void, otherwise to remain in full force and virtue.

Witness our hands and seals this day of, A. D.
 (Seal.)
 (Seal.)

I hereby certify that in my opinion the obligors in the above bond have executed the same in good faith, and that the amount of the penalty specified therein can be recovered from them by due process of law.

In witness whereof I have hereunto set my hand at this day of, A. D.

Judge of Probate of County, State of South Carolina.
 In case the patient is to pay in part, a similar bond, with same securities, conditioned for the payment of the required quarterly sum decided upon, shall be taken and certified and transmitted by the Probate Judge.

Civ. '12, § 3365; Civ. '02, § 2255; 1894, XXI, 835.

(5091) § 19. Proceedings When Patient Becomes Indigent.—In any case in which satisfactory evidence is adduced before the Judge of Probate that a paying patient in the hospital, has since admission, and since his or her last advanced payment of quarterly dues, become indigent in circumstances so that he or she can no longer pay the ordinary charges of the hospital for his or her support, the Judge of Probate shall at once notify the Superintendent of the fact, who at the end of the current quarter may transfer his name from the list of paying patients to the list of those paying in part, or to the list of beneficiary patients, whose expenses are paid by the State: *Provided, however,* That the appeal to the Judge and the notice to the Superintendent shall both have been made before the close of a quarter for which payment has been made.

Civ. '12, § 3366; Civ. '02, § 2256; 1894, XXI, 835.

(5092) § 20. Proceedings When Patient Becomes Possessed of Property.—If in any case in which a person who has been admitted into the hospital as a beneficiary patient it shall be brought to the attention of the Probate Judge of the county from which the patient was sent that the said patient has since admission become possessed of means sufficient to pay in part or whole for his or her support in the hospital, the Judge shall at once investigate the case and shall report the evidence taken to the Superintendent of the hospital for decision; and if so notified by the hospital authorities, the Judge of Probate shall cause to be made a bond for the support of the patient as hereinbefore specified. Friends or relatives can have any patient transferred from the beneficiary to the paying class upon paying into the hands of the Treasurer of the hospital the charges for three months in advance and giving bond for the continual payment of the same.

Civ. '12, § 3367; Civ. '02, § 2257; 1894, XXI, 835.

(5093) § 21. Committee for Custody of Patient's Estate.—In all cases where any person shall have been adjudged insane and committed to the

hospital under and according to the provisions of this Chapter and still remains a patient therein, as well as in the case of a patient committed thereto prior to the passage of this Chapter, the Judge of Probate of the county wherein such persons reside shall have jurisdiction to appoint a committee for such person and to make all such orders as may be necessary for the custody and control of the estate of such person: *Provided*, That the Judge of Probate receives a certificate signed by at least two members of the Board of Regents and by the physician in charge to the effect that such person is in their opinion, after a full examination, insane.

Civ. '12, § 3373; Civ. '02, § 2262; 1894, XXI, 835.

(5094) § 22. Physicians' Certificate for Admission — Requirements. — Physicians examining persons alleged to be insane for admission to the hospital shall certify, under oath, that they are registered in accordance with the State law, that they have examined the person separately, and that they are not related by blood or marriage to said person; they shall also certify, under oath, that, to the best of their medical knowledge, the person they recommend for admission to the State Hospital for the Insane is an epileptic, idiot or lunatic, incurable at home, and is violent or dangerous.

Civ. '12, § 3374; Civ. '02, § 2263; R. S. 1784; 1884, XVIII, 827.

(5095) § 23. Forwarding Papers to Superintendent of Hospital—Liability of Sheriff. — The Sheriff or other person in charge of any patient ordered to be conveyed to the State Hospital for the Insane, whether such patient be a beneficiary or a pay patient, shall transmit the papers, or certified copies thereof, on which the order or commitment was based, to the Superintendent of the hospital for inspection, and hold such patient without expense to the hospital until notified by said Superintendent that the patient can be received into the hospital; and any Sheriff or other person violating the requirements of this Section by conveying a patient to the hospital before receiving notice from the Superintendent to do so shall be required either to keep charge of such patient in the City of Columbia or to furnish transportation back home and to the hospital again when notified that such patient can be received.

Civ. '12, § 3376; Civ. '02, § 2265.

(5096) § 24. Entry of Order of Retention After Ten Days—Copy Sent Probate Judge. — No lunatic, idiot or epileptic who may be declared a fit subject for the institution by a Probate Judge and two physicians, or who shall be sent from a sister State, shall be retained in the institution more than ten days after the first meeting of the Board of Regents, subsequent to his admission, except where there shall be entered in the record of the institution an order for his retention, made after full examination of his state of mind by the medical attendant or attendants and not less than two of the Regents, and upon such order being made it shall be the duty of the Secretary of Regency to make out a certified copy of the declaration of the Probate Judge and physicians, and of the order of retention, and immediately send the same to the Judge of Probate of the county wherein such lunatic, idiot or epileptic shall reside, who shall thereupon make such

order in relation to the custody of the estate of the said subject as would have been made had the proceedings been under a writ *de lunatico inquirendo*.

Civ. '12, § 3377; Civ. '02, § 2266; 1827, VI, 322; 1892, XXI, 112.

(5097) § 25. **Discharge of Lunatics.**—Whenever any lunatic or epileptic shall have recovered, it shall be the duty of the Regents to discharge him or her from the State Hospital for the Insane.

Civ. '12, § 3378; Civ. '02, § 2267; G. S. 1594; R. S. 1791; 1827, VI, 323.

(5098) § 26. **Inebriates to Be Received Only as Pay Patients—Regulations.**—Inebriates or persons addicted to the opium or chloral habit shall not be received in the State Hospital for the Insane for treatment, unless they are dangerous or violent; and should any Probate Judge, Circuit Judge, or Board of County Commissioners commit such a person who is a beneficiary, the same sum upon the same terms required for pay patients; from which such persons are sent, shall pay to the Superintendent or Treasurer of the State Hospital for the Insane, for the maintenance of said beneficiary, the same sum upon the same terms required for pay patients; and no such beneficiary patient shall be admitted unless the county from which such patient comes shall, at the time of admission and as a prerequisite thereto, pay to the said Superintendent two months' board (\$41.60) in advance; and if the said county shall fail to pay subsequent claims for board for such patients as the shall fall due, to wit, at the beginning of each month, then the Superintendent of the State Hospital for the Insane shall have the right, and it shall be his duty, to file the account therefor as other claims are filed with the Board of County Commissioners; and if they refuse to approve and pay the same, to take legal steps to enforce the approval and payment of same; said account to be made out in favor of the Board of Regents of the State Hospital for the Insane, in whose name such proceedings shall be had: *Provided, however*, That any inebriate or person addicted to the opium or chloral habit, voluntarily making application to be admitted into the hospital for treatment, may, at the discretion of the Board of Regents, be received as a pay patient; but no such person shall be received or retained in the hospital when the accommodations provided for patients shall be inadequate for the proper care and treatment of lunatics and others lawfully committed to the hospital.

Civ. '12, § 3379; Civ. '02, § 2268; R. S. 1795; 1884, XVIII, 828; 1894, XXI, 835; 1900, XXIII, 432.

(5099) § 27. **Removal of Certain Patients to Poorhouses.**—It shall be the duty of the County Supervisor or the municipal authorities of the City of Charleston, within thirty days after due notice from the Superintendent, to remove from the hospital any patient, a beneficiary from their county or their city, as the case may be, who is simply physically or mentally infirm, or is a harmless imbecile, idiot or epileptic, and they shall take care of all such persons in their respective poorhouses. But in all cases where patients are discharged under the provisions of this Section, it shall be lawful to retain them in the hospital as pay patients.

Civ. '12, § 3380; Civ. '02, § 2269; G. S. 1595; R. S. 1796; 1872, XV, 67; 1884, XVIII, 828; 1893, XXI, 481.

(5100) § 28. **Commitment of Persons Charged With Crime.**—Any Judge of the Circuit Court is authorized to commit to the State Hospital any person charged with the commission of any criminal offense who shall, upon the trial before him, be adjudged insane, or in whom there is a question as to the relation of mental disease to the alleged crime, whether such question is raised by the prosecution or defense, or it appears to the Judge from any evidence brought before him or upon his own recognition: *Provided*, That such commitment shall be for a period of thirty days, at the end of which the patient must be returned to the Court if found sane, or duly committed by such Judge if found insane. When the person committed is financially able to pay, he shall be required to pay for his support and maintenance.

Civ. '12, § 3375; Civ. '02, § 2264; G. S. 1589; R. S. 1785; 1822, VI, 323; 1920, XXXI, 704.

Issue of insanity, after conviction may be submitted to a jury of twelve in a Court of General Sessions. *State v. Bethune*, 88 S. C. 401.

(5101) § 29. **Procedure in Regard to Service of Legal Papers Upon Patients.**—The Superintendent shall not accept service of legal papers, nor consent to the appointment of a guardian *ad litem*. When a legal paper is served on a patient in the hospital it shall be filed with the history as a part of the permanent record of such patient, and thereupon the Superintendent shall inform the Judge of the Court out of which the process issued, in writing, of the date of service of such process, and the mental and physical condition of the patient.

1920, XXXI, 704.

(5102) § 30. **Paroles.**—The Superintendent of the Hospital shall, under the authority of the Board of Regents, parole any convalescent patient at the request of his or her relatives or friends for a period of not exceeding six months: *Provided*, The parole shall be granted only at the request of relatives or friends, who shall pay all the traveling expenses of the patient from and back to the hospital, and if at the expiration of six months the patient has not been returned to the hospital, his or her name shall be transferred from the parole to the discharged list, and readmission cannot be obtained without commitment in the usual manner by the Probate Judge of the county in which the person resides, in the manner as if the person had never been a patient in the hospital.

Civ. '12, § 3370; Civ. '02, § 2259; 1894, XXI, 835; 1920, XXXI, 704.

(5103) § 31. **Transfer of Persons Confined for Examination.**—The Governor may by written order transfer any person confined in any other State institution to the State Hospital for the purpose of examination and observation, if such person is suspected of being insane; and, if upon examination the Superintendent of the State Hospital shall reach the conclusion that the person so transferred is insane, he shall notify the Governor in writing, and thereafter hold such person as a patient subject to the further order of the Governor.

1920, XXXI, 704.

(5104) § 32. **Appointment and Powers of Police for Hospital Grounds.**—The Superintendent of the hospital, under authority from the Board of

Regents, shall have authority to appoint or employ one or more suitable persons to act as police officers, to keep off intruders and prevent trespass upon and damage to the property of the hospital. Such persons shall be charged with all the duties, invested with all the powers of police officers, and may eject trespassers from the hospital buildings and grounds, and may without warrant arrest persons guilty of disorderly conduct or of trespass on the property of the institution and carry them before any Court of competent jurisdiction, before whom, upon proper affidavit charging the offense, such person so arrested may be tried.

Civ. '12, § 3371; Civ. '02, § 2260; 1894, XXI, 835; 1920, XXXI, 704.

(5105) § 33. Employees to Be Discharged, Etc., for Assault on Patients.—It shall be the duty of the Regents to remove from office, and cause to be indicted, any person employed in the said institution who shall assault any idiot, lunatic or epileptic, or use towards any such idiot, lunatic or epileptic any other or greater violence than may be necessary for his or her restraint, government or cure.

Civ. '12, § 3381; Civ. '02, § 2270; G. S. 1596; R. S. 1797; 1827, VI, 323.

(5106) § 34. Officers and Employees Exempt from Jury and Military Duty.—All officers, attendants, keepers, and other employees employed at the hospital shall be exempted from serving on juries and from all military duty.

Civ. '12, § 3385; Civ. '02, § 2274; G. S. 1600; R. S. 1801; 1872, XV, 233; 1885, XIX, 228; 1890, XX, 722; 1920, XXXI, 704.

(5107) § 35. No Highways Over Grounds of Hospital, Without Consent of Regents.—No public highway shall be allowed on or over the grounds of the hospital without the consent of the Board of Regents, granted by resolution to be recorded on the minutes of the meeting of such Board.

Civ. '12, § 3372; Civ. '02, § 2261; 1894, XXI, 835; 1920, XXXI, 704.

(5108) § 36. Lot of Land Vested in Regents of Hospital.—The lot upon which the hospital stands, containing four acres, abutting and bounding on Upper Boundary, Bull, Pickens and Sumter Streets, is vested in the Board of Regents of said hospital and their successors in office, for the uses and purposes of the hospital.

Civ. '12, § 3383; Civ. '02, § 2272; G. S. 1598; R. S. 1799; 1822, VI, 185.

(5109) § 37. May Close Up and Use Certain Streets.—The Board of Regents are authorized to close up and use, for the purpose of said hospital, so much of Pickens Street, in the City of Columbia, as lies between Lumber and Upper Streets of said city, to retain such portion of Upper Street as they have already enclosed, and also to close that part of Upper Street, in the plan of the said city, lying between Henderson and Barnwell Streets and adjacent to the hospital grounds.

Civ. '12, § 3384; Civ. '02, § 2273; G. S. 1590; R. S. 1800; 1848, XI, 520; 1855, XII, 478; 1856, XII, 507.

(5110) § 38. Purchase of Supplies for State Hospital for Insane and Penitentiary.—That all regular supplies for the State Hospital for the Insane,

the State Penitentiary and the Confederate Home shall be purchased in the open market in the following manner, to wit: The officers now authorized to purchase said supplies shall duly advertise, in one or more daily papers, once a week for three consecutive weeks, for bids to furnish said supplies for a period of three months.

1913, XXVIII, 209.

(5111) § 39. **Bids.**—That all bids shall be opened publicly by said officer, who shall accept the best and lowest bid made for the furnishing of said supplies.

1913, XXVIII, 209.

(5112) § 40. **Successful Bidder to Enter Into Contract.**—The successful bidder shall enter into an agreement or contract to furnish said supplies at such times during said three months as he may be directed by the said officers, and shall give a good and sufficient bond in the sum of double the amount of said bid, conditioned for the faithful performance of said contract. The said bond shall be in favor of the State, and shall be collected as other bonds of such nature are now collected.

1913, XXVIII, 209.

ARTICLE II.

State Training School for Feeble-minded.

(5113) § 1. **“State Training School for the Feeble-minded” Established.**—That there shall be, and is hereby, established under the provisions of this Article, an institution to be known as the “State Training School for the Feeble-minded.”

1918, XXX, 729.

(5114) § 2. **Corporate Powers.**—That the State Training School for the Feeble-minded is hereby declared to be a body corporate, and, as such, may sue and be sued, plead and be impleaded, in its corporate name; may have and use a proper seal, which it may alter at its pleasure; and shall have the right to acquire by purchase, deed, devise, lease for a term of years, bequest, or otherwise, such property, real and personal, in fee simple, without limitations, as may be necessary or proper for carrying out the purposes of its organization as herein declared.

1918, XXX, 729.

(5115) § 3. **Control.**—That the business, property and affairs of the State Training School for the Feeble-minded shall be under the control of the Board of Regents of the State Hospital for the Insane. However, the said Training School for the Feeble-minded shall be entirely separate from the State Hospital for the Insane, both in location and management. The Superintendent of the said Training School shall not be an officer or other employee of the State Hospital for the Insane. The said Board of Regents shall meet quarterly and oftener, as may be required. They shall make such rules and regulations for their own government and for the manage-

ment of the institution as they may deem necessary, consistent with the laws of this State. The said Board of Regents shall appoint an Advisory Committee of three women, for such terms as the Board of Regents may determine, who shall visit the institution at least quarterly and shall advise with the Regents as to its management and any other pertinent matters. All Regents and members of the Advisory Committee of women shall serve without compensation, but their necessary traveling and other expenses shall be paid.

1918, XXX, 729.

(5116) § 4. **Election and Powers of Superintendent.**—The Board of Regents shall elect a Superintendent for the said Training School, at such salary and for such term as they may fix. Thereafter, the Superintendent shall employ and discharge all the employees of the said Training School.

1918, XXX, 729.

(5117) § 5. **Oath of Regents and Superintendent.**—All members of the Board of Regents and the Superintendent of the said State Training School for the Feeble-minded shall, before entering upon the discharge of their duties, take an oath faithfully to perform any and all duties imposed upon them under this Act and amendments hereto. The Superintendent shall execute a bond payable to the State in such sum as shall be required by the Board of Regents, with sufficient security, which bond shall be filed in the office of the Secretary of the State.

1918, XXX, 729.

(5118) § 6. **Selection of Site.**—The Board of Regents of the said Training School shall, in cooperation with, and subject to, the approval of the State Board of Public Welfare, select a suitable site upon which to establish and develop the said school. It is hereby declared to be the purpose and policy of the State to select this site from the land already owned by the State and now vested in the trustees of its respective institutions, or in the Sinking Fund Commission, if any of such land is found to be desirable for the purpose herein contemplated. Should, in the opinion of the Board of Regents of the said Training School, and of the said State Board of Public Welfare, the best interests of the State require the use of such land above described, these two Boards shall report their recommendations to this effect to the Governor. Thereupon, the Governor, if he approves of the recommendation, shall issue an order to the proper authorities directing them to deed said land to the Board of Regents of said Training School. If the Governor does not approve of the said recommendation, then the two Boards are hereby authorized jointly to make such subsequent similar recommendations as they may deem advisable; and if none of the recommendations meet with the approval of the Governor, then the Board of Regents of the said Training School shall select a suitable site, in cooperation with, and subject to, the approval of the State Board of Public Welfare, and shall purchase and develop same out of the funds appropriated by this Article.

1918, XXX, 729.

(5119) § 7. **Construction of Buildings.**—It is further declared to be the purpose and policy of the State with respect to the institution established by this Article that the buildings to be constructed shall be plain and inexpensive in character, and that in so far as practicable, the labor in constructing such buildings, improvements and facilities shall be supplied by the convicts of the State Penitentiary, as hereinafter provided, or by the inmates of said Training School, or by both. Such other or additional labor may be employed by the Board of Regents as in their judgment may be needed.

1918, XXX, 729.

(5120) § 8. **Penitentiary to Furnish Convict Labor.**—The State Penitentiary, on Request from the Board of Regents of the State Training School for the Feeble-minded, is authorized to transfer to said Training School such convicts as, in the judgment of the Superintendent of said State Penitentiary, would be useful in constructing the buildings and installing the equipment of said Training School. The State Penitentiary shall provide transportation and proper guards for said convicts; and while they remain at the State Training School for the Feeble-minded they shall be under the control, discipline and government, and subject to the orders of the Board of Regents of said Training School and its executive officers. The expenses of transportation and transfer of convicts used as above provided to and from the said Training School, together with their guarding and maintenance, shall be paid out of the funds provided for the establishment of said Training School.

1918, XXX, 729.

(5121) § 9. **To Be Opened by Proclamation.**—When the State Training School for the Feeble-minded shall have been equipped with buildings and other facilities, sufficient in the opinion of its Board of Regents, to receive patients, such Board of Regents shall notify the Governor, who shall thereupon, by proclamation, declare the said Training School for the Feeble-minded ready to receive patients. Thereafter, white persons may be admitted thereto in accordance with the provisions of this Article.

1918, XXX, 729.

(5122) § 10. **Definition of Term "Feeble-minded."**—For the purpose of this Article, the term "feeble-minded persons" shall be construed to mean any moron, imbecile or idiotic person, of whatever grade, who is afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of competing on equal terms with his normal fellows or of managing himself or his affairs with ordinary prudence, and who, therefore, required custodial care and training for his own protection and for the welfare of others and of the community, but who is not insane or of unsound mind in such a degree as to require his commitment to the State Hospital for the Insane.

1918, XXX, 729.

(5123) § 11. **Inmates May Be Admitted or Committed — Custody.**—Feeble-minded persons may be (a) admitted; or (b) committed to the State Training School for the Feeble-minded. Section twelve (12) of this

Article defines the procedure to be followed when a person is admitted to the said Training School; Sections thirteen (13), fourteen (14), fifteen (15), and sixteen (16) define the procedure to be followed when a person is committed to the said Training School. Any admission or commitment under this Article shall be full and sufficient authority to the Board of Regents, officers and agents of the said Training School for the detention and keeping therein of any person until said person be released therefrom by the Board of Regents, or by the Superintendent, or by order of a Judge of the Supreme Court or Circuit Court of this State, rendered at chambers or otherwise, in a proceeding in the nature of an application for a writ of *habeas corpus*. From the time of the lawful reception of any persons into said institution, and during said person's stay therein, said institution shall have exclusive care, custody and control of said person, and shall cause said person to be instructed in such branches of useful knowledge as may be suited to his or her years and mental capacity. In granting the applications for admission, or in accepting the commitments of feeble-minded persons to the said Training School, the Board of Regents, or the Superintendent, acting with such discretionary powers as are given him by this Article and by the Board of Regents, shall observe the following conditions: (1) No decree of any Court having jurisdiction under this Article, committing any feeble-minded person to the said Training School, shall be binding upon the said Board of Regents until accepted by them. (2) Preference may be given to women of child-bearing age, and to the more trainable boys, girls, and young men. (3) The Board of Regents shall prevent undue crowding of inmates in the said Training School.

1918, XXX, 729.

(5124) § 12. **Procedure for Admission.**—Applications for the admission of feeble-minded persons shall be made to the Board of Regents of the State Training School in the following manner: First, by the father or mother, if the father and mother are living together; second, if the father and mother are not living together, then by the one having the custody of the child; third, by a guardian duly appointed; fourth, by the superintendent of any county almshouse, or by the person having the management of any orphanage or other institution where children are cared for; fifth, by the County Commissioners of any county or the County Supervisor in those counties which have no County Commissioners. In Items three, four and five above, the consent of the parents is not required. It is further enacted that all applications for admission shall be submitted by the said Board of Regents to the State Board of Public Welfare before being granted. Thereupon, the State Board of Public Welfare shall investigate the application and report their findings with their recommendations to the Board of Regents of the State Training School for the Feeble-minded. The said Board of Regents shall then, in accordance with such rules as they may make, determine which of these applications for admission shall be granted, and in what order. It is hereby declared to be the policy of the State that inmates of the said Training School, whose estates are sufficient, or that relatives of said inmates liable in law for their support, whose estates are sufficient, shall be required to pay for the maintenance

of such inmates in said Training School in whole or in part; the manner and method of determining such financial ability and the collecting of the amounts required to be paid, shall be similar to that in force with regard to inmates of the State Hospital for the Insane.

1918, XXX, 729.

(5125) § 13. Petition for Commitment.—When any person who is a resident of this State shall be adjudged to be feeble-minded, and by reason of such mental condition of feeble-mindedness and of social conditions, such as want of proper supervision, control, care and support, or other causes, it is unsafe and dangerous to the welfare of the community for him to be at large without supervision, control and care, any relative, guardian or any reputable citizen of this State may file with the Judge of the Probate Court, or with the Clerk of the Circuit Court, a petition in writing, setting forth that the person therein named is feeble-minded, the facts and circumstances of the social conditions, such as want of proper supervision, control, care and support, or other causes, making it unsafe or dangerous to the welfare of the community for such person to be at large without supervision, control or care; also the name and residence, or that such name and residence is unknown to the petitioner, of some person, if any there be, actually supervising, caring for or supporting such person, and of at least one person, if any there be, legally chargeable with such supervision, care or support, and also the names and residences, if the same be known, of the parents or guardians.

1918, XXX, 729.

(5126) § 14. Hearing on Petition.—That the hearing on the petition shall be by the Court and a Commission to be appointed by the Court of two (2) qualified physicians, or one (1) qualified physician and one (1) qualified psychologist, residents of South Carolina, to be selected by the Judge on account of their known competency and integrity, and evidence shall be heard by the Court without a jury and proceedings had as in other civil proceedings. Evidence shall also be heard and inquiry made into the social conditions, such as want of proper supervision, control, care or support, and other causes making it unsafe or dangerous to the welfare of the community for such person to be at large without supervision, control and care. The Commission shall also make a personal examination, touching the mental condition of the alleged feeble-minded person. Upon the conclusion of the hearing, inquiry and examination the Commission shall file with the Court a report in writing showing the result of their examination of the mental condition and social conditions aforesaid, setting forth their conclusions and recommendations upon such blank forms as may be furnished by the said Board of Regents. Upon request of the Court, the psychologist of the State Board of Public Welfare shall serve the Court in an advisory capacity whenever possible and without fee.

1918, XXX, 729.

(5127) § 15. Order of Court on Petition.—That if the Court shall find such alleged feeble-minded person not to be feeble-minded, as defined in this Article, he shall order the petition dismissed and the person discharged.

If the Court shall find such alleged feeble-minded person to be feeble-minded and subject to be dealt with under this Article, having due regard to all circumstances appearing on the hearing and the welfare of the feeble-minded person and the welfare of the community, it shall direct that he be placed in the Training School provided for in this Article, and such decree, so entered, shall stand and continue binding, in accordance with the terms of this Article, upon all persons whom it may concern, until rescinded or otherwise regularly superseded or set aside.

1918, XXX, 729.

(5128) § 16. **How Expenses of Commitment, Etc., Paid.**—All costs for transportation, Court fees and other expenses involved in committing any feeble-minded person to the said Training School shall be borne in the same manner as similar expenses in connection with the commitment of persons to the State Hospital for the Insane are now met.

1918, XXX, 729.

(5129) § 17. **Appropriations.**—For carrying out the provisions of this Article, the sum of sixty thousand (\$60,000.00) dollars is hereby appropriated out of the funds of the State not otherwise appropriated, to be expended from the public treasury on order of the Treasurer of the State Training School for the Feeble-minded, approved by Chairman of the Board of Regents. There shall be appropriated from the State Treasury such amounts for the further development and maintenance of the said Training School from year to year as the General Assembly may determine.

1918, XXX, 729.

CHAPTER LVII.

Estrays.

(5130) § 1. **To Be Advertised and Taken Before a Magistrate for Appraisement.**—If an estray shall be found wandering in or about the plantation of any freehold or settled resident, such freeholder or resident is hereby authorized and empowered to take the same into possession, and shall advertise the same within three days thereafter, in three or more public places in the said county wherein the said person or persons so taking up the said estray may reside; and the said person or persons shall, within ten days after advertising as aforesaid, take such estray to the nearest Magistrate, excepting hogs, sheep, neat cattle, or goats, which shall be appraised at the place taken up.

Civ. '12, § 3886; Civ. '02, § 2275; G. S. 1610; R. S. 1802; 1803, V, 465.

(5131) § 2. **Appraisement—Certificate of Appraisement to Be Filed.**—Every Magistrate before whom an estray shall be returned, shall cause the same to be appraised, on oath, by three proper persons in the vicinity, who shall certify their appraisement under their hands, together with an accurate description of the color, size, age, brands, and marks, of said estray;

whereupon the said Magistrate shall enter the said certificate at large in his book; and shall, within ten days thereafter, send a duplicate of the said certificate to the Clerk of the Court of the county in which said estray shall be taken up.

Civ. '12, § 3387; Civ. '02, § 2276; G. S. 1611; R. S. 1803; 1803, V, 465; 1839, XI, 30.

(5132) § 3. Estray Advertised by Magistrate.—At the same time such Magistrate shall cause the estray, if other than a horse or mule, to be advertised at three or more public places in the county, one of which shall be on the Court House door, for two months, together with a notice where said estray is to be found; and, if a horse or mule, by advertising at the same places and in the nearest gazette once a month for four months.

Civ. '12, § 3388; Civ. '02, § 2277; G. S. 1612; R. S. 1804; 1839, XI, 30.

(5133) § 4. Sale If Not Claimed—Suit on Note for Purchase Price.—Where no owner shall appear and prove his property within the time directed for advertising, it shall be lawful for such Magistrate and he shall cause the same to be publicly advertised for ten days, and sold on a credit of six months, except the costs, to be paid in cash; and the purchaser shall give his note, with approved security, to the Magistrate, in the name of the County Board of Commissioners in the county wherein such estray shall be taken up; which note the said Magistrate shall deliver immediately to the said County Board of Commissioners for the county in which such estray shall be taken up, who shall have power, in default of payment, to sue for and recover the same.

Civ. '12, § 3389; Civ. '02, § 2278; G. S. 1613; R. S. 1805; 1839, XI, 30.

(5134) § 5. Pay for Advertisement.—For printing the said advertisement the printer shall be entitled to one dollar, which shall be paid by the owner of such estray, or taken out of the sales of the same.

Civ. '12, § 3390; Civ. '02, § 2279; G. S. 1614; R. S. 1806; 1803, V, 465.

(5135) § 6. Claim of Owner After Sale and Before Maturity of Note—Disposition of Purchase Money.—If any person shall put in a just and lawful claim to such estray at any time after the sale, and before the note becomes due, the County Board of Commissioners are hereby directed to give up the note to the claimant, on his paying the customary fees; but if no such owner shall appear, the County Board of Commissioners shall cause the amount of the same to be collected and appropriated to the proper use of the county.

Civ. '12, § 3391; Civ. '02, § 2280; G. S. 1615; R. S. 1807; 1789, V, 137; 1803, V, 465.

(5136) § 7. Amount, Etc., of Sale to Be Recorded — Record Open to Inspection.—The Clerk of the Court shall file the duplicate certificate of the appraisers and Magistrate in all instances of estrays taken up, where the same shall be returned, and also the certificate of such Magistrate, of the amount and disposition of the funds arising therefrom; the same being entered in the book of estrays, which shall always be subject to the inspection of any person desiring to examine the same, free of charge.

Civ. '12, § 3392; Civ. '02, § 2281; G. S. 1616; R. S. 1808; 1839, XI, 111.

(5137) § 8. **Compensation for Keeping Estray—Proviso.**—As a compensation for keeping and maintaining estrays until the time of sale, it shall and may be lawful for the taker up, at his option, either to put them to moderate labor for use, if a horse, mare or gelding, ass or mule, or to demand and receive therefor such a reasonable allowance as the Court or Magistrate shall judge adequate: *Provided, always*, That when any estray shall have been put to labor or use the taker up shall be obliged to produce it at the time of sale, unavoidable accidents excepted, in as good order and condition as it was when appraised; and shall be liable to an action for damages by the owner of any such estray for any abuse thereof, if the said owner shall claim the said estray within the time prescribed in this Chapter.

Civ. '12, § 3393; Civ. '02, § 2282; G. S. 1617; R. S. 1809; 1789, V, 138; 1803, V, 466.

(5138) § 9. **Unlawful for Stone Horse to Run at Large—Fee for Gelding.**—If any person shall negligently suffer any stone horse, above the age of twenty months, to run at large, it shall be lawful for any person to catch the same and recover from the owner thereof two dollars and fifty cents for so doing, and any person whose stock may be damaged or injured by such stone horse running at large shall have a lien thereon for such damage superior to all other liens, except liens for taxes, and enforceable in any Court of competent jurisdiction, either by attachment or by summons and complaint and special judgment for the sale thereof, without attachment; or in case where the person suffering damage to his stock has obtained possession by retention of such possession, until judgment, execution and levy: *Provided, however*, That the lien hereby given shall cease if foreclosure thereof be not commenced within ninety days after the damage or injury complained of is done.

Civ. '12, § 3394; Civ. '02, § 2283; G. S. 1618; R. S. 1810; 1789, V, 139; 1915, XXIX, 250.

(5139) § 10. **Magistrate and Clerk to Perform Duties Under This Chapter—Penalty.**—Any Magistrate or Clerk of Court, or person taking up any estray, who shall refuse or neglect to perform the duties prescribed by this Chapter shall forfeit and pay the sum of twenty-five dollars, to be recovered and applied to the use of any person who shall inform and sue for the same, and shall moreover be liable in damages to the party aggrieved.

Civ. '12, § 3395; Civ. '02, § 2284; G. S. 1619; R. S. 1811; 1803, V, 466.

(5140) § 11. **Penalty on Takers of Estrays for Not Obeying the Law.**—Each and every person who shall take into his or her possession any estray, and neglect to pursue the directions of this Chapter, or shall convert to his or her use any such estray, shall be liable to a fine of twenty dollars, to be recovered upon information, in any Court of record having jurisdiction of the same in this State, to be given to the informer; and shall also be liable to an action by the owner of any such estray for damages.

Civ. '12, § 3396; Civ. '02, § 2285; G. S. 1620; R. S. 1812; 1803, V, 466.

CHAPTER LVIII.

Of Wrecks and Shipwrecked Goods.

(5141) § 1. **Custody of Unclaimed Stranded Goods—Delivery to Treasurer—Nature—Sale.**—If any ship or vessel, goods or effects, shall be

stranded, or cast on shore, and no person appears to claim the goods which shall be so saved, two or more neighboring Magistrates shall take the same into their custody or possession, and, as soon as may be, give notice and a schedule, in writing, of the different articles (such Magistrates keeping a copy thereof) to the County Treasurer, and deliver safely all such goods and effects to the said Treasurer or his order, who shall be responsible for the same, and who shall give public notice thereof in the gazettes of this State for at least eight months, if no claim should be made; and if such goods be not claimed within twelve months after such delivery to the County Treasurer as aforesaid, they are to be publicly sold (or, if the goods be perishable, to be sold forthwith), and, after deducting reasonable charges, the residue shall be lodged in the County Treasury, for the use of the State, subject to the claim of the proprietor, his agent or attorney.

Civ. '12, § 3397; Civ. '02, § 2286; G. S. 1623; R. S. 1813; 1783, IV, 552.

(5142) § 2. Repelling Entry Into Stranded Vessels—Penalty for Carrying Away Saved Goods.—Any person or persons not empowered, who shall enter, or try to enter, forcibly on board any ship or vessel stranded or cast away, or in distress, or molest in the preservation thereof, may be repelled by force. And any person or persons who shall carry away, or secrete, any goods and effects saved as aforesaid, shall forfeit and pay treble the value, to be recovered by the owner of such goods, or his agent, in any Court of competent jurisdiction in this State.

Civ. '12, § 3398; Civ. '02, § 2287; G. S. 1624; R. S. 1814; 1783, IV, 552.

(5143) § 3. Magistrates May Issue Warrants for Stolen Goods—Penalty for Retention.—It shall and may be lawful for any Magistrate, on information, upon oath, of any part of a cargo or effects of any vessel lost or stranded on or near the seacoasts being unlawfully conveyed or concealed, or of some cause or reasonable suspicion thereof, to issue his warrant for searching for such goods or effects as in cases of stolen goods; and, if the same be found in any house or other place, or in the possession of any person not legally authorized to have the same, and the person in whose possession the same shall be found shall not immediately, upon demand, deliver the same to the owner or person lawfully authorized to receive them, he or she shall forfeit and pay to the owner or owners of such goods, his or their agent or attorney, treble the value of such refusal.

Civ. '12, § 3399; Civ. '02, § 2288; G. S. 1627; R. S. 1815; 1783, IV, 552.

(5144) § 4. Salvage Allowed Informer.—Any person discovering where any such goods are wrongfully bought, sold, or concealed, so that the owner, his agent or attorney, shall regain them, shall be entitled to a reasonable salvage, not exceeding twenty-five per cent. on the value, to be adjusted by the next neighboring Magistrate, who is hereby required to adjust the same.

Civ. '12, § 3400; Civ. '02, § 2289; G. S. 1628; R. S. 1816; 1783, IV, 552.

(5145) § 5. Seizure and Restoration of Goods Unlawfully Taken from Vessels—Reward—Penalty for Offering for Sale.—If any person or persons shall offer or expose to sale any goods or effects whatsoever belonging to any ship or vessel lost, stranded, or cast on shore as aforesaid, and unlaw-

fully taken away, or reasonably suspected to have been, then and in every such case it shall be lawful for the person or persons to whom the same shall be so offered for sale, or any Magistrate, to stop and seize the said goods and effects, and if the person or persons who shall have offered the said goods and effects to sale, or some other person in his or her behalf, shall not, within ten days next after such seizure, make out to the satisfaction of such Magistrate that they became honestly possessed of them, then the said goods and effects shall, by order of the said Magistrate, be forthwith delivered over to and for the use of the owner thereof, on proof of his claim and the payment of a reasonable reward, not exceeding five per cent. on the value, for such seizure (to be ascertained by the said Magistrate), to the person who shall seize the same. And he, she, or they, who offered such goods and effects for sale as aforesaid, shall forfeit and pay to the owner or owners twice the value of such goods, to be recovered according to law.

Civ. '12, § 3401; Civ. '02, § 2290; G. S. 1629; R. S. 1817; 1783, IV, 552.

CHAPTER LIX.

Of Immigrants and Seamen.

(5146) § 1. Immigrants' Hotel or Boarding House Keepers to Be Licensed.—It shall not be lawful for any person to keep, conduct, or carry on, either as owner, proprietor, agent, or otherwise, any sailors' or immigrants' boarding house, or sailors' or immigrants' hotel, in the City of Charleston, without having a license from the City Council thereof.

Civ. '12, § 3402; Civ. '02, § 2291; G. S. 1637; R. S. 1818; 1866, XIII, 471.

(5147) § 2. Hotels Not Licensed Not to Solicit Boarders, Etc.—It shall not be lawful for any person, not having the license in this Chapter provided, or not being the regular agent, runner, or employee of a person having such license, to invite, ask, or solicit, in the city or harbor of Charleston, the boarding or lodging of any of the crew employed on any vessel, or of any immigrant arriving in the said City of Charleston.

Civ. '12, § 3403; Civ. '02, § 2292; G. S. 1638; R. S. 1819; 1866, XIII, 471.

(5148) § 3. City Council of Charleston May Grant License.—The City Council shall take the application of any person applying for a license to keep a sailors' or immigrants' boarding house, or sailors' or immigrants' hotel, in the City of Charleston, and upon satisfactory evidence to them of the respectability and competency of such applicant, and of the suitability of his accommodations, shall issue to him a license, which shall be good for one year, unless sooner revoked by said City Council, to keep a sailors' or immigrants' boarding house in the City of Charleston, and to invite and solicit boarders for the same.

Civ. '12, § 3404; Civ. '02, § 2293; G. S. 1639; R. S. 1820; 1866, XIII, 471.

(5149) § 4. City Council May Revoke License.—The City Council may, upon satisfactory evidence of the disorderly character of any sailors' or immigrants' hotel or boarding house, licensed as hereinbefore provided, or of the keeper or proprietor of any such house, or of any force, fraud, deceit,

or misrepresentation, in inviting or soliciting boarders or lodgers for such house, on the part of such keeper or proprietor, or any of his agents, runners, or employees, revoke the license for keeping such house.

Civ. '12, § 3405; Civ. '02, § 2294; G. S. 1640; R. S. 1821; 1866, XIII, 471.

(5150) § 5. **Fees for License.**—Every person receiving the license hereinafore provided for shall pay to the City Council aforesaid the sum of twenty dollars.

Civ. '12, § 3406; Civ. '02, § 2295; G. S. 1641; R. S. 1822; 1866, XIII, 472.

(5151) § 6. **City Council to Furnish Badges to Licensee.**—The said City Council shall furnish to each sailors' or immigrants' hotel or boarding house keeper licensed by them as aforesaid one or more badges or shields, on which shall be printed or engraved the name of such hotel or boarding house keeper, and the number and street of his hotel or boarding house; and which said badges or shields shall be surrendered to said City Council upon the revocation by them, or expiration of any license granted by them, as herein provided.

Civ. '12, § 3407; Civ. '02, § 2296; G. S. 1642; R. S. 1823; 1866, XIII, 472.

(5152) § 7. **Agents Must Wear Badges.**—Any sailors' or immigrants' hotel or boarding house keeper, and every agent, runner, or employee of such hotel or boarding house keeper, when boarding any vessel in the harbor of Charleston, or when inviting or soliciting the boarding or lodging of any seaman, sailor, or person employed on any vessel, or of any immigrant, shall wear, conspicuously displayed, the shield or badge referred to in the foregoing Section.

Civ. '12, § 3408; Civ. '02, § 2297; G. S. 1643; R. S. 1824; 1866, XIII, 472.

(5153) § 8. **No Other Person to Wear Badges.**—It shall not be lawful for any person, except those named in the preceding Section, to have, wear, exhibit, or display any such shield or badge to any of the crew employed on any vessel, or to any immigrant so arriving in the City of Charleston, with the intent to invite, ask, or solicit the boarding or lodging of such immigrant, or of any of the crew employed on any vessel being in the harbor of Charleston.

Civ. '12, § 3409; Civ. '02, § 2298; G. S. 1644; R. S. 1825; 1866, XIII, 472.

(5154) § 9. **None But Pilot or Public Officer to Board Vessels.**—It shall not be lawful for any person, except a pilot or public officer, to board, or attempt to board, a vessel arriving in the port or harbor of Charleston, before such vessel shall have been made fast to the wharf, without first obtaining leave from the master or person having charge of such vessel, or from her owners or agents.

Civ. '12, § 3410; Civ. '02, § 2299; G. S. 1645; R. S. 1826; 1866, XIII, 470.

(5155) § 10. **Owners, Etc., of Vessels Not to Permit Unauthorized Persons to Board.**—It shall not be lawful for any owner, agent, master, or other person having charge of any vessel arriving or being in the port of Charleston, to permit or authorize any sailors' hotel or boarding house keeper, not licensed as herein provided, or any agent, runner, or employee

of any sailors' or immigrants' hotel or boarding house, to board, or attempt to board, any vessel arriving or lying or being in the harbor or port of Charleston, before such vessel shall have been made fast to the wharf, or anchored, with intent to invite, ask, or solicit the boarding of any of the crew employed on such vessel.

Civ. '12, § 3411; Civ. '02, § 2300; G. S. 1646; R. S. 1827; 1866, XIII, 471.

(5156) § 11. **Hotel Keepers to Leave Vessels When Ordered.**—It shall not be lawful for any sailors' or immigrants' hotel or boarding house keeper, or the employees of any sailors' or immigrants' hotel or boarding house keeper, having boarded any vessel made fast to any wharf in the port of Charleston, to neglect or refuse to leave said vessel after having been ordered so to do by the master or person having charge of such vessel.

Civ. '12, § 3412; Civ. '02, § 2301; G. S. 1647; R. S. 1828; 1866, XIII, 471.

(5157) § 12. **Meaning of Word "Vessel."**—The word "vessel," as used in the preceding Section, shall include vessels propelled by steam.

Civ. '12, § 3413; Civ. '02, § 2302; G. S. 1649; R. S. 1829; 1866, XIII, 472.

(5158) § 13. **Seaman's Debt.**—It shall not be lawful for any keeper of a public or lodging house for seamen, at any time, to recover from any seaman any debt exceeding one dollar; and no debt exceeding said sum, incurred by any seaman to any other person, shall be recoverable after he has signed an agreement to proceed on a voyage, until such voyage shall have been concluded.

Civ. '12, § 3414; Civ. '02, § 2303; G. S. 1651; R. S. 1830; 1836, VI, 557.

(5159) § 14. **Seaman's Goods.**—It shall not be lawful for any keeper of a public or lodging house for seamen to withhold or detain any chest, bed or bedding, clothes, tools, or other effects, of any seaman for any debt alleged to have been contracted by such seaman; and in case any such chest, bed, bedding, clothes, tools, or other effects, as aforesaid, shall be withheld or detained, contrary to this Chapter, it shall be lawful for any Magistrate, upon complaint, upon oath, to be made by any such seaman, or on his behalf, to inquire into the matter, and, if he shall see fit, by warrant under his hand and seal, to cause any such property or effects so withheld or detained contrary to this Chapter, to be seized and delivered over to the seaman.

Civ. '12, § 3415; Civ. '02, § 2304; G. S. 1652; R. S. 1831; 1836, VI, 557.

CHAPTER LX.

Gambling Contracts and Contracts of Sale for Future Delivery.

ARTICLE 1. Gambling Contracts, 1558.

ARTICLE 2. Contracts of Sale for Future Delivery, 1560.

ARTICLE I.

Gambling Contracts.

(5160) § 1. **When Loser of Money at Cards, Etc., May Recover by Action.**—Any person who shall, at any time or sitting, by playing at cards,

dice table, or other game or games whatsoever, or by betting on the sides or hands of such as do play at any of the games aforesaid, lose to any one or more person or persons so playing or betting, in the whole, the sum or value of fifty dollars, and shall pay or deliver the same or any part thereof, shall be at liberty, within three months then next ensuing, to sue for and recover the money or goods so lost and paid or delivered, or any part thereof, from the respective winner or winners thereof, with costs of suit, by action, to be prosecuted in any Court of competent jurisdiction.

Civ. '12, § 3416; Civ. '02, § 2305; G. S. 1720; R. S. 1854; 1712, II, 566.

The money or goods must be lost at one time or at one sitting. *Trumbo v. Finley*, 18 S. C. 305. Horse racing is included in this Section. *Barrett v. Hampton*, 2 Brev. 226; *Aitchison v. Gee*, 4 McC. 241. Wager on horse racing for twenty dollars not illegal. *Barrett v. Hampton*, 2 Brev. 226. Contract to forfeit deposit on refusal to run horse race for wager above fifty dollars void. *Corley v. Berry*, 1 Bail. 593. No recovery beyond the time limited. *Owen v. Davis*, 1 Bail. 315; *Willis v. Hockaday*, 1 Speer 379. Principal may recover money lost by his agent. *Allen v. Watson*, 2 Hill 319. The thing lost, and not the articles delivered in payment of it, can be recovered. *Whellock v. Bobo*, Harp. 421. Recovery may be had of stakeholder, if demanded before he pays it over. *Bledsoe v. Thompson*, 6 Rich. 44. Or if he paid it over after notice not to do so. *Livingston v. Wootans*, 1 N. & McC. 178. One winner can recover of his joint winner his share of money received on note for wager. *Owen v. Davis*, 1 Bail. 315.

(5161) § 2. If Losers Do Not Sue, Any Other Person May.—In case the person or persons who shall lose such money or other thing as aforesaid, shall not, within the time aforesaid, really and *bona fide*, and without covin or collusion, sue, and with effect prosecute for the money or other things so by him or them lost, and paid and delivered as aforesaid, it shall and may be lawful to and for any person or persons, by any such action or suits as aforesaid, to sue for and recover the same, and treble the value thereof, with costs of suit, against such winner or winners as aforesaid; the one moiety thereof to the use of the person or persons that will sue for the same, and the other moiety to the use of the county where the offense shall have been committed.

Civ. '12, § 3417; Civ. '02, § 2306; G. S. 1721; R. S. 1855; 1712, II, 566.

Trumbo v. Finley, 18 S. C. 365.

(5162) § 3. Orders for Discovery.—Any person or persons who, by virtue of the provisions herein contained, shall or may be liable to be sued for the said moneys, or other things so won, shall be obliged and compellable to answer, upon oath, such order or orders as shall be made against him or them, for discovering the sum and sums of money, or other things so won at play, as aforesaid.

Civ. '12, § 3418; Civ. '02, § 2307; G. S. 1722; R. S. 1856; 1712, II, 566.

(5163) § 4. Notes, Etc., Given to Secure Wagers, Void.—All notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever, given, granted, or entered into, or executed, by any person or persons whatsoever, where the whole or any part of the consideration of such conveyances or securities shall be for any money or valuable things whatsoever won by cock-fighting, horse-racing, or by gaming, or playing at cards, dice tables, tennis, bowls, or other game or games whatsoever, or by betting on the sides or hands of such as do game at any of the games aforesaid, or any other game, or games, or for the reimbursing or repaying any money knowingly lent or advanced at the time and place of such cock-fighting, horse-racing or play, to any person or persons so gaming or betting as aforesaid, or that shall, during such cock-fighting, or horse-racing, or play, so bet, shall be

utterly void, frustrate, and of none effect, to all intents and purposes whatsoever.

Civ. '12, § 3419; Civ. '02, § 2308; G. S. 1723; R. S. 1857; 1712, II, 567; 1791, V, 178.

Barrett v. Hampton, 2 Brev. 226; *Tidmore v. Boyce*, 2 Mill 200. Holder of such note payable to bearer cannot recover from maker. *Sharp v. Smith*, 7 Rich. 3; *Mordecai v. Dawkins*, 9 Rich. 262. Note given for goods by third party, won and actually delivered and transferred to him, is good. *Willis v. Hockaday*, 1 Speer 379. Generally as to wagers. *Laval v. Myers*, 1 Bail. 486; *Rice v. Gist*, 1 Strob. 82.

(5164) § 5. **Grants, Conveyances, Etc., of Land Void.**—Where such mortgages, securities, or other conveyances, shall be of lands, tenements, or hereditaments, or shall be such as to encumber or affect the same, such mortgages, securities or other conveyances, shall enure and be to and for the sole use and benefit of, and shall devolve upon, such person or persons as shall have been or may be entitled to such lands, tenements, or hereditaments, in case the said grantor or grantors thereof, or the person or persons so encumbering the same, had been dead, and as if such mortgages, securities, or other conveyances, had been made to such person or persons by the person or persons so encumbering the same; and all grants and conveyances to be made for the preventing of such lands, tenements, or hereditaments from coming to, or devolving upon, such person or persons, hereby intended to enjoy the same, as aforesaid, shall be deemed fraudulent and void, and of none effect, to all intents and purposes whatsoever.

Civ. '12, § 3420; Civ. '02, § 2309; G. S. 1724; R. S. 1858; 1791, V, 178.

ARTICLE II.

Contracts of Sale for Future Delivery.

(5165) § 1. **Validity of Sale of Certain Bonds, Stocks, and Products for Future Delivery.**—Every contract, bargain or agreement, whether verbal or in writing, for the sale or transfer at any future time of a certificate, bond or other evidence of debt, due from the United States or from an individual State, or of stock or a share of interest in the stock, or of the bonds of any bank, city, town, village or incorporation of any kind whatsoever incorporated under any law of the United States or of any individual State, or for the sale or transfer at any future time of any cotton, grain, meats, or any other animal, mineral or vegetable product of any and every kind, shall be void unless the party contracting, bargaining or agreeing to sell or transfer the same is at the time of making such contract, bargain or agreement the owner or assignee thereof, or is at the time authorized by the owner or assignee thereof or his duly authorized agent to make and enter into such contract, bargain or agreement for the sale or transfer of such certificate, bond or other evidence of debt, cotton, grain, meats or other animals, mineral or vegetable products so contracted for, or unless it is the *bona fide* intention of both the parties to the said contract, bargain or agreement, at the time of making the same, that the said certificate, bond or other evidence of debt, cotton, grain, meats or other animal, mineral or vegetable product so agreed to be sold and transferred shall be actually delivered in kind by the party contracting to sell and deliver the same, and shall be actually received in kind by the party contracting to receive the same at the period

in the future mentioned and specified in the said contract, bargain or agreement for the transfer and delivery of the same.

Civ. '12, § 3421; Civ. '02, § 2310; R. S. 1859; 1883, XVIII, 454.

For laws as to sales for future delivery, see Criminal Code.

Such contract before this Act not assumed to be a gambling contract without evidence to show it. *Williams v. Conner*, 14 S. C. 62.

The object of this statute, and the requisites for a valid contract of sale for future delivery, are stated in *Gist v. Tel. Co.*, 45 S. C. 344, 23 S. E. 143; *Riordan v. Doty*, 50 S. C. 542, 27 S. E. 941, 56 S. C. 111, 34 S. E. 69; *Harvey v. Doty*, 54 S. C. 382, 32 S. E. 501, 50 S. C. 548, 27 S. E. 943. Purchase by *Mig's* in course of business. *State v. McGinnis*, 138 N. C. 724, 51 S. E. 50; *Sampson v. Camperdown Mills*, 82 Fed. 836.

"The true test of the validity of the contract is whether it could be settled only in money, and in no other way; or whether the party selling could tender and compel the acceptance of the particular commodity sold; or whether the party buying could compel the delivery of the commodity purchased." Contract sustained. *Sampson v. Camperdown Cotton Mills*, 82 Fed. 833, 836. See, also, *Springs & Co. v. Carpenter*, 154 Fed. 486, 83 C. C. A. 327; *Parker v. Moore*, 111 Fed. 470, reversed 115 Fed. 799; on circuit again, 125 Fed. 807; *Cousar v. Heath, Witherspoon & Co.*, 80 S. C. 466, 61 S. E. 973; *Randolph v. Walker*, 78 S. C. 161, 59 S. E. 856; *Barr v. Satcher*, 72 S. C. 35, 51 S. E. 530; *Knight Yancy & Co. v. Zeiss Cotton Mills*, 80 S. C. 213, 61 S. E. 396.

Complaint alleging contract, with bona fide intention of parties at time to deliver in kind, states good cause of action. *Maybank & Co. v. Rogers*, 88 S. C. 572, 575.

Gwathmey et al v. Burgess, 98 S. C. 152, 82 S. E. 394; *Maybank & Co. v. Rogers*, 98 S. C. 279, 82 S. E. 422; *Doughty v. Lightsey*, 101 S. C. 370, 85 S. E. 898; *Mariboro Cotton Mills v. O'Neal*, 114 S. C. 459, 103 S. E. 781.

(5166) § 2. Burden of Proof in Such Actions.—In any and all actions brought in any Court to enforce such contracts, bargains or agreements, or to collect any note or other evidence of indebtedness, or any claim or demand whatever founded upon any such contract, bargain or agreement, the burden of proof shall be upon the plaintiff to establish that at the time of making such contract, bargain or agreement the party making the same was the owner or assignee of the certificate, bond or other evidence of debt, cotton, grain, meats or other animal, mineral or vegetable products so agreed to be sold and transferred, or was at the time authorized by the owner or assignee thereof, or his duly authorized agent, to make and enter into such contract, bargain or agreement, or that at the time of making such contract, bargain or agreement it was the *bona fide* intention of both parties thereto that the said certificate, bond or other evidence of debt, cotton, grain, meats or other animal, mineral or vegetable product so agreed to be sold and transferred should be actually delivered and received in kind by the said parties at the future period mentioned therein.

Civ. '12, § 3422; Civ. '02, § 2311; R. S. 1860; 1883, XVIII, 454.

Gist v. Western Union Tel. Co., 45 S. C. 344, 23 S. E. 143, 55 Am. St. Rep. 763; *Riordan v. Doty*, *supra*; *Maybank & Co. v. Rogers*, 88 S. C. 572, 575.

Maybank & Co. v. Rogers, 98 S. C. 279, 82 S. E. 422.

(5167) § 3. Persons Contracting May Sue and Recover Amount Lost Upon Proof.—Any person or persons so contracting, bargaining or agreeing for the sale or transfer of any of the aforesaid commodities in violation of the provisions of this Chapter who shall pay over to any one or more person or persons any sum or sums of money for and on account of a loss sustained by reason of such contract, bargain or agreement shall be at liberty, within three months next ensuing after such payment, to sue and recover the amount so lost and paid, or any part thereof, from the person or persons to whom he or they shall have paid the same, with costs of suit, by action, to be prosecuted in any Court of competent jurisdiction, and the oath of the loser that he has actually paid over the money to the party against whom the action is brought shall be regarded as *prima facie* establishing the case against such party; and any person who shall act as agent or middleman in the making or execution of any such contract, or who shall accept

or receive and forward any moneys, drafts or bills of exchange in furtherance thereof, shall be held liable in an action by the party to recover the amount of value of the money so received, or the value of the draft or bill of exchange so accepted or forwarded.

Civ. '12, § 3423; Civ. '02, § 2312; R. S. 1861; 1883, XVIII, 454.

Brokers and middlemen occupy the same position as the contracting parties. *Riodan v. Doty*, 50 S. C. 546, 27 S. E. 941; *Hurvey v. Doty*, 54 S. C. 382, 32 S. E. 501. The words "any such contract" refer to such prohibited in § (3421), and a person need not have sustained a loss by reason of such contract to recover the moneys so paid. *Saunders v. Phelps Co.*, 53 S. C. 173, 31 S. E. 54.

Amendment of complaint making real party in interest a party, with the party by whom contract was made, allowed after the lapse of three months; new defendant had no right to plead the limitation. *Cousar v. Heath, Witherspoon & Co.*, 80 S. C. 466, 61 S. E. 973. Recovery of money paid to cover losses which might be sustained. *Ib.*; 80 S. C. 466. Limitation of three months counterclaim. *Randolph v. Walker*, 78 S. C. 157, 161, 59 S. E. 856.

Maybank & Co. v. Rogers, 98 S. C. 279, 82 S. E. 422.

(5168) § 4. Certain Persons Liable to Answer Upon Oath.—Any person or persons who by virtue of the provisions herein contained shall or may be liable to be sued for the said moneys so paid to him or them shall be obliged and compelled to answer upon oath such order or orders as shall be made against him or them for discovering the sum and sums of money so paid to him or them as aforesaid.

Civ. '12, § 3424; Civ. '02, § 2313; R. S. 1862; 1883, XVIII, 454.

(5169) § 5. When Notes, Bills, Bonds and Other Securities Shall Be Void.—All notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatever, given, granted or entered into or executed by any person or persons whatsoever where the whole or any part of the consideration of such conveyances or securities shall be for any money lost by reason of any contract entered into in violation of the provisions of this Article shall be utterly void, frustrate and of none effect, to all intents and purposes whatsoever

Civ. '12, § 3425; Civ. '02, § 2314; R. S. 1863; 1883, XVIII, 454.

Doughty v. Lightsey, 101 S. C. 370, 85 S. E. 898.

CHAPTER LXI.

Licenses.

ARTICLE 1. Licenses for Plays and Shows, 1562.

ARTICLE 2. Licenses for Game Preserves, 1566.

ARTICLE I.

Licenses for Plays and Shows.

(5170) § 1. Tax on Plays and Shows in Towns or Villages Not Incorporated.—All persons representing publicly, for gain or reward, any play, comedy, tragedy, interlude, or farce, or other entertainment of the stage, or any part therein, all fortune tellers, and those who exhibit wax figures, or shows of any kind whatsoever, shall pay a tax of three dollars per day, when they make those exhibitions at the towns or villages that are not incorporated; and the said sum of three dollars shall be paid into the hands of the Clerks of the Circuit Courts respectively, who shall be bound to pay over the same into the County Treasury.

Civ. '12, § 3426; Civ. '02, § 2315; G. S. 1754; R. S. 1866; 1813, V, 711.

(5171) § 2. Clerks and Magistrates to Issue Executions for Failure to Pay Tax.—If any person who is required to pay the aforesaid tax shall neglect to do so before such representation or exhibition, it shall be the duty of the Clerk of the Court, or any Magistrate, for the county where the same may be done, to issue an execution for double the amount of tax so imposed, which execution may be directed to any Sheriff or Constable of this State, and against the body and goods of the person so being liable, and which may be levied in any county in the State; and every Magistrate who shall so issue execution shall cause the amount of the same to be paid to the Clerk of the Court for his county; and the Clerk of Court shall pay into the County Treasury all such taxes as may come into his hand respectively: *Provided*, That nothing herein contained shall be construed to extend to any incorporated town, village, or city.

Civ. '12, § 3427; Civ. '02, § 2316; G. S. 1755; R. S. 1867; 1843, XI, 246.

(5172) § 3. Power of Officers of Incorporated Towns to Collect Tax.—The Intendant and Wardens of all incorporated towns and villages (the City of Charleston excepted) shall have power to collect the taxes from all or persons to exhibit theatrical entertainments within said city, and to persons representing, publicly, within their respective corporate limits, for gain or reward, any plays, shows of what nature or kind soever, which, by the last Section, are made payable to the Clerks of Courts, the same to be used for the purposes of the said corporations, respectively.

Civ. '12, § 3428; Civ. '02, § 2317; G. S. 1756; R. S. 1868; 1835, VI, 532.

(5173) § 4. Licensing of Theatrical Entertainment in Charleston.—The City Council of Charleston are authorized to permit and license any person impose and collect, for each and every such license, such sum as they may, from time to time, deem reasonable: *Provided*, The same does not exceed five hundred dollars.

Civ. '12, § 3429; Civ. '02, § 2318; G. S. 1757; R. S. 1869; 1817, VIII, 284.

(5174) § 5. Circus and Traveling Shows to Take Out License—License Fee—Application of Moneys.—Any circus or other such traveling show exhibiting under canvas or outdoors for gain shall, before exhibiting in any county of this State, obtain a license from the Clerk of the Court of such county and shall pay to the said Clerk for such license one hundred (\$100.00) dollars for each and every day said circus or other show shall be exhibited, and said Clerk shall forthwith pay over to the County Treasurer of said county all the moneys by him received on account of said license to be applied to the use of said county. And any carnival company, or other such traveling show, exhibiting under canvas or 'outdoors for gain, other than a circus, shall, before exhibiting in any county of this State, obtain a license from the Clerk of the Court of such county and shall pay to said Clerk for said license twenty-five (\$25.00) dollars for each day said carnival company or other show other than a circus shall be exhibited; and said Clerk shall pay over to the County Treasurer of said county all the moneys by him received on account of said license to be applied to the use of said county.

Civ. '12, § 3430; Civ. '02, § 2319; 1875, XV, 845; 1896, XXII, 212; 1916, XXIX, 836; 1918, XXX, 720.

(5175) § 6. **Annual License to Operate Pool or Billiard Tables Outside Incorporated City or Town.**—Every person operating any pool or billiard table in this State, outside of an incorporated city or town, shall pay to the Clerk of the Court of the county in which such table is operated, an annual license of one hundred dollars, to be turned into the school funds of such county: *Provided*, That this Section shall not apply to clubs or individuals where the table is not operated for private gain.

Civ. '12, § 3431; 1911, XXVII, 141.

Thomas v. Foster, Treasurer, 108 S. C. 98, 93 S. E. 397.

(5176) § 7. **Municipal Authorities May Require License.**—Nothing herein contained shall be construed to prevent the municipal authorities of any incorporated city or town in this State from levying and collecting such fines or licenses as may be imposed by such municipal authorities.

Civ. '12, § 3432; Civ. '02, § 2320; G. S. 1760; R. S. 1871; 1875, XV, 845.

(5177) § 8. **Carnivals and Tent Shows Prohibited in Certain Counties—Provisos.**—That it shall be unlawful for any carnival or tent show of a like nature, or traveling show exhibiting under tent, to exhibit in Aiken, Barnwell, Chesterfield, Dorchester, Marlboro, Lexington, Colleton, Chester, Union and York Counties, and no license shall be granted to any carnival company, or other like exhibition, within the Counties of Aiken, Barnwell, Chesterfield, Dorchester, Marlboro, Darlington, Lexington, Colleton, Chester, Union and York: *Provided*, The management of the County Fair Association, during the county fair may permit Carnivals and other like shows during fair week within the enclosure permit carnivals and other like shows during fair week within the enclosure of the grounds of the County Fair Association: *Provided*, That the provisions of this Section shall not apply to chautauquas: *And provided*, Same shall not apply to circuses, which circuses may be licensed for a time not exceeding forty-eight hours in any one year.

1920, XXXI, 927; 1921, XXXII, 100, 224.

(5178) § 9. **Penalty for Violation.**—Any person, firm or corporation violating the terms of Section 8 shall be fined a sum not less than five hundred (\$500.00) dollars and three months imprisonment for each and every offense.

1920, XXXI, 927.

(5179) § 10. **License Fees for Carnival Companies Prohibited in Colleton County Fairs.**—That it shall be unlawful for the town authorities of the Town of Walterboro to charge or collect any license fees or other tax of any carnival company or other show exhibiting on the grounds of the Colleton County Agricultural Fair Association under the auspices of the said association.

1914, XXVIII, 612.

(5180) § 11. **Police Protection.**—That it shall be the duty of the town authorities of the said Town of Walterboro to furnish without charge adequate police protection on the grounds of the said Fair Association at all times when the said Fair Association is in annual session.

1914, XXVIII, 612.

(5181) § 12. **Carnivals and Other Tent Shows, Except Circuses and Chautauquas, Forbidden License in Edgefield County.**—That no carnival or other traveling show exhibiting under tent shall be allowed license or be allowed to exhibit within the county of Edgefield, except circuses, which may be licensed for a time not exceeding forty-eight hours any one year: *Provided*, The provisions of this Section shall not apply to chautauquas.

1920, XXXI, 726.

(5182) § 13. **Carnivals and Other Tent Shows Forbidden License in Williamsburg County—Not to Apply to Circuses, Chautauquas or Shows Under Management of Fairs.**—That no carnival or other traveling show exhibiting under tent shall be allowed license or to be allowed to exhibit within the County of Williamsburg, except circuses, which may be allowed license for a time not exceeding forty-eight hours any one year: *Provided*, That the provisions of this Section shall not apply to chautauquas and independent shows, rides and concessions under the management of the Fair Associations in Williamsburg County.

1920, XXXI, 752.

(5183) § 14. **Carnival Shows Prohibited in Certain Counties.**—No carnival and no traveling show exhibiting under tent shall be allowed license or be allowed to exhibit within the Counties of Beaufort, Bamberg, Calhoun, Cherokee, Clarendon, Darlington, Fairfield, Greenwood, Greenville, Hampton, Horry, Allendale, Lancaster, Laurens, Marlboro, McCormick, Newberry, Oconee, Kershaw, Charleston and Pickens, except circuses, which may be licensed for a time not exceeding forty-eight hours, any one year: *Provided*, That the provisions of this Section shall not apply to Chautauquas: *Provided, further*, That the provisions of this Section shall not apply to the City of Camden, in the County of Kershaw, during the time that any County Fair or Horse Show is held thereat, but other times this Section shall apply.

1921, XXXII, 331.

(5184) § 15. **Violation a Misdemeanor—Penalty.**—Any person owning, operating, or who is connected with or employed by any carnival company or show violating the provisions of Section 14 shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, or imprisonment of not less than five days nor more than thirty days. Every performance or exhibition of such show or carnival shall be a separate offense.

1921, XXXII, 331.

(5185) § 16. **Carnival and Tent Shows Prohibited in Richland County—Provisos.**—That hereafter it shall be unlawful for any carnival or tent show of a like nature, or traveling show exhibiting under tent to exhibit in Richland County: *Provided*, That the South Carolina Agricultural and Mechanical Society may, within their discretion, permit carnivals and other like shows during the State Fair week to exhibit within the enclosure of the grounds of the South Carolina Agricultural and Mechanical

Society: *Provided, further*, That the provisions of this Section shall not apply to Chautauqua or Colored State Fair: *Provided, further*, That it shall not apply to circuses, which circuses may be licensed for a time not exceeding forty-eight hours in any one year.

1921, XXXII, 256.

(5186) § 17. **Penalty for Violation.**—Any person, firm or corporation violating the terms of Section 16 shall be fined in the sum of not less than five hundred (\$500.00) dollars and three months imprisonment for each and every offense.

1921, XXXII, 256.

ARTICLE II.

Licenses for Game Preserves.

(5187) *Whereas*, The holding and acquiring of lands in this State in excess of five thousand acres, which are or may be used for the primary purpose of a game preserve for pleasure, results harmfully in that it withdraws from husbandry or other useful purposes large areas for said purpose, thereby preventing the development of such large areas and the progress of the communities wherein such areas are located, and creates a condition which is against the public welfare of the State of South Carolina and the citizens thereof;

Whereas, It is deemed by the General Assembly of the State of South Carolina to the best interest of the State and the citizens thereof to restrict the quality of land which may be withdrawn from husbandry or other useful purposes thereof and dedicated primarily to the chase; therefore,

1920, XXXI, 988.

(5188) § 1. **Annual License Tax on Game Preserves of Over 10,000 Acres.**—That all persons, firms, corporations and associations holding or acquiring lands adaptable to agricultural purposes either in fee or for a term of years of more than ten thousand acres shall pay a license fee for all lands in excess of five thousand acres which are now used or to be hereafter used for the primary purpose of game preserve for pleasure in the following sum, that is to say: All lands in excess of five thousand acres which are intended to be used for the primary purpose of a game preserve for pleasure the sum of ten cents per acre up to twenty-five thousand acres and all acreage in excess of twenty-five thousand acres up to fifty thousand acres, twenty-five cents an acre; and all acreage in excess of fifty thousand acres, fifty cents per acre.

1920, XXXI, 988.

(5189) § 2. **Collection of Tax—Use of Proceeds.**—That the license hereinabove assessed and provided for shall be collected by the County Treasurer of the various counties of this State, at the same time State and county taxes are required by law to be collected, and used by the counties wherein the said license fees have been collected. That the money arising from the

license herein referred to shall be expended only upon the highways of the various counties in this State from which the same has been collected by the County Board of Commissioners of said counties.

1920, XXXI, 988.

(5190) § 3. Nonpayment a Misdemeanor — Penalty.—That the license fees herein provided for shall be a first lien upon the property upon which it is placed, and any persons, firms, corporations or associations failing or refusing to pay the license hereby imposed shall be guilty of a misdemeanor and punishable by fine or imprisonment in the discretion of the Court.

1920, XXXI, 988.

(5191) § 4. Executions for Collection of Tax—Timber Contracts.—That the County Treasurers of this State, upon the failure or refusal to pay the license fees hereby imposed, shall issue executions against such person, firm, corporation or association in the same manner and according to the same rules as provided by law for the collection of tax execution now of force in this State for the collection of delinquent taxes: *Provided*, That the provisions of this Article shall not apply to lands covered by timber contracts, until after the timber is cut.

1920, XXXI, 988.

CHAPTER LXII.

Board of Conciliation.

(5192) § 1. Board of Conciliation Created.—That a Board of Conciliation for the investigation and arbitration of industrial disputes and strikes be, and the same is hereby, created, to be composed of three members to be appointed by the Governor as hereinafter provided.

1916, XXIX, 935.

(5193) § 2. Terms of Members.—The terms of the members of said Board first appointed shall be for two, four and six years, respectively, from the date of their appointment, and thereafter upon the expiration of a term of a member of said Board his successor shall be appointed for a term of six years, appointed to fill vacancies caused by death, resignation or otherwise before the expiration of such term, shall be made for the residue of such terms in the same manner as herein provided for original appointments.

1916, XXIX, 935.

(5194) § 3. Duties.—The duties of the Board of Conciliation shall be to investigate industrial disputes, or strikes or lockouts arising between employer and employees, or capital and labor; to ascertain, as near as may be, the cause or causes of such industrial disputes or strikes or lockouts, to make a finding of fact in respect thereto; to report their findings of fact to the Governor as soon as may be practicable, and annually to the General Assembly of the State of South Carolina (subject to the

proviso hereinafter made), to endeavor, as far as possible, to induce both sides to such an industrial dispute or strike or lockouts to arrive at an agreement; to remove misunderstandings or differences; to nominate, appoint or act as arbitrators when so requested by both sides to the controversy, and, in general, to remove as much as possible the causes for industrial disputes or strikes or lockouts, and to induce an amicable settlement of the same.

1916, XXIX, 935.

(5195) § 4. Powers.—The Board of Conciliation shall have the power to summon witnesses and compel them to testify; to compel the production of books or documents relating to questions in dispute; to inspect property with respect to which there is a dispute; with relation to industrial disputes or strikes or lockouts; to examine into working conditions and sanitary conditions, and at all times to have access to any property or premises necessary to such inspection.

1916, XXIX, 935.

(5196) § 5. Additional Powers—Reports.—The Board of Conciliation shall have power to summon before it and to examine in public or in executive session any persons concerned in such strike or lockouts, or industrial disputes or any other person within the State of South Carolina, and to make a report to the Governor or to the General Assembly of such testimony and its recommendation with respect thereto: *Provided, however,* That no report shall be made in such cases where a majority of such Board of Conciliation shall deem it advisable so to do.

1916, XXIX, 935.

(5197) § 6. Compensation.—The compensation of the Board shall be ten (\$10.00) dollars per day to each member in attendance while actually employed in the performance of the duties herein prescribed, in addition to traveling expenses.

1916, XXIX, 935.

(5198) § 7. Governor May Convoke.—The Board can be called into session, and into the performance of its duties and functions, by the Governor.

1916, XXIX, 935.

(5199) § 8. How Board Constituted.—One of the members of the said Board of Conciliation shall be an employer of labor in behalf of any incorporated company; one to be a member of a recognized labor union; the third member to be appointed on recommendation of the two so appointed as aforesaid: *Provided,* That in case the two members appointed as aforesaid do not agree on the third member within thirty days after their appointment, then the Governor shall use his discretion in the appointment of the third member without recommendation, so that at least one member shall be neither an employer of labor in behalf of an incorporated company or an employee of any such company.

1916, XXIX, 935.

(5200) § 9. **Purpose and Interpretation of Article.**—The duties and functions of the Board of Conciliation hereby created shall be the conciliation of industrial disputes or strikes or lockouts, and the removal of causes for industrial disputes or strikes or lockouts; and their powers and the terms of this Chapter shall be favorably construed for the promotion of that end.

1916, XXIX, 935.

(5201) § 10. **Penalty for Violation.**—Any person, firm or corporation violating the provisions of this Chapter shall, upon conviction, be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars, or sentenced to not more than thirty (30) days upon the county chaingang.

1919, XXXI, 118.

PART II.

Of the Acquisition, the Enjoyment and the Transmission of Property, Real and Personal; the Domestic Relations and Other Matters Connected With Private Rights.

TITLE I.

OF REAL PROPERTY.

CHAPTER LXIII. Tenure of Lands and Confirmation of Certain Titles; Titles to Catawba Indian Lands, 1570.

CHAPTER LXIV. Legal Formalities, Construction and Operation of Conveyances and Mortgages of Land and Other Instruments Affecting Property, 1575.

CHAPTER LXV. Dower and Allotment Thereof, 1584.

CHAPTER LXVI. Estate for Life and for Years—Landlord and Tenant—Joint Tenants and Tenants in Common—Betterments—Miscellaneous Provisions Concerning Real Estate, 1594.

CHAPTER LXIII.

Tenure of Lands and Confirmation of Certain Titles; Titles to Catawba Indian Lands.

ARTICLE 1. Tenure of Lands and Confirmation of Certain Titles, 1570.

ARTICLE 2. Titles to Catawba Indian Lands, 1574.

ARTICLE I.

Tenure of Lands and Confirmation of Certain Titles.

(5202) § 1. **Free and Common Socage.**—The only tenure of lands in South Carolina is that of free and common socage.

Civ. '12, § 3439; Civ. '02, § 2353; G. S. 1761; R. S. 1872; 1712, II, 413.

(5203) § 2. **Former Grants, Etc., Made Valid and Persons May Hold Under Same Against State.**—All and every person or persons who are now possessed of or do hold any messuages, lands, tenements or hereditaments whatsoever in the State of South Carolina, by and under any original patents, grants, deeds, indentures or poll, either made by the former Lords Proprietors or by their Palatine, or his deputy, and any three or more of the Lords Proprietors, or their deputies, or by any of their Governors, and any three or more of the said Lords Proprietors, or the said Lords Proprietors' deputies, or by any other person or persons whatsoever, commissioned by their Palatine, and any three or more of the said Lords Proprietors, or by any five of the said Lords Proprietors, their

deputies or commissioners, as of fee simple or fee simple conditional, or for life or for terms of years, and all other person or persons whatsoever who are now possessed of or do hold any such estate or estates, by virtue of any mesne conveyances, derived from and under all or any such original patents, grants, deeds, indented or poll, shall and may from henceforth quietly and peaceably have, hold, use, occupy, possess and enjoy all and every such messuages, plantations, lands, tenements and hereditaments whatsoever, to them, their heirs, executors, administrators and assigns, respectively, according to the several tenures in such original patents, grants, deeds indented or deeds poll, and mesne conveyances, or last wills, derived from and under them respectively mentioned and expressed, and that against the said State forever, and against all and every the said Lords Proprietors and their heirs, and all and every person and persons whatsoever, save and except as hereinafter excepted.

Civ. '12, § 3440; Civ. '02, § 2354; G. S. 1762; R. S. 1873; 1731, III, 298.

(5204) § 3. Former Patents, Grants, Etc., Valid Notwithstanding Certain Designated Errors.—The said patents, grants, deeds, indented or poll, shall be held valid, notwithstanding:

(1) Any misnomer or omission of the names of any of the said Lords Proprietors, or their deputies, any want of significant and necessary words in law for conveying of such lands, any omission, commission or mistake whatsoever in the said grants, done, omitted or committed by all or any of the said Lords Proprietors, their deputies or trustees commissioned by the said Lords Proprietors for selling of lands in this State.

(2) Any proper seal or seals not being used or affixed by the said Proprietors, their Governors, deputies, commissioners or trustees to all or any such patents, grants, indentures, deeds or commissions.

(3) The lands granted or conveyed, or intended to be granted and conveyed, by such patents, grants, deeds, indented or poll have not been sufficiently described or ascertained in such patents, grants, deeds, indented or poll so that, nevertheless, any such lands, or some part thereof, have been surveyed or meted out, or ascertained by survey to such patentees, grantees or purchasers, or to their heirs or assigns, or to the heirs or assigns of the persons named as patentees or grantees or assigns in such patents or grants or deeds of assignment, or to their or any of their attorneys or agents in their behalf, by a survey of a sworn surveyor or surveyors, as part of such patent lands, or certified or returned into the office of the late Surveyor General (now Secretary of State), by a sworn surveyor or surveyors thereto appointed; or so that the same lands, or some part thereof, have been described or ascertained by subsequent grants thereof, to such original patentees, grantees or to persons named as such, their heirs or assigns, or to under-purchasers by mesne conveyances from such original patentees, grantees or assignees, or persons named as such, their heirs or assigns, or to persons claiming under them as such, or to their attorneys or agents in their or any of their behalf, before the 20th day of August, A. D. seventeen hundred and thirty-one (1731).

(4) Any want of livery and seizin, enrollment, attornment or any other defect whatsoever in the execution of all or any such patents, grants, deeds, indented or poll, so made by the said Lords Proprietors, or any of them, their Governors, deputies or commissioners, or in the not timely execution, or for the nonexecution of the same, by reason of the first or former patentee or patentees dying before such lands were meted out to him or them, in part of such patents, or otherwise howsoever, so that, nevertheless, the heir or heirs of the persons who were named as patentees or grantees, or purchasers in such patents, grants or deeds of assignment, or their heirs or assigns of such first or former patentee or patentees, or any person or persons whatsoever, claiming as such, under all or any of them, their agents or attorneys, did cause any part of such vacant and unoccupied lands to be meted out or ascertained to them, or any of them, their heirs or assigns, or persons named as such in such deeds of assignment, conveyances or last wills, or to their attorneys or agents in their behalf, by survey or surveys of a sworn surveyor or surveyors, or certified or returned into the late Surveyor General's office, for and in part of such patent lands before conveyed or intended to be conveyed by such original patents, grants, indentures or deeds. Or,

(5) Any other defect, omission or commission in form or substance, law or fact, in all or any such original patents, grants, indentures, or deeds, or assignments of the same, or in the execution thereof, or any of them, so that such lands, or some part of them, have been meted out or ascertained to such patentees, grantees or assigns, or to persons named as such in any such patents, grants or deeds of assignment, or to their attorneys or agents in their behalf, or return into the late Surveyor General's office as aforesaid, at any time before the said 20th day of August, A. D. 1731.

Civ. '12, § 3441; Civ. '02, § 2355; G. S. 1763; R. S. 1874; 1731, III, 298.

(5205) § 4. Ratification and Confirmation of Former Grants, Etc., Saving Claims of Third Persons.—All and every such patents, grants, indentures and deeds and all other patents, grants, indentures and deeds from the said Proprietors, their Governors, deputies, commissioners or trustees, where any lands have been so meted or ascertained, or returned as aforesaid, and the assignments thereof, are hereby ratified and confirmed, for and notwithstanding all or any such defects in the patents, grants or deeds aforesaid, or any of them, or the assignments thereof, or other defects whatsoever, in not timely executing, undue or nonexecution thereof as aforesaid, saving to every person and persons whatsoever, bodies politic and corporate, their executors, administrators and assigns, other than to the State of South Carolina, and other than to the said Lords Proprietors, and their heirs, and other than to such person and persons who do or may stand seized or possessed in trust, for the said State, or for the said Lords Proprietors, all such right, title, interest and demand whatsoever, which they or any of them now have and may claim of, in or to the said lands, tenements and hereditaments whatsoever, or any part thereof.

Civ. '12, § 3442; Civ. '02, § 2356; G. S. 1765; R. S. 1875; 1731, III, 299.

(5206) § 5. **Estate of John Lord Carteret Not Altered or Abridged.**—Nothing herein contained shall extend or be construed to alter or abridge the Right Honorable John Lord Carteret, his heirs, executors, administrators or assigns, or the said Lords Proprietors or their heirs of any estate, right, title or interest whatsoever, which have or has been saved and reserved unto the said John Lord Carteret, or to the late Lords Proprietors, or any of them, in and by the Act entitled “An Act for establishing an agreement with seven of the Lords Proprietors of Carolina, for the surrender of their title and interest in that province to His Majesty;” nor to revive or enlarge any estate or right or interest whatsoever in the said Lords Proprietors, or any of them, their or any of their heirs, of, in, and to the estates aforesaid, or any part thereof, which they or any of them have granted and conveyed as aforesaid, to any person or persons whatsoever, or which they have surrendered by virtue of the aforesaid Act.

Civ. '12, § 3443; Civ. '02, § 2357; G. S. 1765; R. S. 1875; 1731, III, 299.

Chisolm v. Cains, 67 Fed. 285, 289.

(5207) § 6. **Grants, Etc., Before August 20, 1731, Not to Be Impeached for Certain Causes.**—No grant, deed of feoffment, deed of bargain and sale, deeds of gift, or other conveyance of any lands or tenements whatsoever, made prior to the said 20th day of August, 1731, shall be impeached or set aside in any Courts of law or equity for want of attornment or of livery and seizin or enrollment thereof, or because such conveyance has been made by way of assignment or endorsement on such deeds or grants without other ceremony, nor for any other defect in the form or in the manner of the execution of such deeds or grants, or of the endorsements or assignments thereof, either by the first grantor, or in any of the mesne conveyances derived therefrom, so that the right was or would have been in the person conveying, if such defects had not happened in the form of such grants, deeds or conveyances, or in the manner of the execution of the same aforesaid.

Civ. '12, § 3444; Civ. '02, § 2358; G. S. 1766; R. S. 1876; 1731, III, 302; 4 Ann, c. 16; 1712, II, 434.

(5208) § 7. **Titles Derived Through Aliens Legalized.**—Any citizen or citizens, alien or aliens, who, prior to the 19th day of December, A. D. one thousand eight hundred and seven (1807), entered into any *bona fide* contract or contracts, or received any grant or grants, or other deed or deeds of conveyance for, or relating to, any real property in this State, or who derived their titles from or through aliens, either mediately or immediately, may and shall hold and enjoy the same, in fee simple, or for any less estate, according to the nature of his, her or their contract or contracts, grant or grants, or other deed or deeds of conveyance; any law, usage or custom to the contrary thereof in any wise notwithstanding: *Provided*, That nothing contained herein shall be so construed as to interfere with, or at all invalidate, any grants of real property which may, before the said 19th day of December, 1807, have been made by the Legislature of this State unto any person or persons, or unto any body or bodies corporate, or to affect in any measure, descents cast before the date aforesaid.

Civ. '12, § 3445; Civ. '02, § 2359; G. S. 1767; R. S. 1879; 1807, V, 547.

(5209) § 8. **Aliens and Foreign Corporations Entitled to Same Property as Natural Born Citizens.**—Real and personal property of every description may be taken, acquired, held and disposed of by an alien, subject to the provisions of Section (4053), in the same manner, in all respects, as by a natural born citizen; and a title to real and personal property of every description may be derived through, from or in succession to an alien, in the same manner, in all respects, as through, from or in succession to a natural born citizen. Foreign corporations shall have and exercise all rights granted to aliens in this Section.

Civ. '12, § 3446; Civ. '02, § 2360; G. S. 1768; R. S. 1880; 1872, XV, 72; 1873, XV, 488.
 Construed. *Tucker v. Atlantic Coast Lumber Co.*, 78 S. C. 134, 142, 59 S. E. 859.

(5210) § 9. **Grants Obtained Five Years Before July 4, 1776, Absolutely Confirmed.**—An actual, peaceable, and quiet possession of lands five years previous to the 4th day of July, 1776, shall be deemed a good and sufficient title; and any grant obtained since that time, or which may be obtained, for the said land is hereby declared null and void.

Civ. '12, § 3447; Civ. '02, § 2361; G. S. 1769; R. S. 1880; 1787, V, 40.

ARTICLE II.

Titles to Catawba Indian Lands.

(5211) § 1. **Catawba Indians May Lease Their Lands for Life—Proviso.**—It shall be and may be lawful for the Catawba Indians to grant and make to any person any lease or leases, for life or lives, or term of years, of any of the lands vested in them by the laws of this State: *Provided*, That no lease shall exceed the term of ninety-nine years, or three lives in being.

Civ. '12, § 3448; Civ. '02, § 2362; G. S. 1770; R. S. 1881; 1808, V, 576.

(5212) § 2. **Formal Requisites of Lease.**—No lease of the lands of the Catawba Indians, whether for life or lives, or terms of years, shall be held or deemed as valid and good in law, unless the same be witnessed by the Commissioner for said tribe at the time of making thereof, and be signed and sealed by at least four of the head men or chiefs of the said Catawba Indians.

Civ. '12, § 3449; Civ. '02, § 2363; G. S. 1771; R. S. 1882; 1808, V, 576; 1854, XII, 324.

(5213) § 3. **Certain Rights Vested in Lessees of Catawba Indians.**—All the reversionary right, title and interest of this State in and to the Catawba Indian lands, situated in the Counties of York and Lancaster, within a boundary of fifteen miles square and which are represented in the plat of survey made by Samuel Wiley, and dated the 22d day of February, 1764, and now on file in the office of the Secretary of State, are hereby vested in the persons who now or hereafter may hold the said lands as lessees of the said Catawba Indians, their heirs and assigns, according to the location of their respective leases.

Civ. '12, § 3450; Civ. '02, § 2364; G. S. 1772; R. S. 1883; 1838, VI, 602.

(5214) § 4. **Grants to Lessees of Leased Catawba Indian Lands.**—Each lessee of the Catawba Indian lands who shall deposit with the Secretary of State his lease, and also the receipt or receipts of the former tax collector of the county wherein such lands may be situated for such taxes as may have been paid thereon, as heretofore required by law, shall be entitled to locate and receive a grant from the State (in the manner provided by law for granting vacant lands) for the land held by him under lease, upon payment of the usual fees, and thenceforth hold the land so granted in the same right as any other lands granted by this State are held.

Civ. '12, § 3451; Civ. '02, § 2365; G. S. 1773; R. S. 1884; 1840, XI, 146.

(5215) § 5. **Lessee—How to Proceed If Lease Be Lost—Proviso.**—If any lessee of the Catawba Indian lands, being in possession, shall not have it in his power to deposit the lease under which he holds, as required by the preceding Section, by reason of its loss or otherwise, such person shall file in the office of the Secretary of State a notice of his intention to apply for the issuing of a grant, and shall publish the same in one or more of the newspapers of the county in which such land is situated, for at least three months before the time of such intended application, which notice shall set forth the cause of the inability of such person to produce such lease, and shall be verified by the oath of the applicant; and such grant shall thereupon issue, if the person applying be otherwise entitled thereto: *Provided*, That if any person shall, within five years from the issuing of such grant, produce a lease of the premises as granted, such grant shall thereupon become null and void.

Civ. '12, § 3452; Civ. '02, § 2366; G. S. 1774; R. S. 1885; 1857, XII, 611.

CHAPTER LXIV.

Legal Formalities, Construction and Operation of Conveyances and Mortgages of Land and Other Instruments Affecting Property.

ARTICLE 1. Form and Execution of Conveyance of Land, 1575.

ARTICLE 2. Certain Conveyances, Etc., Void, 1577.

ARTICLE 3. Mortgages of Land and Satisfaction Thereof, 1581.

ARTICLE I.

Form and Execution of Conveyance of Land.

(5216) § 1. **Form of Conveyance—Must Have Two or More Witnesses.**—The following form or purport of a release shall, to all intents and purposes, be valid and effectual to carry from one person to another or others the fee simple of any land or real estate, if the same shall be executed in the presence of and be subscribed by two or more credible witnesses:

“The State of South Carolina:

“Know all men by these presents that I, A B, of, in the State aforesaid, have granted, bargained, sold, and released, and by these pres-

ents do grant, bargain, sell, and release, unto the said C D all that (here describe the premises), together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging, or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned, unto the said C D, his heirs and assigns, forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said C D, his heirs and assigns, against myself and my heirs, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

"Witness my hand and seal, this.....day of....., in the year of our Lord....., and in the..... year of the independence of the United States of America.

"..... [L. S.]"

Provided, This Section shall be so construed as not to oblige any person to insert the clause of warranty, or to restrain him from inserting any other clause or clauses, in conveyances hereafter to be made, as may be deemed proper and advisable by the purchaser and seller, or to invalidate the forms heretofore in use within this State.

WHAT CONSIDERED SEALED INSTRUMENTS.—Whenever it shall appear from the attestation clause or from the other parts of any instrument in writing that it was the intention of the party or parties thereto that said instrument should be a sealed instrument, then said instrument shall be construed to be, and shall have the effect of, a sealed instrument, although no seal be actually attached thereto.

Civ. '12, § 3453; Civ. '02, § 2367; G. S. 1775; R. S. 1886; 1795, V, 255; 1899, XXIII, 48.

See, also, post § (5347).

Cook v. Cooper, 59 S. C. 560, 38 S. E. 213; Trustees v. Bryson, 34 S. C. 401, 13 S. E. 619; Sullivan v. Latimer, 38 S. C. 417, 17 S. E. 221; Heyward v. Farmers' Min. Co., 42 S. C. 138, 19 S. E. 964, 28 L. R. A. 42. See also Mitchell v. Parham, Harp. 1, decided in 1823. Seal is necessary. Cline v. Black, 4 McC. 431; Jones v. Crawford, 1 McM. 373. But whatever is intended as a seal sufficient. St. Phillip's Church v. Zion Church, 23 S. C. 297. Grantor's estate need not be stated. Kottman v. Ayer, 1 Strob. 522. Grantee's name must be inserted. Hardin v. Hardin, 32 S. C. 599, 11 S. E. 102. Deed to "joint heirs" of A. & B. Holeman v. Fort, 3 Strob. Eq. 66. Property must be sufficiently described to show intention. Lorick & Lowrance v. McCreery, 20 S. C. 424; Navarra Co. v. Richardson, 26 S. C. 401, 2 S. E. 307. Recital is no substantial part of deed. Harrison v. Maxwell, 2 N. & McC. 347. As to *habendum*. Ingram v. Porter, 4 McC. 193; Stockton v. Martin, 2 Bay 471; Porter v. Ingram, Harp. 492. Limitations in remainder to persons named in *habendum* sustained, though the persons are not named in the premises or granting clause. Millage v. Lamar, 4 DeS. 617. A deed to "A and his associates" is sufficiently certain. Duncan v. Beard, 2 N. & McC. 400. Signature must be in name of principal when executed by agent. Prior v. Coulter, 1 Bail. 517; Webster v. Brown, 2 S. C. 428. Execution by only some of grantors recited. Arthur v. Anderson, 9 S. C. 234; Harrelson v. Sarvis, 39 S. C. 14, 17 S. E. 368. As to description of land. Sally v. Gunter, 13 Rich. 72. As to warranty. Lorrick v. Hawkins, 1 Rich. 417; Morris v. Owens, 3 Strob. 199; McCracken v. Anselv, 4 Strob. 1; Jeter v. Glenn, 9 Rich. 374; Evans v. McLucas, 12 S. C. 56; Lessly v. Bowie, 27 S. C. 193, 3 S. E. 199; Davis v. Townsend, 32 S. C. 112, 10 S. E. 837; Hardin v. Clark, 32 S. C. 480, 11 S. E. 304; Ex parte Hardin 34 S. C. 377, 13 S. E. 615. Two witnesses necessary. Allston v. Thompson, Chev. 271; Craig v. Pinson, Ib. 272; Jones v. Crawford, 1 McM. 373; Young v. Young, 27 S. C. 201, 3 S. E. 202; Little v. White, 29 S. C. 170, 7 S. E. 72; Navarra Co. v. Richardson, 26 S. C. 401, 2 S. E. 307. But ten years' adverse possession under deed with one witness may cure the defect. Lvles v. Kirkpatrick, 9 S. C. 265. As to proof by witnesses. Barry v. Wilbourne, 2 Bail. 91; Brazel v. Fair, 26 S. C. 370, 2 S. E. 293; McGowan v. Reid, 27 S. C. 263, 3 S. E. 337; Little v. White, 29 S. C. 170, 7 S. E. 72. Or their handwriting when absent or dead. Manigault v. Hampton, 1 Brev. 394; Sims v. DeGraffenreid, 4 McC. 253; Melwee v. Sutton, 2 Bail. 128; Collins v. Lamasters, 2 Bail. 141; Dawson v. Dawson, Rich. Eq. 241; Smith v. Asbell, 2 Strob. 141; Lyon v. Holmes, 11 S. C. 429. Or their mark. Martin v. Quatebaum, 3 McC. 205. As to the delivery. Ingram v. Porter, 4 McC. 193; Jackson v. Insbinet, 2 Hill Ch. 41; Dawson v. Dawson, Rice Eq. 243; Younge v. Moore, 1 Strob. 48; Harris v. Saunders, 2 Strob. Eq. 370; McDowell v. Chambers, 1 Strob. 347; McKenzie v. Roper, 2 Strob. 306; McCracken v. Anselv, 4 Strob. 1; Wood v. Ingram, 3 Strob. Eq. 105; Folk v. Varn, 9 Rich. Eq. 203; Williams v. Sullivan, 10 Rich. Eq. 217; Cloud v. Calhoun, Ib. 358; Withers v. Jenkins, 6 S. C. 122; Arthur v. Anderson, 9 S. C. 234; Fraser v. Davie, 11 S. C. 56; Shaw v. Cunningham, 16 S. C. 632; McDaniel v. Anderson, 19 S. C. 216; Carrigan v. Byrd, 23 S. C. 91; Cohn v. Cohn, 24 S. C. 597; Little v. White, 29 S. C. 170, 7 S. E. 72; Walker v. Frazier, 2 Rich. Eq. 99; McGee v. Wells, 52 S. C. 472, 30 S. E. 602; Guess v. R. R. Co., 40 S. C. 450, 19 S. E. 62.

This form not indispensable. Any form of words sufficient, if intention to convey can be ascertained, and there be a seal, two witnesses and description of the property. Lorick & Lowrance v.

McCreery, 20 S. C. 424; Navassa Co. v. Richardson, 26 S. C. 401, 2 S. E. 307; Sally v. Gunter, 13 Rich. 72. Form of bargain and sale not invalidated by 'his Section. Sanders v. Hartzog, 6 S. C. 479; Lorick & Lowrance v. McCreery, 20 S. C. 424. But the words "heirs and assigns" are necessary to convey the whole fee. Lorick & Lowrance v. McCreery, 20 S. C. 242; McMichael v. McMichael, 51 S. C. 555, 29 S. E. 403. Feoffment with livery of seizin. Dehon v. Redfern, Dad. Eq. 115. Deeds insufficient as bargain and sale, operative as covenants to stand seized. Pledger v. David's administrators, 4 DeS. 264; Milledge v. Lamar, Ib. 617. Deed necessary to convey freehold estate. Miller v. Graham, 1 Brev. 448. Sufficiency of writing to give equitable interest. Craig v. Craig, 1 Bail. Eq. 102; Pope v. Montgomery, 24 S. C. 594; Wilson v. Watkins, 48 S. C. 341, 26 S. E. 668. Covenants to stand seized to use, when effectual to convey land. Craig v. Pierson, Cheves 272; Chancellor v. Windham, 1 Rich. 161; Kinsler v. Clarke, Ib. 170; Dinkins v. Samuel, 10 Rich. 66; Ellen v. Ellen, 16 S. C. 142; Watson v. Watson, 24 S. C. 228. Endorsement on back of deeds insufficient as conveyance. Turner v. Moore, 1 Brev. 236; Clark v. O'Margey, 2 Brev. 134. Blank paper signed, sealed and delivered and afterwards filled up is no deed. Farminter v. McDaniel, 1 Hill 267. Ratification of defective deed. Wallace v. McCullough, 1 Rich. Eq. 426; Broughton v. Telfer, 3 Rich. Eq. 431.

Does the statutory deed have the same effect as a deed of feoffment with livery of seizin? See Young v. McNeill, 78 S. C. 143, 59 S. E. 986.

Quit claim deed proper mode of conveying fee. Martin v. Ragsdale, 71 S. C. 67, 50 S. E. 671.

Railroad as boundary. Foster v. Foster, 81 S. C. 307, 62 S. E. 320.

Superadded words amounting to a mere repetition of the preceding words of limitation are inoperative to vary the construction. Poston v. Midland Timber Co., 76 S. C. 36, 56 S. E. 546; Danna v. Prescott, 5 Rich. Eq. 356, 2 Jarman Wills 271.

Life estate with contingent remainder over. Mitchell v. Cleveland, 76 S. C. 432, 57 S. E. 33; Mitchell v. Allen, 81 S. C. 340, 61 S. E. 1087, 62 S. E. 399.

Conveyance for railroad purposes only; conditions stated. Gaffney v. Wood, 74 S. C. 323, 54 S. E. 573.

When consideration may be proved by parol. Whitman v. Corley, 72 S. C. 410, 52 S. E. 49.

Duty of Court to construe. Foster v. Foster, 81 S. C. 307, 62 S. E. 320.

Vested remainder under limitation in will. Roberts v. Herron, 78 S. C. 115, 58 S. E. 968.

Conflicting clauses; construction of. Crawford v. A. C. Lumber Co., 79 S. C. 166, 60 S. E. 445.

Grant of growing timber; construction. Wilson Lumber Co. v. D. W. Alderman & Co., 80 S. C. 106, 61 S. E. 217, 128 Am. St. Rep. 865.

Right of vendee buying up outstanding title as against vendor. Brown v. Thompson, 81 S. C. 380, 62 S. E. 440.

Delivery; record presumptive evidence. Sparkman v. Jones, 81 S. C. 453, 52 S. E. 370. Testimony to rebut. Shute v. Shute, 82 S. C. 264, 64 S. E. 145. Delivery question for jury. Mitchell v. Allen, 81 S. C. 340, 61 S. E. 1087, 62 S. E. 399.

Limitations inserted in deed made under judicial sale, at direction of purchaser. Corbett v. Fogle, 72 S. C. 312, 51 S. E. 884.

Words of limitation in covenant of warranty only does not affect estate. Wilson v. Garland, 77 S. C. 171, 57 S. E. 728.

Deed to A, "her, and her children and her assigns forever" held to convey a fee conditional. Dillard v. Yarboro, 77 S. C. 227, 57 S. E. 841. Deed to "E. J. forever, and at her death to her children, J. W. C., M. M. E. and E. T., etc." held to carry life estate to E. J. Windham v. Howell, 78 S. C. 187, 59 S. E. 852.

"Heirs" word of limitation in will. Fishburne v. Sigwald, 79 S. C. 551, 60 S. E. 1105.

Reservation of life estate for grantor. Merck v. Merck, 83 S. C. 329, 65 S. E. 347, 137 Am. St. Rep. 815.

"Issue" word of limitation. Williams v. Gause, 83 S. C. 265, 65 S. E. 241.

Life estate by implication in trustee. Weathersbee v. Weathersbee, 82 S. C. 4, 62 S. E. 838.

Special warranty only. Folk v. Graham, 82 S. C. 66, 63 S. E. 1106.

Arthur v. Hollowell, 111 S. C. 444, 98 S. E. 202; Farmers Bank & Trust Co. v. Fudge et al, 113 S. C. 25, 100 S. E. 628.

ARTICLE II.

Certain Conveyances, Etc., Void.

(5217) § 1. **Certain Conveyances to Bastard Children or Their Mother Void.**—If any person who is an inhabitant of this State, or who has an estate herein, shall have already begotten, or shall hereafter beget, any bastard child, or shall live in adultery with a woman, the said person having a wife or lawful children of his own living, and shall give, or settle, or convey, either in trust or by direct conveyances, by deed or gift, legacy devise, or by any other ways or means whatsoever, for the use and benefit of the said woman with whom he lives in adultery, or of his bastard child or children, any larger or greater proportion of the real clear value of his estate, real or personal, after payment of his debts, than one-fourth part thereof, such deed or gift, conveyance, legacy, or devise, made or hereafter to be made, shall be null and void, only in favor of wife and legitimate children,

for so much of the amount or value thereof as shall or may exceed such fourth part of his real and personal estate.

Civ. '12, § 3454; Civ. '02, § 2368; G. S. 1785; R. S. 1887; 1703, II, 226; 1795, V, 271.

Must be construed so as to suppress the evil. *Lowry v. Brady*, Speer Eq. 1; *Massey v. Wallace*, 32 S. C. 149, 10 S. E. 937. Applied. *Bouknight v. Brown*, 16 S. C. 155; *Canady v. George*, 6 Rich. Eq. 103. Donor having neither wife nor lawful issue can so give his property to his bastard child. *Harten v. Gibson*, 4 DeS. 139. Such gift is not absolutely void, only voidable at election of wife or legitimate children, and right must be exercised in their lifetime. *Breithaupt v. Banskett*, 1 Rich. Eq. 465; *Ford v. McElroy*, 1 Rich. Eq. 474; *Hull v. Hull*, 2 Strob. Eq. 174. Grand-children cannot avoid gift to illegitimate children. *Taylor v. McRa*, 3 Rich. Eq. 96. Gift to children of bastard daughter, who take as purchasers, and not through her, is not a gift to her use or benefit within this Section. *Hull v. Hull*, 2 Strob. Eq. 174. Adultery defined. *Ib.* Committee of lunatic wife may, under control of the Court, avoid gift. *Taylor v. McRa*, 3 Rich. Eq. 96. Court will not permit when effect would be not to benefit wife. *Ib.* This Section does not give validity to deed to a woman in consideration of future illicit cohabitation. *Cusack v. White*, 2 Mill 279. A legally divorced father of legitimate children may give to a single woman with whom he cohabits more than one-fourth of his clear estate. *Hull v. Hull*, 2 Strob. Eq. 174.

Williams v. Halford, 64 S. C. 396, 42 S. E. 187. See also same case, 67 S. C. 296, 45 S. E. 207. Right of action is personal, and accrues where conveyance or gift took effect; limitations. *Williams v. Halford*, 73 S. C. 119, 53 S. E. 88.

Action to recover three-fourths of value of lands so conveyed is one in equity. *Williams v. Halford*, 64 S. C. 396, 42 S. E. 187.

Tedder et al v. Tedder et al, 108 S. C. 271, 94 S. E. 19; *Tedder et al v. Tedder et al*, 109 S. C. 451, 96 S. E. 157.

(5218) § 2. Conveyance to Defraud Creditors Void.—Every feoffment, gift, grant, alienation, bargain, and conveyance of lands, tenements, or hereditaments, goods and chattels, or of any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise; and every bond, suit, judgment, and execution, which may be had or made, to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures, shall be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators, and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties and forfeitures, by such guileful, covinous, or fraudulent devices and practices, as is aforesaid, are, shall, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate, and of none effect; any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

Civ. '12, § 3455; Civ. '02, § 2369; G. S. 1786; R. S. 1888; 13 Eliz., c. 5; 1712, II, 697; Cooper's Ed., II, 497.

As to fraudulent sale of stock of goods in bulk, see § (3527).

The words "goods and chattels" are inserted after word "hereditaments" in above Section to conform to the original Statute of Elizabeth, II Cooper's Statutes at Large, 497. They were omitted by mistake in the Revised Statutes of 1873, 1882 and 1893. These Statutes are in affirmation of the common law. *Hudnal v. Wilder*, 4 McC. 294; *Footman v. Pendergrass*, 3 Rich. Eq. 33.

As to the application of this Statute to personal property, see the North Carolina case of *Garrison v. Bryce*, 48 N. C. (3 Jones L.) 85, and our own case of *Avery v. Wilson*, 47 S. C. 78, 25 S. E. 286.

As to conveyances. *Croft v. Arthur*, 3 DeS. 223; *Wade v. Calvert*, 2 Mill 27; *Kid v. Mitchell*, 1 N. & McC. 334; *Kirkley v. Blakeney*, 2 N. & McC. 544; *Jenkins v. Clement*, Harp. Eq. 72; *Harrison v. McCall*, Harp. Eq. 170; *Madden v. Day*, 1 Bail. 337; *Henderson v. Dodd*, Bail. Eq. 138; *Blake v. Jones*, Bail. Eq. 141; *Cordery v. Zealy*, 2 Bail. 205; *Lowry v. Pinson*, 2 Bail. 324; *Edwards v. Ford*, 2 Bail. 461; *Hipp v. Sawyer*, Rich. Eq. Ch. 410; *Thomas v. Jeter*, 1 Hill 380; *Brown v. McDonald*, 1 Hill Ch. 297; *Bank v. Toomer*, 2 Hill Ch. 27; *King v. Clarke*, 2 Hill Ch. 611; *Davidson v. Graves*, *Riley Ch.* 219, 232; *Bank v. Mitchell*, *Rice Eq.* 389; *Jacot v. Corbett*, *Chev. Eq.* 71; *Anderson v. Fuller*, *McM. Eq.* 27; *Jones v. Crawford*, 1 McM. 373; *Watson v. Kennedy*, 3 Strob. Eq. 1; *Gracey v. Davis*, 3 Strob. Eq. 55; *Arnold v. Mattison*, 3 Rich. Eq. 153; *Pettus v. Smith*, 4 Rich. Eq. 197; *Godbold v. Lambert*, 3 Rich. Eq. 155; *Gadsden v. Carson*, 9 Rich. Eq. 252; *Bulwinkle v. Grube*, 5 Rich. 286; *Smith v. Culbertson*, 9 Rich. 106; *Anderson v. Rhodus*, 12 Rich. Eq. 104; *Richardson v. Rhodus*, 14 Rich. 95; *Buchanan v. McNinch*, 3 S. C. 498; *Means v. Fenster*, 4 S. C. 249; *Thorpe v. Thorpe*, 12 S. C. 166; *McGowan v. Hitt*, 16 S. C. 610; *Suber v. Chandler*, 18 S. C. 529; *Kohn v. Meyer*, 19 S. C. 201; *Dawson v. Niver*, 19 S. C. 607; *McPherson v. McPherson*, 21 S. C. 270; *Werts v. Spearman*, 22 S. C. 216; *Walker v. Bollman*, 22 S. C. 526; *McSween v. McCown*, 23 S. C. 353; *Woody v. Dean*, 24 S. C. 505; *Wagener v. Mars*, 27 S. C. 97, 2 S. E. 844; *Featherstone v. Dagnall*, 29 S. C. 45, 6 S. E. 897; *Bates v. Cobb*, 29 S. C. 395, 7 S. E. 743; *Watson v. Young*, 30 S. C. 144, 8 S. E. 706; *Archer v. Long*, 32 S. C. 171, 11 S. E. 86; *Shell v. Boyd*, 32 S. C. 359, 11 S. E. 205; *Amaker v. New*, 33 S. C. 28, 11 S. E. 386; *Jackson v. Lewis*, 34 S. C. 1, 12 S. E. 560; *McGee v. Jones*, 34 S. C. 147, 13 S. E. 326; *Bates v. Cobb*, 29 S. C. 395, 7 S. E. 743; *McGahan v. Crawford*, 47 S. C. 566, 25 S. E. 123; *Perkins v. Douglass*, 52 S. C. 129, 29 S. E. 400; *Bank v. Dowling*, 45 S. C. 677, 23 S. E. 982, 52 S. E. 345, 29 S. E. 788; *McGee v. Wells*,

52 S. C. 472, 30 S. E. 602; *Latimer v. Latimer*, 53 S. C. 483, 31 S. E. 304; *Bomar v. Means*, 53 S. C. 232, 31 S. E. 234; *Gentry v. Lanneau*, 54 S. C. 514, 32 S. E. 523; *McElwee v. Kennedy*, 56 S. C. 154, 34 S. E. 86; *Sloan v. Hunter*, 56 S. C. 385, 34 S. E. 658; *Steinmeier v. Steinmeier*, 55 S. C. 9, 33 S. E. 15; *Garvin v. Garvin*, 55 S. C. 360, 33 S. E. 458; *Sullivan v. Ball*, 55 S. C. 343, 33 S. E. 486; *DeLoach v. Sarraff*, 55 S. C. 254, 33 S. E. 2, 35 S. E. 441; *Younger v. Massey*, 39 S. C. 115, 17 S. E. 711; *Michelson v. Merrick*, 47 S. C. 297, 25 S. E. 162; *Sumner v. Murphv*, 2 Hill 488; *Leake v. Anderson*, 43 S. C. 448, 21 S. E. 439; *Booth v. Mozet*, 1 Brev. 216; *McMahon v. Dawkins*, 22 S. C. 314; *Simonton v. Davis*, 4 Stroob. Eq. 133; *Durham Fert. Co. v. Hemphill*, 45 S. C. 621, 24 S. E. 85; *Aultman & Co. v. Salinas*, 44 S. C. 299, 22 S. E. 465; *Grube v. Boyles*, 1 Brev. 266; *Tutt v. Culvert*, 2 Mills 26; *Ingram v. Phillips*, 5 Stroob. 200; *Durant v. Durant*, 36 S. C. 49, 14 S. E. 929; *Harrell v. Kea*, 37 S. C. 369, 16 S. E. 42; *Ferguson v. Harrison*, 41 S. E. 340, 19 S. E. 619; *Anderson v. Pilgram*, 41 S. C. 423, 19 S. E. 1002; *McIntyre v. Legon*, 38 S. C. 457, 17 S. E. 253; *Miller v. Wroton*, 82 S. C. 97, 63 S. E. 62, 63 S. E. 449. Remedy of creditors. *Armour Packing Co. v. London*, 53 S. C. 539, 31 S. E. 500.

Such conveyance cannot be avoided by executor or administrator. *Chappell v. Brown*, 1 Ball. 528; *King v. Clarke*, 2 Hill Ch. 611.

As to judgments. *Wilmington v. Howley*, 1 DeS. 167; *State v. Fife*, 2 Ball. 337; *Posey v. Underwood*, 1 Hill 262; *Hipp v. Sawyer*, Rich. Eq. Ca. 410; *Bowie v. Free*, 3 Rich. Eq. 403; *Dickenson v. Wav*, 3 Rich. 412; *Cureton v. Doby*, 10 Rich. Eq. 411; *McCorkle v. Montgomery*, 11 Rich. Eq. 114; *Weaver v. Wright*, 13 Rich. 9; *Pringle v. Sizer*, 2 S. C. 59; *Smith v. Pate*, 3 S. C. 204; *Arnold v. House*, 12 S. C. 600; *Beattie v. Pool*, 13 S. C. 379; *Weinges v. Cash*, 15 S. C. 58; *Mechanics B. & L. Ass'n v. Fowler*, 35 S. C. 110, 35 S. E. 433; *Drake v. Steadman*, 46 S. E. 474, 24 S. E. 458.

To avoid a deed under this Section it must be shown either that it is without consideration, or made in bad faith by both parties. *Lenhardt v. Ponder*, 64 S. C. 854, 42 S. E. 169.

Creditors alone can attack deed on ground of fraud. *Mitchell v. Cleveland*, 76 S. C. 432, 57 S. E. 33.

(5219) § 3. Conveyances to Deceive Purchasers Void.—Every conveyance, grant, charge, lease, estate, incumbrance, and limitation of use or uses of, in, or out of any lands, tenements, or other hereditaments whatsoever, which may be had or made for the intent and of purpose to defraud and deceive such person or persons, bodies politic or corporate, as shall purchase in fee simple, fee tail, for life, lives, or years, the same lands, tenements, and hereditaments, or any part and parcel thereof, or to defraud and deceive such as have or shall purchase any rent, profit, or commodity in or out of the same, or any part thereof, shall be deemed and taken (only as against such person and persons, bodies politic and corporate, his and their heirs, successors, executors, administrators, and assigns, and against all and every other person and persons lawfully having or claiming by, from, or under them, or any of them, which have purchased, or shall hereafter so purchase, for money or other good consideration, the same lands, tenements, or hereditaments, or any part or parcel thereof, or any rent, profit, or commodity, in or out of the same) to be utterly void, frustrate, and of none effect; and, pretense, color, feigned consideration, or expressing of any use or uses to the contrary notwithstanding.

Civ. '12, § 3456; Civ. '02, § 2370; G. S. 1787; R. S. 1889; 27 Eliz., c. 4; 1712, II, 499.

Does not extend to goods and chattels. *Teasdale v. Atkinson*, 2 Brev. 48; *Footman v. Pendergast*, 3 Rich. Eq. 38. The Stat., 27 Eliz., only affrmance of common law. *Footman v. Pendergast*, 3 Rich. 38. As to notice of purchaser at second sale. *Hudnal v. Wilder*, 4 McC. 294; *Howard v. Williams*, 2 Bail. 575.

(5220) § 4. Parties to Fraudulent Conveyances—How Punished.—All and every the parties to such feigned, covinous, and fraudulent gifts, grants, leases, charges, or conveyances, or being privy and knowing of the same, or any of them, who shall wittingly or willingly put in use, avow, maintain, justify or defend the same, or any of them, as true, simple and done, had, or made *bona fide*, or upon good consideration, to the disturbance or hindrance of the said purchaser or purchasers, lessees or grantees, or of or to the disturbance or hindrance of the said purchaser or purchasers, lessees or grantees, or of or to the disturbance or hindrance of their heirs, successors, executors, administrators, or assigns, or such as have or shall lawfully claim anything by, from, or under them, or any of them, shall incur

the penalty and forfeiture of one year's value of the said lands, tenements, and hereditaments so purchased or charged; the one moiety whereof for the use of the State, and the other moiety to the party or parties grieved by such feigned and fraudulent gift, grant, lease, conveyance, incumbrance, or limitation of use, to be recovered by action in any Court of competent jurisdiction; and also being thereof lawfully convicted, shall suffer imprisonment for one-half year.

Civ. '12, § 3457; Civ. '02, § 2371; G. S. 1788; R. S. 1890; 27 Eliz., c. 4; 1712, II, 500; 13 Eliz., c. 5; 1712, II, 497.

(5221) § 5. Conveyances Upon Good Consideration, Etc., Valid.—Nothing contained in the three preceding Sections of this Chapter shall extend or be construed to impeach, defeat, make void, or frustrate, any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest, or limitation of use or uses of, in, to, or out of any lands, tenements, or hereditaments heretofore at any time had or made or hereafter to be had or made, upon or for good consideration and *bona fide* to any person or persons, bodies politic or corporate; anything mentioned to the contrary notwithstanding.

Civ. '12, § 3458; Civ. '02, § 2372; G. S. 1789; R. S. 1891; 1712, II, 500; 1712, II, 498.

(5222) § 6. Conveyed With Condition, Etc., Afterwards Sold for Good Consideration, First Conveyance Void.—If any person or persons have heretofore made, or hereafter shall make, any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance of, in, or out of any lands, tenements, or hereditaments, with any clause, provision, article, or condition of revocation, determination, or alteration, at his or their will or pleasure, of such conveyance, assurance, grants, limitations of uses or estates of, in or out of the said lands, tenements, or hereditaments, or of, in, or out of any part or parcel of them, contained or mentioned in any writing, deed, or indenture of such assurance, conveyance, grant, or gift; and after such conveyance, grant, gift, demise, charge, limitation of uses or assurance so made or had, shall or do bargain, sell, demise, grant, convey, or charge, the same lands, tenements, or hereditaments, or any part or parcel thereof, to any person or persons, bodies politic and corporate, for money or other good consideration paid or given (the said first conveyance, assurance, gift, grant, demise, charge, or limitation, not by him or them revoked, made void, or altered, according to the power and authority reserved or expressed unto him or them in or by the said secret conveyance, assurance, gift, or grant), then the said former conveyance, assurance, gift, demise, and grant, as touching the said lands, tenements, and hereditaments, so after bargained, sold, conveyed, demised, or charged, against the said bargainees, vendees, lessees, grantees, and every of them, their heirs, successors, executors, administrators, and assigns, and against all and every person and persons which have, shall, or may lawfully claim anything by, from, or under them, or any of them, shall be deemed, taken, and adjudged to be void, frustrate, and of none effect: *Provided*, That no lawful mortgage made, or to be made, *bona fide*, and without fraud or covin, upon good consideration, shall be impeached or impaired by force of anything in this Chapter contained.

Civ. '12, § 3459; Civ. '02, § 2373; G. S. 1790; R. S. 1892; 27 Eliz., c. 4; 1712, II, 500.

ARTICLE III.

Mortgages of Land and Satisfaction Thereof.

(5223) § 1. **Rights and Title of Mortgagor and Mortgagee—Foreclosure and Equity of Redemption.**—No mortgagee shall be entitled to maintain any possessory action for the real estate mortgaged, even after the time allotted for the payment of the money secured by mortgage is elapsed; but the mortgagor shall be deemed owner of the land, and the mortgagee as owner of the money lent or due, and shall be entitled to recover satisfaction for the same out of the land by foreclosure and sale according to law: *Provided*, That notwithstanding the foregoing provision all releases of the equity of redemption shall be binding and effectual in law.

Civ. '12, § 3460; Civ. '02, § 2374; G. S. 2299; R. S. 1893; 1791, V, 170; 1797, V, 311; 1879, XVII, 19.

Before Act of 1791 legal title passed to mortgagee upon defeasance and he could maintain action for the land. *Verce v. Verce*, 2 Brev. 211; *State v. Laval*, 4 McC. 336; *Stoney v. Shultz*, 1 Hill Ch. 465; *Drayton v. Marshall*, Rice Eq. 373; *Mitchell v. Bogan*, 11 Rich. 686; *Laffan v. Kennedy*, 15 Rich. 246; *Reeder v. Dargan*, 15 S. C. 175. Under this Statute a mortgage is not a conveyance. *Burkett v. Whittemore*, 36 S. C. 428, 15 S. E. 618.

Since mortgage does not convey any estate, even after time for redemption has passed. *Thayer v. Cramer*, 1 McC. Ch. 395; *Lowndes v. Chisolm*, 2 McC. Ch. 455; *Simons v. Bryce*, 10 S. C. 354; *Warren v. Raymond*, 12 S. C. 9; *Annelly v. DeSaussure*, 12 S. C. 488; *Reeder v. Dargan*, 15 S. C. 175; *Warren v. Raymond*, 17 S. C. 163; *Hendrix v. Seaborn*, 25 S. C. 481; *Johnson v. Johnson*, 27 S. C. 309, 3 S. E. 606; *Seignious v. Pate*, 32 S. E. 134, 10 S. E. 880; *Hardin v. Hardin*, 34 S. C. 77, 12 S. E. 936 *Glover v. United States*, 164 U. S. 294, 296, 41 L. Ed. 440. Unless as provided in original Act, the mortgagor went out of possession which proviso was stricken out in 1879. *Durand v. Isaacs*, 4 McC. 54; *Stoney v. Shultz*, 1 Hill Ch. 465; *Mitchell v. Bogan*, 11 Rich. 686; *Laffan v. Kennedy*, 15 Rich. 246; *Williams v. Beard*, 1 S. C. 309; *Warren v. Raymond*, 12 S. C. 22.

Release of the equity of redemption operates under the Section as a conveyance of land. *Mitchell v. Bogan*, 11 Rich. 704; *Simons v. Bryce*, 10 S. C. 372; *Navassa Guano Co. v. Richardson*, 26 S. C. 401, 2 S. E. 307; *Tant v. Guess*, 37 S. C. 489, 16 S. E. 477.

Deed of conveyance and separate agreement to recovery constitute a mortgage. *Francis v. Francis*, 78 S. C. 178, 58 S. E. 804.

Mortgagee in possession, right to reconveyance. *Francis v. Francis*, 78 S. C. 178, 58 S. E. 804. Effect of attempted sale under invalid exercise of power. *Griffin v. Griffin*, 82 S. C. 256, 64 S. E. 160.

Amendment of 1873, acted only on remedy. *Sims v. Steadman*, 62 S. C. 300, 40 S. E. 677. A mortgage creditor is not entitled to direct tax collected under Act of 1861 and refunded by Act of Congress, March 2, 1891, c. 496, 26 Stat. 822. *Glover v. United States*, 164 U. S. 294, 295, 41 L. Ed. 440.

Mills v. Sumter Lumber Co. et al, 109 S. C. 276, 95 S. E. 355.

(5224) § 2. **Satisfaction to Be Entered When Mortgage Debts Are Paid.**

—Any person who shall have received full payment or satisfaction, or to whom a legal tender shall have been made, of his debts, damages, costs, and charges, secured by mortgage of real estate, shall, at the request of the mortgagor, or of his legal representative, or of any other person being a creditor of the said debtor, or a purchaser under him, or having an interest in any estate bound by such mortgage, and on tender of the fees of office for entering such satisfaction, within three months after such request made, enter satisfaction in the proper office, on such mortgage, which shall forever thereafter discharge and satisfy the same.

Civ. '12, § 3461; Civ. '02, § 2375; G. S. 1791; R. S. 1894; 1817, VI, 61.

An endorsement on mortgage that its lien is released is not the satisfaction required. *Lynch v. Hancock*, 14 S. C. 56. The satisfaction does not require two witnesses. *Charleston v. Ryan*, 22 S. C. 339. If fraudulent the rights of subsequent purchaser without notice of fraud will be secure. *Charleston v. Ryan*, 22 S. C. 339. Tender of debt, though past due, discharges lien of the mortgage. *Salinas v. Ellis*, 26 S. C. 337, 2 S. E. 121.

Union National Bank of Columbia v. Cook et al, 110 S. C. 99, 96 S. E. 484.

(5225) § 3. **Same — Penalties and Forfeitures.**—Any person having received such payment, satisfaction, or tender, as aforesaid, who shall not, within three months, by himself or his attorney, after request and tender of fees of office, repair to the said office, and enter satisfaction as aforesaid,

shall forfeit and pay to the party aggrieved a sum of money not exceeding one-half of the amount of the debt secured by mortgage as aforesaid, to be recovered by action in any Court of competent jurisdiction within the State; and on judgment being rendered for the plaintiff in any such action, it shall be the duty of the presiding Judge to order satisfaction to be entered on the judgment or mortgage aforesaid, by the Clerk or Register, or other proper officer, whose duty it shall be, on receiving such order, to record the same, and to enter satisfaction accordingly.

Civ. '12, § 3461a; Civ. '02, § 2376; G. S. 1792; R. S. 1895; 1817, VI, 61.

Ryan v. Kaphan, 16 S. C. 154; *Reynolds v. Price*, 88 S. C. 525.
Where tender must include attorney's fees. *Easton v. Woodbury*, 71 S. C. 250, 50 S. E. 790.
Satisfaction by guardian. *Werber v. Cain*, 71 S. C. 346, 51 S. E. 123.
Tender before maturity is not legal tender. *Pyross v. Fraser*, 82 S. C. 498, 64 S. E. 407.
Where penalty has been recovered, question of subsistence of mortgage in suit for foreclosure is *res judicata*. *Eastern Bldg., etc., Ass'n v. Welling*, 116 Fed. Rep. 100.

(5226) § 4. Mortgagor May Apply for Rule to Show Cause for Satisfaction.—Any person who shall be indebted by mortgage shall be, and he is hereby, authorized to apply to the presiding Judge of any Court of General Sessions and Common Pleas, to be held in the county in which such mortgage shall be recorded, for a rule to show cause why satisfaction should not be entered thereon.

Civ. '12, § 3462; Civ. '02, § 2377; G. S. 1793; R. S. 1896; 1817, VI, 61.

(5227) § 5. Proceedings Where Rules Is Issued.—It shall be the duty of such Judge to grant such rule, returnable on a day to be fixed by him; which rule shall be served on the mortgagee, his legal representative, or assignee, or their attorney; and if the party so served shall not attend to show cause, or, attending, shall show insufficient cause, and the Judge shall be satisfied that the mortgage aforesaid has been fully paid, it shall be his duty to order the proper officer to enter satisfaction on the said mortgage.

Civ. '12, § 3463; Civ. '02, § 2378; G. S. 1794; R. S. 1897; 1817, VI, 61.

(5228) § 6. When a Jury May Decide Whether Mortgage Is Paid.—If, on the return of the said rule, it shall appear to the presiding Judge that matters proper for the decision of a jury are involved in the case, he may, at the request of either party, submit the same to the jury, to be decided immediately, in a summary manner; and if the jury shall decide that the mortgage has been paid, satisfaction shall be ordered accordingly.

Civ. '12, § 3464; Civ. '02, § 2379; G. S. 1795; R. S. 1898; 1817, VI, 61.

(5229) § 7. Debt Secured Must Be Proved Before Sale—Exceptions and Provisos.—No sale under or by virtue of any mortgage or other instrument in writing intended as security for a debt, conferring a power upon the mortgagee or creditor to sell the mortgaged or pledged property while said power remains of force, or has not been revoked by the death of the party or parties executing such mortgage or instrument, shall be valid to pass the title of the land mortgaged, unless the debt for which the security is given shall be first established by the judgment of some Court of competent jurisdiction, or unless the amount of the debt be consented to in writing by the debtor subsequently to the maturity of the debt, such consent in writing to be recorded in the office of the Register of Mesne Conveyance, or Clerk of the Court, where the mortgage or other instrument in writing

given to secure such debt is, or ought to be, recorded: *Provided, however*, That nothing herein contained shall render it necessary, nor shall it be necessary, to make the personal representative of a deceased mortgagor a party to any foreclosure proceeding; nor in any foreclosure proceeding (if the mortgagor be dead) shall it be necessary to first establish the debt by the judgment of some Court of competent jurisdiction in order to obtain a decree of foreclosure and sale; nor shall it be necessary to make the mortgagor who may have conveyed the mortgaged premises a party to any action for foreclosure where no judgment for any deficiency is demanded: *Provided, further*, That no sale heretofore made under foreclosure proceedings, to which the personal representatives of deceased mortgagors were not parties, shall be invalid by reason of the absence of such personal representatives.

Civ. '12, § 3465; Civ. '02, § 2380; 1894, XXI, 1900, XXIII.

(5230) § 8. **Registers' or Clerks' Entry on Margin of Mortgage When Cancelled of Record.**—That all the Registers of Mesne Conveyance of the counties of this State, and all Clerks of Court, where, by law, they are required to perform the duties of such Registers of Mesne Conveyances, are required to enter the word "cancelled," together with the signature of such officer, upon the margin, or across the indexes of real estate mortgages, chattel mortgages and judgments, respectively, when any such real estate mortgage, or judgment, is duly cancelled of record by the mortgagee or his assignee, or the judgment creditor or his assignee; such cancellation and signature to be entered in the margin opposite the names of the mortgagor and mortgagee, or judgment debtor and judgment creditor, respectively, or across said names, and that the like cancellation shall on the demand of the mortgagor or judgment debtor, or legal representative, be made on mortgages or judgments, respectively, theretofore cancelled of record; and that upon failure of such Register of Mesne Conveyance or Clerk of Court to comply with this Section, he shall, in each instance, forfeit and pay to the mortgagor or judgment debtor, respectively, the sum of ten (\$10.00) dollars, the same to be recovered in any Court of competent jurisdiction.

Any Clerk or other officer wilfully violating this Section shall, on conviction, be fined not more than one hundred (\$100.00) dollars, or be imprisoned not more than thirty days, in the discretion of the Court, and it shall be the duty of the Solicitor of each Circuit to see that the law is complied with or to forthwith prosecute the violators.

Civ. '12, § 3466; 1910, XXVI, 587; 1911, XXVII, 164; 1912, XXVII, 628.

(5231) § 9. **Date of Consent of Mortgagor.**—The consent of the mortgagor to the amount of the debt shall bear date not more than twelve months prior to any sale under any power contained in any such mortgage as referred to in Section 7; and when any sale of land is made, or to be made, under and according to the provisions of said Section, any balance of the mortgage debt over the purchase price of the land at such sale shall not be extinguished by reason of the mortgagee or his or her assigns becoming

the purchaser at such sale, whether the mortgage contain a provision to that effect or not.

Civ. '12, § 3467; Civ. '02, § 2381; 1896, XXII.

(5232) § 10. Court May Render Judgment and Order Sale at Same Time—Crediting Judgment.—In actions of foreclosure, the Courts shall have the power to render judgment against the parties liable for the payment of the debt secured by the mortgage and to direct at the same time the sale of the mortgaged premises. The said judgment so rendered may be entered and docketed in the Clerk's office in the same manner as other judgments. Upon sale of the mortgaged premises, the officer making the sale under the order of the Court shall credit upon the judgment so rendered for the debt the amount or amounts paid to the plaintiff from the proceeds of the sale.

Civ. '12, § 3468; Civ. '02, § 2382; 1894, XXI.

CHAPTER LXV.

Dower and Allotment Thereof.

ARTICLE 1. Renunciation of Dower, and When the Right Shall Be Barred or Forfeited, 1584.

ARTICLE 2. Mode of Divesting Right of Insane Married Woman, 1589.

ARTICLE 3. Proceedings for Allotment of Dower, 1591.

ARTICLE I.

Renunciation of Dower, and When the Right Shall Be Barred or Forfeited.

(5233) § 1. Who May Take Renunciation of Dower.—When any *femme covert* shall relinquish her right of dower in any real estate and acknowledge the same in writing, if she be within this State, in open Court, or before any Judge of the Court of Common Pleas, Justice of the Supreme Court, Judge of Probate, Clerk of the Court of Common Pleas, or Master, Magistrate or Notary Public; or, if she be without this State, before a Commissioner of Deeds of this State, or before a Commissioner duly appointed by *dedimus*, or before any Minister, Ambassador, Consul General, Consul, Vice Consul, Deputy Consular Agent, Commercial Agent of the United States or any other officer appointed by the United States in foreign countries with the power to administer oaths and having an official seal, or a Clerk of a Court of record, or before a Notary Public, or Justice of the Peace, who must each append to the certificate the official seal used by him, and such acknowledgment shall be recorded, the same shall be effectual in law to convey and pass away the right of such *femme covert*, although she has not executed or acknowledged any deed of conveyance for that purpose: *Provided*, That if the Notary Public or Justice of the Peace do not append to the certificate the official seal used by him, his official character must be attested by a Clerk of the Court of record of the county in which he may reside and append to the certificate of such officer. Any and all certificates of renunciation of dower which may have heretofore been taken before a Notary Public without this State, who has signed

the same and affixed thereto his official seal, but whose official character has not been attested by a Clerk of the Court of record of the county in which he may reside, are hereby validated and their certificate affirmed.

Civ. '12, § 3469; Civ. '02, § 2383; G. S. 1899; R. S. 1899; 1878, XVI, 705; 1880, XVIII, 466; 1889, XX, 380; 1892, XXI, 113; 1909, XXVI, 40, 41; 1918, XXX, 807.

Promise by husband that wife would relinquish subsequent to conveyance void. *Murray v. Crane*, 1 McC. 489. Must be perfect at time when made. *Scanlan v. Turner*, 1 Bail. 421. Shall not be construed as renunciation of inheritance. *Brown v. Spann*, 2 Mill 12; *Mays v. Feaster*, McC. Ch. 137. Officer cannot take upon conveyance in which he is interested. *Scanlan v. Turner*, 1 Bail. 421. Where renounced on mortgage by husband, and executors, under a power in the will, raised money by mortgage on same land with wife's renunciation and paid husband's mortgage, she was entitled to dower in priority of executor's mortgage. *Jeffries v. Allen*, 29 S. C. 501, 7 S. E. 828.

Dower does not attach against purchase money mortgaged. *Groce v. Ponder*, 63 S. C. 162, 41 S. E. 83. Held not to attach, deed being executed, though not recorded, before marriage. *Ex parte Wallace*, 73 S. C. 109, 52 S. E. 873. Protection against outstanding lien of dower. *Wannamaker v. Brown*, 77 S. C. 64, 57 S. E. 665. Election between acceptance of devise and dower. *Ottis v. Ottis*, 80 S. C. 16, 61 S. E. 109. Certificate of renunciation in statutory form estops the wife from claiming title to land. *Wilkins v. Baker*, 77 S. C. 244, 57 S. E. 851.

(5234) § 2. How Dower Renounced and Barred.—The wife of any grantor conveying real estate by deed of release may, whether she be of lawful age or a minor, release, renounce, and bar herself of her dower in all the premises so conveyed, by acknowledging, as prescribed in the preceding Section of this Chapter, upon a private and separate examination, that she did freely and voluntarily, without any compulsion, dread or fear of any person whomsoever, renounce and release her dower to the grantee, and his heirs and assigns, in the premises mentioned. Any renunciation of dower which may have heretofore been probated by either Minister, Ambassador, Consul General or other Consul, Consular Agent, Commercial Agent of the United States or Notary Public, or Justice of the Peace, are hereby validated and their probate confirmed.

Civ. '12, § 3470; Civ. '02, § 2384; G. S. 1797; R. S. 1900; 1876, XVI, 92; 1890, XX, 710; 1909, XXVI, 42; 1918, XXX, 807.

Campbell v. Harris Lithia Springs Co., 74 S. C. 282, 54 S. E. 378, 114 Am. St. Rep. 1001. Prior to the Constitution of 1895 this was held to be the only way by which a married woman could renounce her inchoate right of dower. *McKenzie v. Sifford*, 52 S. C. 104, 29 S. E. 388.

Privy examination is necessary to make renunciation of dower effectual. *Townsend v. Brown*, 16 S. C. 91. Before Act 1890 infant wife could not so renounce dower. *McMorris v. Webb*, 17 S. C. 558. Wife cannot make valid renunciation of dower to one who is in possession of husband's land without title but with his consent. *Mobley v. Mobley*, 14 Rich. Eq. 280.

(5235) § 3. Certificate to Be Endorsed on Release—Form.—A certificate, under the hand of the woman and the hand and seal of the officer or officers aforesaid, shall be endorsed upon such release, or a separate instrument of writing to the same effect, in the form, or to the purport, hereafter following, and be recorded in the office of Register of Mesne Conveyances in the county where the land lies:

“The State of South Carolina, ... County.

“I, F G (., Judge, Magistrate, or other officer, as the case may be), do hereby certify unto all whom it may concern, that E B, the wife of the within named A B, did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish, unto the within named C D, his heirs and assigns, all her interest and estate, and also all her right and claim of dower of, in, or to, all and singular the premises within mentioned and released.

"Given under my hand and seal, this day of, Anno Domini . . .

(Signed)

E B

[L. S.] F G"

Civ. '12, § 3471; Civ. '02, § 2385; G. S. 1798; R. S. 1901; 1878, XVI, 706.

The renunciation of dower is co-extensive with the operation of the deed. *Rickard v. Talbird*, Rice Eq. 158; *Kleckley v. Kleckley*, 2 Hill Eq. 250. Such form wholly inoperative as a renunciation, unless conveyance of land has been executed by husband. *Mobley v. Mobley*, 14 Rich. Eq. 280; *Jeffries v. Allen*, 29 S. C. 501, 7 S. E. 828. Certificate good between the parties without recording. *Kottman v. Ayer*, 1 Strob. 552. Such renunciation of dower by mother on deed of son "amounted to nothing more than a renunciation of all claims of donee against this purchaser." *Bethune v. McDonald*, 35 S. C. 88, 14 S. E. 674. Dower, prior to the Constitution of 1895, could only be renounced by a compliance with this Statute. *McKenzie v. Siford*, 52 S. C. 104, 29 S. E. 388. Where the wife signed a covenant not to claim dower she must return the consideration received before the cancellation of same. *Ib.* As to estoppel by conduct. *Jeffries v. Allen*, 34 S. C. 189, 13 S. E. 365; *Davis v. Townsend*, 32 S. E. 112, 10 S. E. 837; *Anderson v. Woodward*, 41 S. C. 363, 19 S. E. 685; *Stoney v. Bank*, 1 Rich. Eq. 275; *Tennent v. Stoney*, *Ib.* 222; *Smith v. Passenger*, 2 Mills 59. Quit claim deed of dower, signed by wife with husband, no bar to dower. *Townsend v. Brown*, 16 S. C. 91. Since Constitution of 1868, and Acts in pursuance thereof, wife may estop herself by covenant for value to not claim dower. *Shelton v. Shelton*, 20 S. C. 560; *Smith v. Oglesby*, 33 S. C. 194, 11 S. E. 687. Certificate need not be in this exact form; "to same purport" sufficient. *Vinson v. Nicholas*, 28 S. C. 198, 5 S. E. 357. Inchoate right of dower should be renounced; complete right conveyed by deed. *Jeffries v. Allen*, 29 S. C. 501, 7 S. E. 828; *Bethune v. McDonald*, 35 S. C. 88, 14 S. E. 674. Officer's seal indispensable. *Vinson v. Nicholas*, *supra*; *McCreary v. McCreary*, 9 Rich. Eq. 34.

Estoppel by covenant to claim dower. *Moon v. Bruce*, 63 S. C. 126, 40 S. E. 1030.

Cancellation of release—or renunciation—fraud on part of grantee necessary. *Campbell v. Harris* L. Springs Co., 74 S. C. 282, 54 S. E. 378, 114 Am. St. Rep. 1001. Acceptance of devise in lieu of dower. *Scott v. Vaughn*, 83 S. C. 362, 65 S. E. 269.

(5236) § 4. Widow's Acceptance of Distributive Share in Husband's Intestate Estate Bars Dower.—When a husband dies intestate, and his widow accepts her distributive share in his estate, she shall be barred of her dower in the lands of which her husband died seized, and all of such as he had aliened.

Civ. '12, § 3472; Civ. '02, § 2386; G. S. 1797; R. S. 1902; 1880, XVII, 525.

Distributive share is in lieu of dower. *Douglas v. Clark*, 4 DeS. 143; *Avant v. Robinson*, 2 McM. 215; *Buist v. Dawe*, 3 Rich. Eq. 281; *Evans v. Pierson*, 9 Rich. 9; *Glover v. Glover*, 45 S. C. 51, 22 S. E. 739; *Beaty v. Richardson*, 56 S. C. 173, 34 S. E. 73; *Lavender v. Daniel*, 58 S. C. 125, 36 S. E. 550. Election. *Quarles v. Garrett*, 4 DeS. 145; *Pickett v. Peay*, 3 Brev. 545; *Wilson v. Hayne*, Chev. Eq. 37; *Phinney v. Johnson*, 13 S. C. 26; *Avant v. Robinson*, 2 McM. 215; *Labitt v. Schmidt*, Speer Eq. 421; *Caston v. Caston*, 2 Rich. Eq. 1; *Shaffer v. Shaffer*, 16 S. C. 625; *Witherspoon v. Watts*, 18 S. C. 396; *Hair v. Goldsmith*, 22 S. C. 566; *Lavender v. Daniel*, 58 S. C. 125, 36 S. E. 550; *Callahan v. Robinson*, 30 S. C. 249, 9 S. E. 120; *Sumerel v. Sumerel*, 34 S. C. 85, 12 S. E. 932. When both legacy and dower can be taken. *Gordon v. Stevens*, 2 Hill Ch. 46. Where not. *Cunningham v. Shannon*, 4 Rich. Eq. 135. But if legacy accepted fails, dower allowed. *Gist v. Cattell*, 2 DeS. 53. Legacy does not bar dower in lands purchased after will. *Hall v. Hall*, 2 McC. Ch. 269. Nor in lands alienated during coverture. *Braxton v. Freeman*, 6 Rich. Eq. 35. Nor in intestate lands. *Seabrook v. Seabrook*, 10 Rich. Eq. 495.

The widow may claim both dower and homestead against creditors. *Geiger v. Geiger*, 57 S. C. 521, 35 S. E. 1032. Cannot have both dower and distributive share. *Kennedy v. Kennedy*, 74 S. C. 541, 54 S. E. 773; *Williams v. Newton*, 82 S. C. 227, 64 S. E. 219. Participation in partition proceeding estops right to claim dower. *Weathersbee v. Weathersbee*, 82 S. C. 4, 62 S. E. 838.

(5237) § 5. Elopement Forfeits Dower.—If a wife willingly leave her husband, and go away and continue with her adventurer, and shall so continue uninterruptedly for a period of five consecutive years, or who shall leave the State and obtain a divorce under the laws of any State from her husband, or who shall be convicted of adultery, shall be forever barred of her action to demand her dower that she ought to have of her husband's lands: *Provided*, That if her husband shall willingly reconcile her after the going away and continuing with her adventurer, or after the uninterrupted separation as aforesaid, or who shall condone the conviction of adultery and live with her afterwards, in which case she shall be restored to her action.

Civ. '12, § 3473; Civ. '02, § 2387; G. S. 1799; R. S. 1903; 13 Ed. 1, c. 34; 1712, II, 422; 1919, XXXI, 269.

Dower is not barred where the husband deserted the wife and she made unsuccessful efforts to win him back before going to live in adultery. *Beaty v. Richardson*, 56 S. C. 173, 34 S. E. 73; *Bell v. Nealy*, 1 Bailey, 312; *McCreary v. Davis*, 44 S. C. 195, 22 S. E. 178, 28 L. R. A. 655.

(5238) § 6. **Wife Having Jointure Not to Have Dower.**—Every married woman having jointure shall not claim, or have title to have, any dower of the residue of lands, tenements, or hereditaments, that at any time were her said husband's by whom she hath any jointure, nor shall demand or claim her dower of and against them that have the lands and inheritances of her said husband.

Civ. '12, § 3474; Civ. '02, § 2388; G. S. 1800; R. S. 1904; 27 H. 8, c. 10; 1712, II, 469.

An acceptance of an estate in lifetime of husband under articles of separation is not a jointure under this Section. *Shelton v. Shelton*, 20 S. C. 560.

(5239) § 7. **Not Having Jointure, to Have Dower in Order of the Common Law.**—If she have no such jointure, then she shall be admitted and enabled to pursue, have, and demand her dower, after the due course and order of the common law, any law or provision made to the contrary thereof notwithstanding.

Civ. '12, § 3475; Civ. '02, § 2389; G. S. 1801; R. S. 1905; 1712, II, 469.

(5240) § 8. **Woman Shall Be Endowed Whose Jointure Is Recovered.**—If any such woman be lawfully expelled or evicted from her said jointure, or from any part thereof, without any fraud or covin, by lawful entry, action, or by discontinuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's tenements or hereditaments, whereof she was before dowable, as the same lands and tenements so evicted and expelled shall amount or extend unto.

Civ. '12, § 3476; Civ. '02, § 2390; G. S. 1802; R. S. 1906; 27 H. 8, c. 10; 1712, II, 469.

See *Ward v. Wilson*, 1 DeS. 401.

(5241) § 9. **May Take or Refuse Jointure After Marriage.**—If any wife have, or hereafter shall have, any lands, tenements, or hereditaments unto her given and assured after marriage for term of her life, otherwise in jointure, except the same assurance be to her made by Act of the General Assembly, and the said wife, after that fortune, do over-live her said husband in whose time the said jointure was made or assured unto her, the same wife so over-living, shall and may, at her liberty, after the death of her said husband, refuse to have and take the lands and tenements so to her given, appointed, or assured, during the coverture, for term of her life, or otherwise in jointure, except the same assurance be to her made by Act of the General Assembly, as is aforesaid.

Civ. '12, § 3477; Civ. '02, § 2391; G. S. 1803; R. S. 1907; 1712, II, 469.

(5242) § 10. **Refusing Jointure, May Demand Dower.**—Upon the refusal of any wife to have and take the lands and tenements, given, appointed, and assured to her by jointure as aforesaid, she may have, ask, demand, and take her dower according to the common law, of and in all such lands, tenements, and hereditaments, as her husband was and stood seized of any estate of inheritance at any time during the coverture; anything contained herein to the contrary notwithstanding.

Civ. '12, § 3478; Civ. '02, § 2392; G. S. 1804; R. S. 1908; 1712, II, 469.

As to ante nuptial settlements and agreements in bar of dower, see *Gelzer v. Gelzer*, Bailey Eq. 387; *Cunningham v. Shannon*, 4 Rich. Eq. 135; *Spira v. Jeter*, 9 Rich. Eq. 434. Post nuptial agreement for separation, etc. *McKenzie v. Sifford*, 48 S. C. 458, 26 S. E. 706. Widow may become trespasser on lands of her husband, although entitled to dower, after forty days from his death. *Cave v. Anderson*, 50 S. C. 293, 27 S. E. 693; *McCully v. Smith*, 2 Bail. 103; *Lamar v. Scott*, 2 Rich. 516; *Trenholm v. Wilson*, 13 S. C. 174.

(5243) § 11. **Dower Barred Upon Wife Obtaining Divorce.**—That where any married woman has heretofore obtained or procured, or shall hereafter obtain or procure, a divorce under or by virtue of the laws of any State, Territory, country, or jurisdiction whatsoever, dissolving the bonds of matrimony existing between her and her husband, all right and claim of dower of such woman, contingent or otherwise, of, in, or to any lands of such husband in this State, shall be immediately *ipso facto* extinguished and barred, and such wife shall be estopped from claiming dower of, in, or to any such lands in this State of such husband, whether such divorce be deemed valid or invalid in this State, and whether such lands be sold or aliened by such husband or not.

1920, XXXI, 1066.

(5244) § 12. **Applicable Only to Inchoate Rights.**—Nothing in Section 11 contained shall be construed to apply to any case where a contingent right or claim of dower has become vested by the death of the husband prior to the passage of this Article.

1920, XXXI, 1066.

(5245) § 13. **Dower Claims Not Recognized by Law Not Affected.**—Nothing in Section 11 contained shall be construed as recognizing any right or claim of dower which is not otherwise recognized by the laws of this State.

1920, XXXI, 1066.

(5246) § 14. **Dower Barred by Remarriage of Wife During Lifetime of Husband.**—That where any married woman has heretofore married another man, or shall hereafter marry another man, during the lifetime of her husband, either within or without this State, whether she be divorced from such husband or not, and whether any divorce dissolving the bonds of matrimony existing between her and her husband, which may have been rendered, decreed, or granted under or by virtue of the laws of any State, Territory, country or jurisdiction whatsoever, be deemed valid or invalid in this State, and whether such marriage to another man during the lifetime of her husband be deemed valid or invalid in this State, all right and claim of dower of such woman, contingent or otherwise, of, in, or to any lands of such husband in this State, shall be immediately *ipso facto* extinguished and barred, and such woman shall be estopped from claiming dower of, in, or to any such lands in this State of such husband, whether such lands be sold or aliened by such husband or not.

1920, XXXI, 1067.

(5247) § 15. **Only Inchoate Dower Rights Affected.**—Nothing in Section 14 contained shall be construed to apply to any case where a contingent right or claim of dower has become vested by the death of her husband prior to the passage of this Article.

1920, XXXI, 1067.

(5248) § 16. **Dower Claims Not Recognized by Law Not Affected.**—Nothing in Section 14 contained shall be construed as recognizing any

right or claim of dower which is not otherwise recognized by the laws of this State.

1920, XXXI, 1067.

ARTICLE II.

Mode of Divesting Right of Insane Married Woman.

(5249) § 1. **Mode Prescribed to Divest Dower Right of Insane Married Women.**—When a married man desires in good faith to grant, alien, sell, mortgage, or otherwise incumber real estate, and is unable to obtain his wife's renunciation of her right of dower thereto by reason of her being of unsound mind, then, and in such cases, the husband may, by verified petition to the Probate Court, set forth all the facts, particularly describing the real estate sought to be granted, aliened, sold, mortgaged or otherwise incumbered, and praying: 1. That a guardian *ad litem* be appointed to represent the interest of the said married woman under the proceedings begun by said petition. 2. To inquire into the truth of the facts stated in the said petition. 3. To ascertain the true value of the land described in the petition.

Civ. '12, § 3479; Civ. '02, § 2393; R. S. 1909; 1884, XIX, 169.

Protection against outstanding incumbrance of dower. *Wannamaker v. Brown*, 77 S. C. 64, 57 S. E. 665; *Coleman v. Whittle*, 79 S. C. 212, 60 S. E. 523. Under complete contract vendee must rely upon the covenant against dower, when it vests. *Coleman v. Whittle*, 79 S. C. 212, 60 S. E. 523, 128 Am. St. Rep. 841.

(5250) § 2. **Adjudging Dower Right Barred—Conditions—Investment—Interest and Principal—Bond of Husband.**—If the Probate Judge, after a proper hearing, shall find the facts stated in the petition are true, and that said married woman is of unsound mind, it shall be competent for the said Probate Court to adjudge her said right of dower to the land described in the said petition forever barred, upon the following conditions being complied with by the husband: Either one-sixth of the true value of the land described in the petition shall be invested in some security, to be approved by the Probate Court and held in trust by a trustee to be appointed by said Court, with such security as the Court may direct, or, in case such security cannot be obtained, then by the Judge of said Probate Court; that the interest arising therefrom shall be paid to the husband during his life or during the life of the wife if she should predecease him, and the whole to go to her absolutely at the death of the husband if she should then be living; if she should predecease her husband, at her death the property so invested to be turned over to the husband absolutely; or the husband may give a bond to said Probate Judge for one-sixth (1-6) the true value of the land described in the petition, with two good securities, to be approved by the Probate Court, conditioned for the payment of such sum to the wife upon the death of her husband and if she should then be living, but said bond to be null and void if the wife should predecease said husband.

Civ. '12, § 3480; Civ. '02, § 2394; R. S. 1910; 1884, XIX, 169.

Wannamaker v. Brown, 77 S. C. 64, 57 S. E. 665.

(5251) § 3. **Endorsement on Deed or Mortgage.**—Upon the compliance by the husband with either of the above conditions, the Probate Judge shall endorse upon the deed or mortgage the following language: I,..... Probate Judge of the County of, and State of South Carolina, do certify that Mrs., wife of the within named, was regularly adjudged a person of unsound mind on the day of, 19.., by, Probate Judge of the County of, and State of South Carolina; that on the day of, 19.., the petition was filed in this Court to bar the dower of the said Mrs., and the decision barring the dower was rendered on the day of, 19.. Given under my hand and official seal this day of, 19....

Civ. '12, § 3481; Civ. '02, § 2395; R. S. 1911; 1884, XIX, 169.

(5252) § 4. **Effect of Recordation of Endorsement on Deed or Mortgage.**—The above endorsement on any such deed or mortgage shall have the same force and effect as renunciation of dower made as now provided by law, and shall be recorded in all respects as such renunciations are required to be recorded.

Civ. '12, § 3482; Civ. '02, § 2396; R. S. 1912; 1884, XIX, 169.

(5253) § 5. **Proceedings as to Existing Deeds to Bar Dower.**—Like proceedings may be had for divesting the rights of dower of the insane wife of any married man now outstanding in real estate hitherto granted, sold, aliened, mortgaged or otherwise incumbered, such certificate by the Probate Judge in case of the loss of the original deed to be endorsed across the record in the office where the original was recorded.

Civ. '12, § 3483; Civ. '02, § 2397; R. S. 1913; 1884, XIX, 169.

(5254) § 6. **Where Unsoundness Exists, But Not Adjudged—Endorsement—Bar to Dower.**—In case said married woman shall not have been at the time of filing said petition already adjudged of unsound mind, but the fact of such unsoundness be proved to the satisfaction of said Probate Judge, then said Probate Judge shall, upon the compliance by said husband with the conditions set forth in Section 2, endorse upon the deed, mortgage or other instrument, or upon the record, in case of the loss of the original, the following language: I, ..., Probate Judge of the County of, and State of South Carolina, do certify that Mrs., wife of the within named, has this day been by me adjudged of unsound mind upon the petition filed on the day of, in this Court, to bar the dower of said Mrs. and a decision barring the dower has been rendered thereon. Given under my hand and seal this day of And such endorsement shall be in all respects as effectual to bar the dower of such married woman as in cases when such married woman has been already adjudged of unsound mind.

Civ. '12, § 3484; Civ. '02, § 2398; R. S. 1914; 1884, XIX, 169.

ARTICLE III.

Proceedings for Allotment of Dower.*

(5255) § 1. **Widows May Apply to Probate Court for Writ of Admeasurement.**—Any woman who is entitled to dower or thirds in the lands of which her deceased husband was seized in fee at any time during their marriage may apply to the Judge of Probate of the county in which said lands are situated for a writ of admeasurement thereof, to be directed to certain persons who shall be appointed for that purpose.†

Civ. '12, § 3485; Civ. '02, § 2399; G. S. 2283; R. S. 1915; 1786, IV, 742; 1799, VII, 294; 1868, XIV, 77; Con., Art. IV.

*Secret and fraudulent conveyance to defeat dower right. *Brooks v. McMeekin*, 37 S. C. 285, 15 S. E. 1019.

†Where wife has renounced dower on a mortgage, she cannot ask the Court to transfer her inchoate right to the surplus proceeds of sale in foreclosure. *Grube v. Lilichal*, 51 S. C. 442, 29 S. E. 230; *Miller v. Farmers Bank*, 49 S. C. 427, 27 S. E. 514. Right of non-resident widow. *Lamar v. Scott*, 3 Stro. 562. Conflict of State law. *Barnes v. Cunningham*, 9 Rich. Eq. 475. Validity of marriage. *Woods v. Woods*, 2 Bay 476.

Inchoate dower is a substantial right of property and not a lien. *Shell v. Duncan*, 31 S. C. 547, 10 S. E. 330. Dower in lands confiscated. *Bovee v. Rutledge*, 1 Bay 312; *Wells v. Martin*, 2 Bay 20. Dower extend to lands alienated during coverture. *Avant v. Robinson*, 2 McM. 215. Seizin for an instant sufficient. *Douglas v. Dickson*, 11 Rich. 417. No dower in lands sold under judgment or charge obtained before marriage. *Jones v. Miller*, 17 S. C. 380; *Shiell v. Sloan*, 22 S. C. 151. See, also, *Verree v. Verree*, 2 Brev. 211. Dower in lands held in joint tenancy during coverture. *Reed v. Kennedy*, 2 Stro. 69; *Shell v. Sloan*, 22 S. C. 151. Nor wife's dower in lands held by her husband as tenant in common is subject to the paramount right to partition, and will be barred by a sale for partition under the decree of Court. *Holley v. Glover*, 36 S. C. 404, 15 S. E. 605, 31 Am. St. Rep. 833, 16 L. R. A. 776. But where the land is divided in kind, it attaches to the portion assigned him in severalty. *Gaffney v. Jeffries*, 59 S. C. 565, 38 S. E. 216. Not in lands held under lease. *Whitmore v. Wright*, 22 S. C. 446. But in partnership lands. *Reed v. Kennedy*, 2 Stro. 67; *Bowman v. Bailey*, 20 S. C. 550; *Agnew v. Renwick*, 27 S. C. 562, 4 S. E. 223. Not in lands of devisee until debts of devisor are paid. *May v. May*, Rich. Eq. Ca. 378. Failure of husband to record deed does not defeat dower in favor of *bona fide* purchaser. *Sondlev v. Caldwell*, 28 S. C. 580, 6 S. E. 818; *Pickett v. Lyles*, 5 S. C. 275. Dower barred by sale of land under mortgage for purchase money. *Fraser v. Center*, 1 McC. 270; *Crofts v. Crofts*, 2 McC. 54; *Brown v. Duncan*, 4 McC. 346; *Seibert v. Todd*, 31 S. C. 206, 9 S. E. 822; *Lavender v. Daniel*, 58 S. C. 125, 36 S. E. 546. Where renounced on mortgage and land is sold thereunder during lifetime of husband, and surplus turned over to him, dower is lost. *Genobles v. West*, 23 S. C. 154. But where sale is after death of husband, widow entitled to dower in surplus. *Klinck v. Klecklev*, 2 Hill Ch. 250; *Keith v. Trapier*, Bail. Eq. 63; *Davidson v. Graves*, Bail. Eq. 268; *Stoppelbein v. Shulte*, 1 Hill 290; *Wilson v. McConnel*, 9 Rich. Eq. 500; *Hennegen v. Harlee*, 10 Rich. Eq. 285. Widow owning part of mortgage is entitled to dower in lands covered by it. *Heath v. Blake*, 28 S. C. 406, 5 S. E. 842. Dower merges in wife's fee simple title. *Youmans v. Wagener*, 30 S. C. 303, 9 S. E. 106. But not in title to trustee for wife. *Davis v. Townsend*, 32 S. C. 112, 10 S. E. 837. Tax sale does not bar dower. *Shell v. Duncan*, 31 S. C. 547, 10 S. E. 330. Cannot be divested of right by will. *Bannister v. Bannister*, 37 S. C. 529, 16 S. E. 612. Nor by sale under proceedings against husband in bankruptcy. *Spenk v. Kinard*, 4 S. C. 54. Where a sale in foreclosure was made subject to the widow's right of dower, she is not obliged to take her dower out of the surplus proceeds. *Hill v. Gray*, 45 S. C. 91, 22 S. E. 802.

Estates subject to dower; lands taken by devisee. *Milledge v. Lamar*, 4 DeS. 617; *Scott v. Cohen*, 2 N. & McC. 293. Determinable estate. *Peav v. Peav*, 2 Rich. Eq. 409. Lands held in trust. *Davidson v. Graves*, Bail. Eq. 268; *McNish v. Pope*, 8 Rich. Eq. 112; *Brown v. Cave*, 23 S. C. 251. Lands mortgaged to secure purchase money. *Frazier v. Center*, 1 McC. Eq. 270; *Bogie v. Rutland*, 1 Bay 312; *Pledger v. Ellerbe*, 6 Rich. L. 266; *Calmes v. McCracken*, 8 S. C. 87; *Jeffries v. Fort*, 43 S. C. 48, 20 S. E. 755.

Practice in proceedings for allotment of dower. *Frierson v. Jenkins*, 75 S. C. 471, 55 S. E. 890.

(5256) § 2. **Court to Issue Summons to Show Cause—Upon Whom Served, Etc.**—Immediately thereupon the Judge of the Probate Court shall cause a summons to be issued and directed to the heir at law of the deceased, or to his or her guardian if he or she shall be an infant, and if there be no guardian then to the executor or administrator of the deceased, or to any other person or persons who may be in the possession of any of the said lands, commanding him, her or them to appear at the Probate Court to be held in the county where the lands are situated that shall be

held ten days after the service of the summons above mentioned, and show cause why the prayer of the petition should not be granted.

Civ. '12, § 3486; Civ. '02, § 2400; G. S. 2284; R. S. 1916; 1786, IV, 742.

Jurisdiction of Court. *Stewart v. Blease*, 4 S. C. 37; *Tibbetts v. Langley Mfg. Co.*, 12 S. C. 467. *Witte v. Clark*, 17 S. C. 313.

Summons, not writ, no seal or test necessary. *Ellis v. Falconer*, 1 Brev. 77. Issued to executor or administrator. *McDowall v. McDowall*, Bail. Eq. 324. Or to one in possession. *Plantt v. Payne*, 2 Bail. 319. Or to tenant for life or in fee. *Kennedy v. McAilley*, 9 Rich. 395.

As cause for defense, Statute of Limitations may be pleaded. *Lide v. Reynolds*, 1 Brev. 76; *Ramsey v. Dozier*, 3 Brev. 246; *Mitchell v. Poyas*, 1 N. & McC. 85; *Richard v. Talbird*, Rice Eq. 158; *Wilson v. McLenaghan*, McM. Eq. 35; *Caston v. Caston*, 2 Rich. Eq. 1. Adverse possession. *Hill v. Gray*, 45 S. C. 91, 22 S. E. 802.

Deeds not necessary to prove seizin. *Smith v. Paysinger*, 2 Mill 59. Proof of husband's possession during coverture *prima facie* sufficient. *Forrest v. Trammell*, 1 Bail. 77; *Pledger v. Ellerbe*, 6 Rich. 266; *Stark v. Hopson*, 22 S. C. 42; *Stark v. Hopson*, 24 S. C. 215; *Ib.*, 30 S. C. 370, 9 S. E. 345; *Morgan v. Smith*, 25 S. C. 337; *Reid v. Stevenson*, 3 Rich. 66. Evidence from sale under execution against him. *Steen v. Fowler*, 59 S. C. 220, 37 S. E. 829. Evidence as to marriage. *Chapman v. Cooper*, 5 Rich. 452. Or of grantee of husband, under whom defendant holds. *Plantt v. Payne*, 2 Bail. 319; *Gayle v. Price*, 5 Rich. 525. Grantee of husband may show that husband's estate was not a dowerable estate. *Secrest v. McKenna*, Rich. Eq. 72; *Whitmire v. Wright*, 22 S. C. 446; *Brown v. Cave*, 23 S. C. 251. Defendant not estopped from denying seizin when he never had deed from husband. *Morgan v. Smith*, 25 S. C. 337. But is, where he derived title through him. *Pledger v. Ellerbe*, 6 Rich. 266; *Plantt v. Payne*, 2 Bail. 319; *Pyles v. Reeves*, 4 Rich. 559; *Gayle v. Price*, 5 Rich. 525; *Lyles v. Pickett*, 5 S. C. 275; *Horde v. Landrum*, 5 S. C. 213.

Parties defendant—warrantor of grantee in possession of the lands is not a necessary party. *Robertson v. Curlee*, 59 S. C. 454, 38 S. E. 116. He may be vouched and defend without being made a party defendant. *Ib.*; *Goodwyn v. Taylor*, 2 Brev. 171; *Davis v. Wilbourne*, 1 Hill 27; *Middleton v. Thompson*, 1 Speer 67; *Wilson v. McElwee*, 1 Strob. 65; *Buckels v. Mouzon*, *Ib.* 448. All parties in possession of any portion of the land may be united as defendants in the same action. *Bostick v. Barnes*, 59 S. E. 22, 37 S. E. 24; or not at option of the demandants. *Shelton v. Shelton*, 20 S. C. 560. Petition need not show the forfeiture of demandant or the possession by defendant. *Foxworth v. White*, 5 Strob. 113. Answer pleading adverse possession. *Mitchell v. Poyas*, 1 N. & McC. 85. Right to recover damages. *Heyward v. Cuthbert*, 1 McC. 386.

Frierson v. Jenkins, 75 S. C. 474, 55 S. E. 890.

(5257) § 3. Issuance of Writ of Admeasurement to Commissioners—Proceedings, Return and Certificate.—On the return of the summons, if the heir at law, or his or her guardian (if he or she be an infant), or any other person or persons who may be in possession of the said lands, shall appear, and shall not show sufficient cause against the petition, then the said Court shall cause a writ for admeasurement of dower to be issued and directed to five persons, two of whom shall be nominated by each of the said parties, and a fifth by the Court, commanding them, or a majority of them, within one month thereafter (being first duly sworn for that purpose), fairly, justly, and impartially, according to the best of their judgment, to admeasure and mete out to the said petitioner, and put her in full and peaceable possession of one-third part of all the lands of her deceased husband; and when they have so done, they, or a majority of them, shall immediately return a general plat of the said lands, with a certificate thereon in writing, under their hands and seals, describing the manner in which they have made the admeasurement aforesaid, into the office of the said Court, there to be recorded, and the same shall be final and conclusive on all parties concerned therein.

Civ. '12, § 3487; Civ. '02, § 2401; G. S. 2285; R. S. 1917; 1786, IV, 742.

Defendant must show cause at return of summons against writ. *Gist v. Tongue*, 1 N. & McC. 110. Writ of admeasurement should direct assignment of dower or assessment in lieu of it. *Gibson v. Marshall*, 5 Rich. Eq. 254. Otherwise invalid. *Jeffries v. Allen*, 33 S. C. 268, 11 S. E. 764. Return conclusive where no malpractice or error in principle. *Lesene v. Russel*, 1 Bay 459; *Gibson v. Marshall*, 6 Rich. Eq. 210; *Stewart v. Blease*, 5 S. C. 433; *Erwin v. Brooks*, 19 S. C. 46. Error to assign one part as dower in all lands of deceased. *Scott v. Scott*, 1 Bay 504; *Witherspoon v. Watt*, 18 S. C. 396. Error to assign more than law allows. *Hawkins v. Hall*, 2 Bay 449. Want of notice to defendant no ground to set returns aside. *Beaty v. Hearst*, 1 McM. 31. Nor is affidavit of two of the five Commissioners. *Ib.* Three Commissioners who met without notice to the others can make return. *Erwin v. Brooks*, 19 S. C. 102. Court has control of return and can correct error in law. *Lesene v. Russel*, 1 Bay 459; *Heyward v. Cuthbert*, 3 Brev. 482; *Payne v. Payne*, Dud. Eq. 124; *Gibson v. Marshall*, 5 Rich. Eq. 254. Objection to return must be made by exception. *Mellichampe v. Seabrook*, 2 S. C. 366.

Frierson v. Jenkins, 75 S. C. 474, 55 S. E. 890.

(5258) § 4. Appointment of Commissioners on Failure of Person Appearing Against Petition to Nominate.—If the person who shall be served with the said summons shall appear on day named therein, and, not showing sufficient cause against the petition, shall refuse to nominate two persons in the manner and for the purposes above directed, then the Court shall appoint them in behalf of such heir, or other person in possession of the said land, and they, together with those nominated by the petitioner, shall make such allotment and admeasurement as before required; and the said commissioners, so appointed, or a majority of them, having made due return thereof, the same shall be as effectual and binding on all parties as if done in the manner first above prescribed.

Civ. '12, § 3488; Civ. '02, § 2402; G. S. 2286; R. S. 1918; 1786, IV, 742.

(5259) § 5. Expenses of Admeasurement to Be Paid by Claimant—Surveyor.—The persons who shall be appointed to make such admeasurement of dower, or a majority of them, may, if they shall think necessary, call in to their aid one or more surveyors to run the lines of the said lands, and also the division lines thereof; and the expenses that may be incurred in making such admeasurement of dower, as aforesaid, shall be paid by the person or persons who claim the property, or are in possession of the said lands.

Civ. '12, § 3489; Civ. '02, § 2403; G. S. 2287; R. S. 1919; 1786, IV, 742.

Harshaw v. Davis, 1 Strob. 74.

(5260) § 6. Commissioners to Regard Real Value of Land—Money in Lieu of Dower.—The said commissioners, or a majority of them, shall have power, and they are authorized and required, in the admeasurement aforesaid, to have relation and regard to the true and real value of the lands in question; and where the same cannot, in the opinion of a majority of them, be fairly and equally divided, without manifest disadvantage, then they, or a majority of them, as aforesaid, shall assess a sum of money to be paid to the widow in lieu of her dower by the heir at law, or such other person or persons who may be in possession of the said land.

Civ. '12, § 3490; Civ. '02, § 2404; G. S. 2288; R. S. 1920; 1786, IV, 742.

Where the widow has consented to an order for the sale of the land, the amount realized at the sale is the measure of value. *Lanier v. Griffin*, 11 S. C. 565.

Should certify that land cannot be so divided. *Heyward v. Cuthbert*, 3 Brev. 482; *Wright v. Jennings*, 1 Bail. 277. Otherwise must assign in land. *Brown v. Duncan*, 4 McC. 546. If assigned in land, demandant entitled to third of rents and profits from defendant for time he has been in possession. *Rickard v. Talbird*, Rice Eq. 158; *Keith v. Trapier*, Bail. Eq. 64; *Mey v. Mey*, Rich. Eq. Ca. 378; *Gordon v. Stevens*, 2 Hill Ch. 429; *Woodward v. Woodward*, 2 Rich. Eq. 23; *Henagan v. Harlee*, 10 Rich. Eq. 285; *Clark v. Tompkins*, 1 S. C. 119; *Stewart v. Pearson*, 4 S. C. 4; *Phinney v. Johnson*, 15 S. C. 158. Return must show appraise value of land as well as assessment. *Wright v. Jennings*, 1 Bail. 277; *McCreery v. Cloud*, 2 Bail. 343. One-sixth of appraise value of lands proper assessment for dower. *Wright v. Jennings*, 1 Bail. 277; *Payne v. Payne*, Dud. Eq. 124; *Stewart v. Blease*, 4 S. C. 37; *Jeffries v. Allen*, 34 S. C. 189, 13 S. E. 365. One-third value of fee simple excessive. *Heyward v. Cuthbert*, 3 Brev. 482. Court may correct assessment. *Payne v. Payne*, Dud. Eq. 124. How dower assessed in surplus after encumbrances. *Keith v. Trapier*, Bail. Eq. 63; *Davidson v. Graves*, Bail. Eq. 268; *Stoppelstein v. Shulte*, 1 Hill 200.

The alienee of the husband cannot claim homestead in the land aliened, against a judgment in favor of alienor's widow for a sum of money assessed in lieu of her dower in the land. *Elder v. McIntosh*, 88 S. C. 286.

(5261) § 7. Value of Dower—How Assessed—Improvements.—On all assessments of dower against a purchaser, in behalf of a widow of a former owner, the value of the land at the time of alienation by the husband, with interest from the accrual of the right of dower, shall be taken and received by the Courts of this State as the true value on which to assess the said

dower: *Provided*, That in all cases, whether the alienation be prior or subsequent to the death of husband, the value of the land, without reference to improvements put on it, shall be taken and received as the true value on which to assess the said dower.

Civ. '12, § 3491; Civ. '02, § 2405; R. S. 2289; R. S. 1921; 1824, VI, 23; 1825, VII, 330.

The provisions of this Section as to interest relate only to cases where the land has been aliened during coverture. *McCreary v. Cloud*, 2 Bailey 343.

Value at time of alienation, not improved value. *Russel v. Gee*, 2 Mill 254; *Brown v. Duncan*, 4 McC. 346. But where lands were sold under judgment against administratrix and improved, widow entitled to dower in them as improved. *Phinney v. Johnson*, 15 S. C. 158. Return must show appraised value of land as well as assessment. *Wright v. Jennings*, 1 Bail. 277; *McCreary v. Cloud*, 2 Bail. 343. Price at Sheriff's sale during coverture not fixed value. *Alexander v. Hamilton*, 12 S. C. 39. One-sixth of appraised value of lands proper assessment for dower. *Wright v. Jennings*, 1 Bail. 277; *Payne v. Payne*, Dud. Eq. 124; *Laughlass v. McMill*, 1 Speer 159; *Stewart v. Elease*, 4 S. C. 37. Sum assessed no specific lien on land. *Williamson v. Gasque*, 24 S. C. 100. But it is a fixed judgment. *Id.*; *Asbill v. Asbill*, 24 S. C. 355.

Error to give judgment for rent during the detention from widow before the return from the Commissioners. *Pruitt v. Pruitt*, 57 S. C. 155, 35 S. E. 485.

Brown et ux. v. Brown et al, 94 S. C. 492, 78 S. E. 447.

(5262) § 8. **How Assessed When Husband Died Seized.**—On all assessments of dower in lands of which the husband died seized, the value of the lands at the time of the death of the husband, with interest from the accrual of the right of dower, shall be taken and received by the Courts of this State as the true value on which to assess said dower.

Civ. '12, § 3492; Civ. '02, § 2406; R. S. 1922; 1883, XVIII, 453.

Section construed and applied. *Jeffries v. Allen*, 34 S. C. 189, 13 S. E. 365. Where prior to this Section widow consented to sale under the decree, the price was taken as the value on which her dower was assessed. *Lauier v. Griffin*, 11 S. C. 588. But as to such sale since. *Jeffries v. Allen*, 34 S. C. 189, 13 S. E. 365. Widow taking dower in place of legacy, the assessment must be paid by the devisees of the land. *Witherspoon v. Watts*, 18 S. C. 396.

Where the dower cannot be allotted in kind, and the land is sold, the measure of dower is one-third of the surplus proceeds of sale, after payment of the incumbrances and expenses, for life, or one-sixth absolutely. *Geiger v. Geiger*, 57 S. C. 521, 35 S. E. 1032.

(5263) § 9. **Proceedings for Allotment in Circuit Court to Conform to Regulations of This Article.**—The appointment of Commissioners and the issuing of the writ and other proceedings in relation to the allotment and admeasurement of dower in the Circuit Court shall be made to conform as nearly as may be to the law regulating the allotment of dower in the Probate Court, as prescribed in this Article.

Civ. '12, § 3493; Civ. '02, § 2407; R. S. 1923; 1886, XIX, 597.

Frierson v. Jenkins, 75 S. C. 474, 55 S. E. 890. Sale of corpus; adjustment of rights between life tenants and remainderman. *Kolb v. Booth*, 80 S. C. 501, 61 S. E. 942.

CHAPTER LXVI.

Estate for Life and for Years—Landlord and Tenant—Joint Tenants and Tenants in Common—Betterments—Miscellaneous Provisions Concerning Real Estate.

ARTICLE 1. Estates for Life and for Years, 1594.

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ARTICLE 5. Miscellaneous Provisions Concerning Real Estate, 1609.

ARTICLE I.

Estates for Life and for Years.

(5264) § 1. **Recovery of Rent if Life Tenant Die Before it is Payable.**
—Where any tenant for life shall happen to die before or on the day on

which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life shall and may recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, the rent thereof as prescribed in the next Section.

Civ. '12, § 3494; Civ. '02, § 2408; G. S. 1805; R. S. 1924; 11 G. 2, c. 19; II, 577.

Garland v. Crow's Executors, 2 Bail. 24; Newton v. Odem, 67 S. C. 1, 9, 45 S. E. 105.

(5265) § 2. Proportion of Rent to Be Paid at Death of Life Tenant.—

If such tenant for life die on the day on which the rent was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances, or a reasonable part thereof respectively.

Civ. '12, § 3495; Civ. '02, § 2409; G. S. 1806; R. S. 1924; 11 G. 2, c. 19; II, 577.

Newton v. Odom, 67 S. C. 1, 9, 45 S. E. 105.

(5266) § 3. Under-Tenants of Life Tenants to Have Possession Until Crop Is Secured.—If any person shall rent or hire lands of a tenant for life, and such tenant for life dies, the person hiring such land shall not be dispossessed until the crop of that year is finished, he or she securing the payment of the rent when due.

Civ. '12, § 3496; Civ. '02, § 2410; G. S. 1807; R. S. 1926; 1789, V, 111.

This security must be given to the remainderman for the proportion that arises after death of tenant for life. Freeman v. Tompkins, 1 Strob. Eq. 53.

Where life tenant dies after March 1st, rent goes to personal representative. Newton v. Odem, 67 S. C. 1, 45 S. E. 105; Bowen v. True, 74 S. C. 486, 54 S. E. 1018.

May et al. v. Thomas et al, 94 S. C. 158, 78 S. E. 85.

(5267) § 4. Penalty on Tenants Continuing in Possession Three Months After Demand of Possession.—All tenants, whether for life or years, by sufferance or at will, or persons coming in under or by collusion with them, who shall hold over after the legal determination of their estates, after demand made in writing for delivering possession thereof by the person having the reversion or remainder therein, or his agent, such tenant or other person holding over for the space of three months after such demand shall forfeit double the value of the use of the premises, recoverable by action.

Civ. '12, § 3497; Civ. '02, § 2411; G. S. 1808; R. S. 1927; 1808, V, 565.

Not unconstitutional. Talvande v. Cripps, 3 McC. 147. Where landlord recovers this forfeiture he cannot sue for damages for holding over. Cripps v. Talvande, 4 McC. 20. Liability for this forfeiture begins from demand and not from expiration of three months. Reeves v. McKenzie, 1 Bail. 497. Tenant under agreement with husband or life tenant holding over after her death is, as to remaindermen, a trespasser. Williams v. Caston, 1 Strob. 130.

Termination of tenancy from year to year. Wilson v. Rodman, 30 S. C. 210, 8 S. E. 855; McFall v. McFall, 35 S. C. 559, 14 S. E. 985; Newton v. Odem, 67 S. C. 1, 9, 45 S. E. 105.

(5268) § 5. Warranties by Life Tenants Void.—All warranties which shall be made by any tenant for life of any lands, tenements, or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void and of none effect.

All collateral warranties which shall be made of any lands, tenements, or hereditaments, by any ancestor who has no estate of inheritance in possession in the same, shall be void against his heir.

Civ. '12, § 3498; Civ. '02, § 2412; G. S. 1809; R. S. 1928; 4 Ann., c. 16; 1712, II, 437.

Conveyance in fee by tenant for years disavows his tenancy, and landlord may recover the possession. Trustees v. Jennings, 10 S. C. 169, 18 S. E. 257.

(5269) § 6. **Attornments to Strangers by Tenants Void.**—To prevent the difficulty and expense to which landlord or landlords, lessor or lessors, may be put by the fraudulent practice of tenants in attorning to strangers who claim title to the estates of their respective landlord or landlords, lessor or lessors (whereby the possession of estates in lands, tenements, and hereditaments, is rendered very precarious, and such landlord or landlords, lessor or lessors, are by that means turned out of possession of their respective estates), all and every such attornment and attornments of any tenant or tenants of any lands, tenements, or hereditaments, shall be deemed and taken to be absolutely null and void, to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be anywise changed, altered, or affected by any such attornment or attornments: *Provided*, That nothing herein contained shall extend to vacate or affect any attornment made pursuant to, and in consequence of, some judgment, decree, or order of Court, or made with the privity and consent of the landlord or landlords, lessor or lessors.

Civ. '12, § 3499; Civ. '02, § 2413; G. S. 1810; R. S. 1929; 11 G. 2, c. 19; II, 575.

Attornment to stranger. *Hill v. Williams*, 41 S. C. 134, 19 S. E. 290.

Tenant under trespasser could with his consent attorn to true owner. *Moore v. Johnson*, 2 Speer 288.

Estoppel to deny landlord's title. *Harvey v. Harvey*, 26 S. C. 608, 2 S. E. 3.

ARTICLE II.

Landlord and Tenant.

(5270) § 1. **Lease for More Than One Year to Be Recorded in Forty Days.**—All leases or contracts in writing, hereafter to be made between landlord and tenant, for a longer term than twelve months, shall not be valid in law, against the rights and claims of third persons, unless the same shall have been recorded in the office of the Register of Mesne Conveyances within forty days from the time of execution thereof, nor shall any payment made in anticipation of rent, for a longer period than twelve months, be considered a valid discount against the claims and rights of third persons.

Civ. '12, § 3500; Civ. '02, § 2414; G. S. 1810; R. S. 1930; 1876, XVI, 92.

Enforced as to recording. *City Council v. Page*, Speer Eq. 159. Sufficient notice may supply want of registry. *Ib.* Where mortgage provides that after sale and conveyance, under power therein, the mortgagor shall be tenant of the purchaser, at stipulated rent, the relation of landlord and tenant is established. *Swygert v. Goodwin*, 32 S. C. 146, 10 S. E. 933; *Brewster v. McNab*, 36 S. C. 274, 15 S. E. 233. When contract with laborer is not a lease. *McCutchen v. Crenshaw*, 40 S. C. 511, 19 S. E. 140.

(5271) § 2. **When and How Lease Shall Terminate.**—Every lease or written agreement hereafter to be entered into, for the renting and leasing of lands and tenements, shall absolutely and unequivocally end and determine at the period therein stated, without it being obligatory on the tenant or the landlord to give the notice required by law.

Civ. '12, § 3501; Civ. '02, § 2415; G. S. 1811; R. S. 1931; 1817, VI, 67.

(5272) § 3. **No Parol Lease Valid for More Than One Year.**—No parol lease shall give a tenant a right of possession for a longer term than twelve months from the time of entering on the premises; and all such leases shall

be understood to be for one year, unless it be stipulated to be for a shorter term.

Civ. '12, § 3502; Civ. '02, § 2416; G. S. 1812; R. S. 1932; 1817, VI, 67.

From the Statutes and the decisions interpreting them the following principles may be deduced: (1) A parol lease gives a tenant a right of possession for a term of twelve months from the time of entering on the premises. If the lease is for a term less than 12 months, of course, the tenant would only be entitled to hold possession for the time stipulated after entering into possession of the premises. (2) A parol lease undertaking to give a tenant a right of possession for a longer term than twelve months is within the Statute of Frauds. Nevertheless, if the tenant is permitted to enter on the premises by virtue of such agreement, he shall have a right of possession for 12 months from the time of such entry, but no longer. (3) A parol lease under which the tenant enters upon the premises shall, after the term of 12 months from the time of entering on the premises, have the effect of an estate at will only. (4) If a landlord refuses to permit a tenant to enter on the premises under a parol lease, no action shall be brought to charge him upon such contract, even if the lease is not for a term exceeding 12 months. *Hillhouse v. Jennings*, 60 S. C. 373, 38 S. E. 599.

Such parol leases have been held valid for certain purposes in above case of *Hillhouse v. Jennings*, and also in *Davis v. Pollock*, 35 S. C. 584, 15 S. E. 897; *Godard's Exors. v. R. R.*, 2 Rich. Law 349; *McDonald v. Elfe*, 1 N. & McC. 501; *Clark v. Bynum*, 3 McC. 298. But it does not give right to possession against landlord or any person claiming under him after the first year. *State v. Mays*, 24 S. C. 195.

If a tenant under a parol lease for a year simply continues in possession after termination of lease, he may be tenant at will, or a tenant from year to year according to circumstances. *Matthews v. Hipp*, 66 S. C. 162, 44 S. E. 577.

Where tenant entered into possession of premises under parol lease, and there was no express stipulation as to duration of tenancy, trustee in bankruptcy of his estate is entitled to hold premises for full year upon paying monthly rental. *In re Schwartzman*, 167 Fed. 399, 405.

(5273) § 4. Rents—How Recovered Where Demises Are Not by Deeds.

—It shall and may be lawful to and for any landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by a tenant or tenants, in an action for the use and occupation of what was so held or enjoyed; and if, in evidence on the trial of such action, any parol demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefor be nonsuited, but may make use thereof as an evidence of the amount of the damages to be recovered.

Civ. '12, § 3503; Civ. '02, § 2417; G. S. 1813; R. S. 1933; 11 G. 2, c. 19; II, 576.

Plaintiff need show no further title than that defendant holds under lease from him. *Moorehead v. Barrett, Chev. 99*. But defendant may show title in another, if lessor declared he would not claim rent if title was in another. *Woods v. Chambers*, 3 Rich. 150. It is good defense to such action that the defendant has been deprived of the beneficial enjoyment of the premises. *Coogen v. Parker*, 2 S. C. 255.

Generally. *Smith v. City of Charleston*, 1 Bay 443; *Dorrill v. Stephens*, 4 McC. 59; *Fronty v. Wood*, 2 Hill 367; *Garlington v. Copeland*, 32 S. C. 57, 10 S. E. 616.

(5274) § 5. Provision for Landlords Where Tenants Desert Premises.

—If any tenant holding any lands, tenements, or hereditaments, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, it shall and may be lawful to and for two or more Magistrates of the county (having no interest in the demised premises), at the request of the lessor or landlord, or his, her, or their bailiff or receiver, to go upon and view the same, and to affix, or cause to be affixed, on the most notorious part of the premises, notice in writing, what day (at the distance of fourteen days at least) they will return to take a second view thereof.

Civ. '12, § 3504; Civ. '02, § 2418; G. S. 1814; R. S. 1934; 11 G. 2, c. 19; II, 577.

Tenant justified in quitting when landlord's title has been sold under execution by the Sheriff. *Holmes v. McMaster*, 1 Rich. Eq. 340.

(5275) § 6. Abrogation of Lease for Nonpayment of Arrears of Rent.

—If, upon such second view, the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrear, then the said Magistrates may

put the landlord or landlords, lessor or lessors, into the possession of the said demised premises; and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void.

Civ. '12, § 3505; Civ. '02, § 2419; G. S. 1815; R. S. 1935; 11 G. 2, c. 19; II, 577.

(5276) § 7. Tenant May Appeal from Proceedings on Desertion of Premises.—Such proceedings of the said Magistrates shall be examinable in a summary way by the Courts of Common Pleas of the respective counties in which such lands or premises lie, which Courts are empowered to order restitution to be made to such tenant, together with his or her expenses and costs, to be paid by the lessor or landlord, if they shall see cause for the same; and, in case they shall affirm the act of the said Magistrates to award costs, not exceeding twenty-five dollars, for the frivolous appeal.

Civ. '12, § 3506; Civ. '02, § 2420; G. S. 1816; R. S. 1936; II, 577.

(5277) § 8. How Tenants in Writing or by Parol Holding Over May Be Removed.—On the determination of any lease, in writing, or by parol, of any lands and tenements within this State when the lessee shall hold over thereafter, any two Magistrates in the county where the same may be situated, are authorized and required, on the complaint and due proof thereof by any lessor, his heirs or assigns, to place the names of twenty-four neighboring persons, qualified by law to serve as jurors, in a box, and from them draw the names of eighteen, and shall thereupon issue their warrant, in the nature of a summons, directed to the Sheriff or any Constable of the county, commanding such officer to summon the said eighteen persons to attend at a certain place, within four days, and at a place appointed; and from the said eighteen qualified jurors so summoned, twelve shall be drawn in the same manner, who shall be empanelled to try the facts: *Provided*, That if, from the said eighteen so summoned, the number of twelve cannot, from any cause, be had, the Magistrates are authorized to complete the number from the remaining originally selected. And the said Magistrates shall also summon the said lessee, or any other person claiming or coming into possession under him, at the same time, and in the same way, likewise to appear before them to show cause, if any such lessee or other person may have, why possession of the premises should not be forthwith restored to such lessor, his heirs or assigns; and if, upon hearing the case, the jury shall be satisfied that the complainant is entitled to the possession of the premises in question, they shall so find; whereof the Magistrates shall make a record, and shall thereupon issue their warrant, directed to the Sheriff of the county wherein the lands are situated, commanding him forthwith to deliver to such lessor, his heirs or assigns, full possession of the premises, and to levy all expenses incurred, of the goods and chattels of the lessee, or the person in possession as aforesaid.

Civ. '12, § 3507; Civ. '02, § 2421; G. S. 1817; R. S. 1937; 1812, V, 676; 1817, VI, 67; 1839, XI, 31; XIV, 525.

No previous demand for possession is required. *Kellar v. Pagan*, 54 S. C. 255, 22 S. E. 355.
No notice to quit necessary, as originally required by Act 1812. *Davis v. Carew*, 1 Rich. 275;
The jurisdiction under this Section is exclusive and final. *Leonard v. McCool*, 3 Strob. Eq. 44;
Moultrie v. Dixon, 26 S. C. 296, 2 S. E. 24. But Superior Court may, under proper proceeding, decide whether the inferior tribunal had jurisdiction. *Fallin v. Coogan*, 12 Rich. 44. Landlord has

no right to take the law into his own hands and eject such tenant without legal process. *Sharp v. Kinsman*, 18 S. C. 108. Lease may be determined by agreement of forfeiture for non-payment of rent. *Fallin v. Coogan*, 12 Rich. 44. The Acts of 1808 and 1817 have not altered the common rule of three months' notice to quit in tenancy from year to year. *Godard v. R. R. Co.*, 2 Rich 346. The summons must show upon its face the allegations necessary to give this jurisdiction. *State v. Latimer*, 26 S. C. 208, 2 S. E. 1. Party in possession declining to lease from purchaser of the lands or to surrender possession, Magistrates have no jurisdiction hereunder to eject him. *Ib.* *Sheriff bound to obey the warrant.* *Canaday v. Black*, 34 S. C. 194, 13 S. E. 361.
Turner et al. v. Walker, 110 S. C. 155, 96 S. E. 481.

(5278) § 9. Ejectment of Tenants at Will, Domestic Servants, Etc.—

When any person or persons have gone, or shall hereafter go, into possession of any land or tenement of another, either as a tenant at will, or under a contract to serve another, either as a domestic servant or common laborer, or otherwise, and shall refuse or neglect to quit the premises so occupied, when required by the person letting the same, or upon the termination of the contract, either by its own limitation or from any other cause, it shall be lawful for the person letting the premises to apply to any Magistrate, whose duty it shall be to have a notice served upon the person or persons so refusing to quit, to show cause before him, at the expiration of ten days from the personal service of such notice, why he should not be ejected; and if no sufficient cause be then shown, it shall be the duty of the Magistrate forthwith to issue his warrant, directed to the Sheriff or any Constable, requiring him, without delay, to eject such person or persons from the premises to let, and authorizing him to use such force as may be necessary.

Civ. '12, § 3508; Civ. '02, § 2422; G. S. 1818; R. S. 1938; 1866, XIII, 416.

Magistrate has jurisdiction to determine whether as a fact the relations of landlord and tenant exists; and if so, whether of the character required; and his conclusion, though erroneous, is no ground for prohibition by Superior Court. *State v. Fickling*, 10 S. C. 301; *Morris v. Palmer*, 44 S. C. 462, 22 S. E. 726. But such interference will be made when it appears that the issue was not within jurisdiction of Magistrate. *Baldwin v. Cooley*, 1 S. C. 256; *State v. Fickling*, 10 S. E. 301. Findings of fact by Magistrate are final and cannot be reviewed under any process. *State v. Fort*, 24 S. C. 510. But where the character of the tenancy depends upon a written instrument and the Magistrate construes it as not creating a tenancy at will, the Superior Court, upon contrary construction, will, upon proper proceedings, restrain his order. *Ib.* Where tenant leases land for a year, but continues possession for two years longer, it is not tenancy at will, and Magistrate has no jurisdiction. *Ib.* Where sub-tenant enters under promise of landlord to execute a new lease, which he afterwards refuses to do, he does not become a tenant at will under this Section. *Morris v. Palmer*, 44 S. C. 462, 22 S. E. 726. Jurisdictional facts must appear upon the face of the notice. *Goodgion v. Latimer*, 26 S. C. 208, 2 S. E. 1; *Carlisle v. Prior*, 48 S. C. 183, 26 S. E. 244; *Baldwin v. Cooley*, 1 S. C. 256. Appeal under this Section. *Moutrie v. Dixon*, 26 S. C. 296, 2 S. E. 24.
Graniteville Mfg. Co. v. Renew, 113 S. C. 171, 102 S. E. 18.

(5279) § 10. Tenants Holding Over and Failing to Pay Rent.—

In all cases where tenants hold over after the expiration of their lease or contract for rent, whether the same be in writing or by parol, or shall fail to pay the rent when the same shall become due, the landlord is hereby authorized and empowered, either in person or by agent, to demand possession thereof from the tenant or person in possession thereof; and in case of refusal or resistance, it shall be lawful for the person so letting said premises, houses or tenements, his agent or attorney, to apply to a Magistrate, whose duty it shall be to have a notice served upon the person or persons so refusing to be dispossessed to show cause, before him, if any he can, within three days from the date of said personal service, of such notice, why he should not be dispossessed; and if he fails to show sufficient cause, it shall be the duty of the Magistrate forthwith to issue his warrant, directed to the Sheriff of the county or any Constable thereof, requiring him without delay to dispossess said person or persons from the premises so let, and authorizing him to use such force as may be necessary: *Provided*, That said Magistrate shall receive fifty cents for issuing said notice and warrant, the

Sheriff or Constable a fee of one dollar for executing the same, to be paid by the party so refusing to be dispossessed, and if said costs cannot be collected from the tenant, then the same shall be paid by the landlord, except in case of Constables and Magistrates in counties where they receive salaries: *Provided*, That in case any tenant is wrongfully dispossessed, he, she or they may have an action for damages against said landlord: *Provided, further*, That either party to the proceeding shall have the right to appeal, which appeal shall stay further proceedings upon the tenant entering into bond with sufficient surety or sureties to pay the landlord all damages which he may sustain thereby: *Provided, further*, That on demand for trial by jury of either party to the proceedings, trial by jury shall be allowed to decide the issue of fact arising thereunder.

Civ. '12, § 3509; Civ. '02, § 2423; G. S. 1819; R. S. 1939; 1878, XVI, 635; 1894, XXI, 823; 1898, XXII, 791; 1901, XXIII, 726.

Demand for possession is a necessary prerequisite to proceeding under this Statute. *Kellar v. Pagan*, 54 S. C. 255, 32 S. E. 855. As to right of appeal prior to Act of 1901, see same case.

Is not unconstitutional. *Frazer v. Beaton*, 26 S. C. 348, 2 S. E. 125; *Swygert v. Goodwin*, 32 S. C. 146, 10 S. E. 933. This proceeding is not an action involving title to land, but a summary proceeding. *State v. Marshall*, 24 S. C. 507; *Swygert v. Goodwin*, 32 S. C. 146, 10 S. E. 933. Notice to show cause must be personally served in order to give Magistrate jurisdiction. *State v. Marshall*, 24 S. C. 507. What is such service. *Bradley v. Bell*, 34 S. C. 107, 12 S. E. 1071. This Section gives jurisdiction only when record shows a case under it. *Baldwin v. Cooley*, 1 S. C. 256; *Goodgion v. Latimer*, 26 S. C. 208, 2 S. E. 1. What sort of tenancy was created by the parol contract, and whether rent was due, were questions of fact to be determined by the Magistrate and not reviewable above. *Id.*

The relation of landlord and tenant held established under covenant and power of sale contained in mortgage. *Brewster v. McNab*, 36 S. C. 274, 15 S. E. 233. Held established by the contract in *Rakestraw v. Floyd*, 54 S. C. 288, 32 S. E. 419.

Application for change of venue. *Witte v. Cave*, 73 S. C. 15, 52 S. E. 736; *Mayes v. Evans*, 80 S. C. 362, 61 S. E. 216. Length of notice to tenant; waiver. *Mayes v. Evans*, 80 S. C. 362, 61 S. E. 216. Existence of relation of landlord and tenant—a written contract of sale may be rescinded, and a rent contract substituted, even by parol. *Lewis v. Cooley*, 81 S. C. 461, 62 S. E. 868; *Fripp v. Frupp*, *Rice* Eq. 108; *Mosseley v. Witt*, 79 S. C. 141, 60 S. E. 520. Retention of cheque as payment of rent. *English v. McDowall*, 82 S. C. 282, 64 S. E. 390. *Williams et ux. v. Columbia Mills Co. et al*, 100 S. C. 363, 85 S. E. 160; *Trakas et al v. Mitchell et al*, 111 S. C. 160, 97 S. E. 245; *Biber v. Dillingham*, 111 S. C. 502, 98 S. E. 798; *Graniteville Mfg. Co. v. Renew*, 113 S. C. 171, 102 S. E. 18.

(5280) § 11. **Penalty for Not Delivering Possession in Accordance With Notice of Intention to Quit.**—In case any tenant shall give notice in writing of his intention to quit the premises rented by him, and shall not accordingly deliver up the possession at the time in such notice contained, the said tenant, his executors or administrators, shall pay to the landlord double the rent which he otherwise would have been liable to pay: *Provided, nevertheless*, That nothing herein contained shall be construed to give such tenant a right to discontinue or determine his tenancy by such notice, in any other manner than according to the laws of force at the time of giving the same.

Civ. '12, § 3510; Civ. '02, § 2424; G. S. 1820; R. S. 1940; II, 578; 1808, V, 565.

(5281) § 12. **Tenant Not Allowed to Make Alterations or Remove Buildings.**—It shall not be lawful for any tenant to make alterations or remove buildings erected upon the leased premises, without permission first had in writing, under pain of forfeiting the residue of the unexpired term of said lease or agreement, parol or written; which said forfeiture shall be ascertained by Magistrate, with the jurors to be drawn in the same manner as is prescribed by Section 8, and with like powers where the landlord is to be placed in possession.

Civ. '12, § 3511; Civ. '02, § 2425; G. S. 1821; R. S. 1941; 1817, VI, 68; 1839, XI, 31.

Enforced. *McDonald v. Elfe*, 1 N. & McC. 501; *Clark v. Bynum*, 3 McC. 298. Superior Court will not interfere with the Magistrate Court merely for irregularity in proceeding, if acting within the jurisdiction. *McDonald v. Elfe*, 1 N. & McC. 501.

(5282) § 13. **Effect of Payment of Rent to Grantor.**—No tenant shall be prejudiced or damaged by payment of any rent to any grantor or conusor, or by breach of any condition for nonpayment of rent, before notice shall be given to him of such grant by the conusee or grantee.

Civ. '12, § 3512; Civ. '02, § 2426; G. S. 1823; R. S. 1942.

(5283) § 14. **Payment of Rent Before Removal of Goods, Etc., Under Execution—Proviso.**—No goods or chattels whatsoever, lying or being in or upon any messuages, lands or tenements, which are or shall be leased for life or lives, term of years, at will or otherwise, shall be liable to be taken by virtue of an execution or any pretense whatsoever, unless the party at whose suit the said execution is sued out shall, before the removal of such goods from off the said premises, by virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking of such goods or chattels by virtue of such execution: *Provided*, The said arrears of rent do not amount to more than one year's rent; in case the said arrears shall exceed one year's rent, the party at whose suit such execution is sued out, on paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment; and the Sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money.

Civ. '12, § 3513; Civ. '02, § 2427; G. S. 1824; R. S. 1943; 1712, II, 547; 1878, XIV, 511.

Does not extend to case where rent is not due and goods are not subject to distress for rent in arrears. *Watson v. Hudson*, 3 Brev. 60; *Ayres v. Depras*, 2 Speer 367; *In re Connor*, 12 Rich. 349; *Dawson v. Dewan*, 12 S. C. 499. Only personal chattels are meant; not chattels real. *Hamilton v. Reedy*, 3 McC. 38. Only a lien for the rent due is given to the landlord; not right to distrain goods taken in execution. *Ib.* Notice to Sheriff entitles landlord to demand one year's rent due or to extent of value of goods. *Margrat v. Swift*, 3 McC. 378; *In re Connor*, 12 Rich. 349; *Sullivan v. Ellison*, 20 S. C. 481. A prior dormant execution has no preference over distress levied for more than one year's rent. *Blake v. DeLiesseline*, 4 McC. 496. Crops of tenant distrained and taken in possession by landlord for rent cannot be taken away under seizure by warrant to enforced agricultural lien. *Brewster v. McNab*, 36 S. C. 274, 15 S. E. 233.

This is a remedial statute, and must be construed liberally. *Malcomson v. Wappoo Mills*, 85 Fed. 907, 910.

Landlord has preferred lien which will be enforced as against proceeds of such goods and chattels when sold by trustee, in bankruptcy against tenant. *In re Bishop*, 153 Fed. 304, 309.

This statute applies where receiver for lessee was appointed and took charge of phosphate rock mined under a lease before distress warrant was issued. *Malcomson v. Wappoo Mills*, 85 Fed. 907, 910.

(5284) § 15. **Distress for Rent.**—In case any lessee for life or lives, term of years, at will or otherwise, of any messuages, lands or tenements, upon the demise whereof any rents are or shall be reserved or made payable, shall convey or carry off from such demised premises his goods or chattels, it shall and may be lawful to and for such lessor or landlord, or any person or persons by him for that purpose lawfully empowered, within the space of ten days next ensuing, such conveying away or carrying off such goods or chattels, as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of such rent, and the same to sell or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such

lessor or landlord in and upon such demised premises for such arrears of rent, any law, usage or custom to the contrary in any wise notwithstanding.

Civ. '12, § 3514; Civ. '02, § 2428; G. S. 1825, 1827; R. S. 1944, 1946; 1898, XXII, 784; 1900, XXI, 421.

In re Bishop, 153 Fed. 304, 309.

See Statute 2 Geo. 2 Ch. 19; 2 Cooper's Statutes at Large, 572. This remedy is cumulative to the agricultural lien law. Sullivan v. Ellison, 20 S. C. 484; Parrott v. Malpass, 49 S. C. 4, 26 S. E. 884.

No distress will lie except for rent expressly reserved. *Jacks v. Smith*, 1 Bay 315; *Smith v. Sheriff*, 1 Bay 443; *Marshall v. Giles*, 3 Brev. 488; *Reeves v. McKenzie*, 1 Bail. 497. And not until it is due. *Bailey v. Wright*, 3 McC. 484; *O'Farrell v. Nance*, 2 Hill 484; *Lander v. Ware*, 1 Strob. 15. But it need not be reserved *eo nomine*. *Price v. Limehouse*, 4 McC. 544. If payable in cotton, it is rent certain and subject to distress. *Fraser v. Davie*, 5 Rich. 59; *Huff v. Latimer*, 33 S. C. 265, 11 S. E. 758. One tenant in common may distrain for rent due by his co-tenant. *Luther v. Arnold*, 8 Rich. 24. Executor or administrator may not distrain for rent due at death of landlord. *Bagwell v. Jamison*, Chev. 249. Authority of distress warrant terminates at his death. *Salvo v. Schmidt*, 2 Speer 512. Lien of distress on goods replevied is never lost. *Harris v. Clayton*, 1 McM. 194. Distress herein must be levied within five days. *Rogers v. Brown*, 1 Speer 283. As to law of distress. *Ex parte Knobloch*, 26 S. C. 331, 2 S. E. 612. Where note for rent is given to two and one dies, the survivor has all the remedy given by law for its collection, no matter who owned the land. *Monday v. Elmore*, 27 S. C. 126, 3 S. E. 65.

Liability of landlord for wrongful acts of his agent making the distress. *Jones v. Parker*, 81 S. C. 214, 62 S. E. 261.

(5285) § 16. Goods Sold Bona Fide, Etc., Exempted from Seizure—Assignments and Mortgages Not Exempted.—Nothing herein contained shall extend, or be construed to extend, to empower such lessor or landlord to take or seize any goods or chattels as a distress for arrears of rent which shall have been sold *bona fide* and for a valuable consideration before such seizure made; and no property shall be seized under a distress warrant for such except such as belongs to the tenant in his own right: *Provided*, That nothing herein contained shall interfere with or in any manner abridge the right of such lessor or landlord to take or seize any or all of such goods and chattels wherever they may be found as distress for arrears for rent, when any tenant so in arrears shall make an assignment for the benefit of his creditors, or when any tenant after the contract of tenancy has been entered into shall mortgage said goods and chattels.

Civ. '12, § 3515; Civ. '02, § 2429; G. S. 1826; R. S. 1945; 1892, XXI, 114; 1898, XXIII, 784.

In re Bishop, 153 Fed. 304, 309.

Mortgagor's interest in personal property after condition broken not subject to distress. *Trescott v. Smythe*, 1 McC. Ch. 486; *Ex parte Knobloch*, 26 S. C. 331, 2 S. E. 612. Property belonging to another fund on the premises, as well as that removed, is exempt from such seizure. *Ex parte Knobloch*, 26 S. C. 331, 2 S. E. 612. Property on premises in possession of general assignee not subject to distress as property of assignor. *Bischoff v. Trenholm*, 36 S. C. 76, 15 S. E. 346; *Dial Hardware Co. v. Levy*, 39 S. C. 265, 17 S. E. 776.

Hamilton v. Blanton, 107 S. C. 142, 92 S. E. 275; *Morgan Silver Plate Co. v. Bobo Undertaking Co. et al*, 107 S. C. 280, 92 S. E. 720.

(5286) § 17. Distress for Rent Subject to Prior Liens on Property.—

In all cases where property distrained for arrears of rent is subject to the lien of a mortgage placed upon said property before the rent contract was entered upon or before said property was brought upon the rented premises, the landlord shall have the right to pay the amount due upon such mortgage debt, and subject said property to the payment of the same, as well as to the payment of the amount due for rent.

Civ. '12, § 3516; Civ. '02, § 2430; 1899, XXIII, 81.

Morgan Silver Plate Co. v. Bobo Undertaking Co. et al, 107 S. C. 280, 92 S. E. 720.

(5287) § 18. Rent in Arrear May Be Distrained for After Expiration of Lease—Proviso.—When tenants *pur autre vie* and lessees for years or at will hold over the tenements to them demised after the determination of such leases, it shall and may be lawful for any person or persons having any

rent in arrears or due upon any lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears, after the determination of the said respective leases, in the same manner as they might have done if such lease or leases had not been ended or determined: *Provided*, That such distress be made within the space of six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.

Civ. '12, § 3517; Civ. '02, § 2431; G. S. 1828; R. S. 1947; 1898, XXII, 784.

(5288) § 19. Time of Issuance of Distress Warrant on Removal from Rented Premises.—Should any tenant, for years or lesser period, remove from any demised premises before the expiration of the term for which said premises were demised, leased or rented, then and in such case the rent which would be earned up to the end of the month in which the tenant leaves shall be immediately due and payable; and it shall be lawful for the landlord at any time within ten days after the removal of such tenant to issue his distress warrant for such an amount as may be due up to the expiration of the month in which the tenant leaves the premises.

Civ. '12, § 3518; Civ. '02, § 2432; 1899, XXIII, 82; 1903, XXIII, 86.

(5289) § 20. Action for Debt May Be Brought for Rent on Demise for Life.—Any person or persons having any rent in arrear or due upon any lease or demise for life or lives, may bring an action or actions of debt for such arrears of rent in the same manner as they might have done in case such rent were due and reserved upon a lease for years.

Civ. '12, § 3519; Civ. '02, § 2433; G. S. 1827; R. S. 1946; 1898, XXII, 784.

(5290) § 21. Distress Shall Be Reasonable—Damage for Unreasonable Distress.—Every distress for rent shall be reasonable and not too great, and any lessor or landlord who makes unreasonable and excessive distress shall be liable for all damages sustained by the tenant whose goods are distrained by reason of such excessive distress. Such damage may be recovered by an action in any Court of competent jurisdiction.

Civ. '12, § 3520; Civ. '02, § 2434; G. S. 1827; R. S. 1946; 1898, XXII, 784.

Cannon v. Cox, 98 S. C. 185, 82 S. E. 399.

(5291) § 22. Sale of Goods Not Replevied.—When goods and chattels have been distrained for rent reserved and due upon any lease or contract whatsoever, and the tenant whose goods have been taken shall not, within five days after such distress and notice thereof, replevy the same by giving bond in double the amount of rent claimed, conditioned for the payment to the landlord of whatever judgment may be recovered by said landlord against the tenant in an action to be brought on said bond for the recovery thereof, said bond to be approved by the Magistrate of the county in which the distress is made, if action to recover the amount of rent claimed is within the jurisdiction of a Magistrate, otherwise to be approved by the Clerk of Court of said county. And upon the execution and delivery of said bond to the landlord, or to the person appointed by him to make the distress, the property distrained shall be returned to the

tenant. In the event said bond shall not be given within the time aforesaid, the person making the distress shall cause the goods distrained to be appraised by two sworn appraisers, and, after such appraisal, sell the same in the same manner as goods taken under execution are required by law to be sold.

Civ. '12, § 3521; Civ. '02, § 2435; G. S. 1827; R. S. 1946; 1898, XXII, 784; 1920, XXXI, 1106; 1921, XXXII, 230.

Provision for replevy ample. *Evans v. Mayes*, 81 S. C. 188, 62 S. E. 207.

ARTICLE III.

Joint Tenants and Tenants in Common.

(5292) § 1. **Partition Compellable Between Joint Tenants and Tenants in Common.**—All joint tenants and tenants in common, and every of them, which now hold or hereafter shall hold, jointly or in common, for term of life, year or years, or joint tenant or tenants in common, where one or some of them have or shall have estate or estates for term of life or years, with the other that have or shall have estate or estates of inheritance or freehold in any lands, tenements, or hereditaments, shall and may be compellable to make severance and partition of all such lands, tenements, and hereditaments, which they hold jointly or in common for term of life or lives, year or years, where one or some of them hold jointly or in common for term of life or years with other, or that have an estate or estates of inheritance or freehold.

No severance or partition shall be prejudicial or hurtful to any person or persons, their heirs or successors, other than such as are parties unto the said partition, their executors and assigns.

Civ. '12, § 3522; Civ. '02, § 2436; G. S. 1829; R. S. 1948; 1712, II, 471, 474.

One who is joined in execution of a deed of partition, and retains a portion of the land assigned him cannot ask partition at the hands of the Court, while claiming under the deed. *Brickle v. Leach*, 55 S. C. 510, 38 S. E. 720. Partition by joint agreement of heirs. *Horne v. McRae*, 53 S. C. 51, 30 S. E. 701.

Partition demanded as a right. *Atkinson v. Jackson*, 24 S. C. 594. But not where the joint estate arises of an illegal transaction. *Milhous v. Sally*, 43 S. C. 318, 21 S. E. 268; *Fricks v. Lewis*, 26 S. C. 244, 1 S. E. 884. But not as long as testator directs estate to be kept together. *Callahan v. Callahan*, 36 S. C. 455, 15 S. E. 727. Title claimed by defendant must be tried by jury before partition can be considered. *Capell v. Moses*, 36 S. C. 559, 15 S. E. 711. Partition by parol agreement may be good and binding. *Haughabaugh v. Donald*, 3 Brev. 97; *Goodue v. Barnwell*, Rice Eq. 198; *Kenmore v. Kenmore*, 26 S. C. 251, 1 S. E. 881; *Rountree v. Lane*, 32 S. C. 160, 10 S. E. 941. Such partition by husband cannot prevail against wife. *Jones v. Reeves*, 6 Rich. 132. Tenant in common who has conveyed his interest not a necessary party. *McNish v. Gerald*, 4 Strobl Eq. 66. Joint estate for joint lives may be partitioned. *Reily v. Whipple*, 2 S. C. 277. Lands living in several Counties may be partitioned in same proceeding in one County. *Daniels v. Moses*, 12 S. C. 130. Statutory lien for purchase money attached under Act of 1791 not affected by repeal of that Act. *Id.*; *Chalmers v. Jones*, 23 S. C. 463. But no such lien attached unless the provisions had been strictly complied with. *Burnside v. Watkins*, 30 S. C. 459, 9 S. E. 518. As to estimate of rents and profits. *Valentine v. Johnson*, 1 Hill Ch. 49; *Lyles v. Lyles*, 1 Hill Ch. 86; *Backler v. Farrow*, 2 Hill Ch. 111; *Woodward v. Clark*, 4 Strobl Eq. 170; *Jones v. Massey*, 9 S. C. 376; *Jones v. Massey*, 14 S. E. 292; *Scaife v. Thompson*, 15 S. C. 338; *McCreary v. Burns*, 17 S. C. 45; *Annelv v. DeSaussure*, 17 S. C. 389; *Jacobs v. Bush*, 17 S. C. 594; *Sutton v. Sutton*, 26 S. C. 34, 1 S. E. 19; *Annelv v. DeSaussure*, 26 S. C. 497, 2 S. E. 490; *McCants v. McCants*, 51 S. C. 503, 29 S. E. 387; *McGee v. Hall*, 28 S. C. 562, 6 S. E. 566. Purchaser of remainder may compel partition with other tenants in common during lifetime of his life tenant. *Lorick & Lowrance v. McCreary*, 20 S. C. 424; *Varn v. Varn*, 22 S. C. 77. Adult children cannot have partition of homestead assigned to widow, during her life. *Yoe v. Harvey*, 25 S. C. 94. Partition ordered during lifetime of husband and wife between her and their children then living, where the title was in her and such children and those to be born. *Mellichamp v. Mellichamp*, 28 S. C. 125, 5 S. E. 333. Defendant in partition claiming independent title, his claim must be first adjudicated. *Brock v. Nelson*, 29 S. C. 49, 6 S. E. 899. Where the issue of title is sufficiently raised by the pleadings there is no necessity for the Court to frame an issue. *Tyler v. Williams*, 53 S. C. 367, 31 S. E. 298; *Barnes v. Rodgers*, 54 S. C. 115, 31 S. E. 885; *Sumner v. Harrison*, 54 S. C. 353, 32 S. E. 572. Action for partition premature while two of the co-tenants hold possession under an unexpired lease. *Cannon v. Lomax*, 29 S. C. 369, 7 S. E. 529. An agreement for partition signed by married women and their husbands and others in interest, enforceable. *Smith v. Tanner*, 32 S. C. 259, 10 S. E. 1008.

A grant by one tenant in common of a right of way gives right of grantee to have grantor's share laid off in severalty. *R. R. Co. v. Leech*, 33 S. C. 175, 11 S. E. 631. A conveyance by one co-tenant does not operate to prejudice of other co-tenants. *Young v. Edwards*, 33 S. C. 404, 11 S. E. 1066. Grantee of entire estate claiming from co-tenant. *Garrett v. Weinberg*, 43 S. C. 36, 20 S. E. 756. Proceedings for partition and homestead at same time are inconsistent. *Williams v. Mallory*, 33 S. C. 601, 11 S. E. 1068. See, also, *Geiger v. Geiger*, 57 S. C. 521, 35 S. E. 1032; *in re Worley's Estate*, 49 S. C. 41, 26 S. E. 949. Partition of intestate's property should not be brought within the year after his death and without making administrator party. *Williams v. Mallory*, 33 S. C. 601, 11 S. E. 1068. See, also, *Geiger v. Geiger*, 57 S. C. 521, 35 S. E. 1032; *in re Worley's Estate*, 49 S. C. 41, 26 S. E. 949.

The right to partition is paramount to the right of a wife of a co-tenant to dower: hence, sale for partition will bar her right. *Holley v. Glover*, 36 S. C. 404, 15 S. E. 605, 31 Am. St. Rep. 883, 16 L. R. A. 776; but where the land is divided in kind the wife's dower attaches to the portion assigned him or his alienee. *Gaffney v. Jeffries*, 59 S. C. 565, 38 S. E. 216.

When non-suit will not be allowed. *Gilreath v. Furman*, 57 S. C. 289, 35 S. E. 516.

Partition between tenants in common for life. *Windham v. Howell*, 68 S. C. 478, 47 S. E. 715. Estates in entirety between husband and wife. *Green v. Cannady*, 77 S. C. 193, 57 S. E. 832. Effect of commissioner's report—upsetting. *Parrott v. Barrett*, 81 S. C. 260, 62 S. E. 241; *Aldrich v. Aldrich*, 75 S. C. 869, 55 S. E. 887, 117 Am. St. Rep. 909.

(5293) § 2. Jurisdiction of Common Pleas in Matters of Partition—Sale and Division.—The Court of Common Pleas has jurisdiction in all cases to make partition in kind of real and personal estates held in joint tenancy or in common, or by allotment to one or more of the parties, upon their accounting to the other parties in interest for their respective shares; or in case partition in kind or by allotment cannot be fairly and impartially made, and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties.

Civ. '12, § 3523; Civ. '02, § 2437; G. S. 1830; R. S. 1949; 1882, XVII, 982; 1885, XIX, 314.

The Court of Equity had jurisdiction in partition independently of the Statute. *Holley v. Glover*, 36 S. C. 404, 15 S. E. 605; *Charleston, etc., R. Co. v. Leech*, 35 S. C. 146, 14 S. E. 730. Infant parties, fee conditional. *Owings v. Hunt*, 53 S. C. 187, 31 S. E. 237; *Dupont v. DuBos*, 52 S. C. 244, 29 S. E. 665. No need to resort to equity for partition under the facts in *Latham v. Harby*, 50 S. C. 428, 27 S. E. 862. Complaint not alleging possession by plaintiff sustained. *Garrett v. Weinberg*, 50 S. C. 310, 27 S. E. 770. As to allegation of ouster. *Elmore v. Davis*, 49 S. C. 1, 26 S. E. 898.

When account between co-defendants can be ordered. *Craig v. Craig*, Bail. Eq. 102. Legislature cannot confer upon Probate Court jurisdiction in partition between adults. *Davenport v. Caldwell*, 10 S. C. 317. But proceedings in partition in that Court prior to that case in November, 1878, are binding upon all parties. *Herndon v. Moore*, 18 S. C. 329; *Schumpert v. Smith*, 18 S. C. 358; *Thomas v. Poole*, 19 S. C. 323; *Tedall v. Bouknight*, 25 S. C. 275. Whether Probate Court has concurrent jurisdiction in partition under wills, or where there are minors, not decided. *Thomas v. Poole*, 19 S. C. 323. Judge holding Court in the Circuit, and while in the County where the land lies, has power to hear and determine a case of partition at chambers. *Woodward v. Elliott*, 28 S. C. 368. Recovery of land and partition thereof should not be joined in one action. *Westlake v. Farrow*, 34 S. C. 270, 13 S. E. 469.

An estate in trees may exist separate from the estate in the land and is the subject of partition. It is discretionary with the Court whether they be sold together or not. *Rivers v. A. O. Lumber Corp.*, 81 S. C. 492, 62 S. E. 855.

(5294) § 3. Writs of Partition—Commissioners—Oaths—Duties—Special Return—Powers of Court.—Writs of partition shall be issued and directed to five persons, two of whom shall be nominated by the plaintiff and two by the defendant, and a fifth by the officer issuing the same, and in cases when the defendant fails to appear or answer the plaintiff shall nominate three persons and the officer two, commanding them, or a majority of them, within one month thereafter (being first duly sworn for that purpose) fairly and impartially, according to the best of their judgment, to make partition of the premises described in the complaint among the parties entitled thereto, according to their several rights; and when the estate or property cannot, in the opinion of the Commissioners, be fairly and equally divided between the parties interested therein without manifest injury to them, or some one of them, then they shall make a special return of the whole property and the value thereof, truly appraised, and certify their opinion to the Court whether it will be most for the benefit of all parties to

deliver over to one or more of the parties interested therein the property which cannot be fairly divided, upon the payment of a sum of money to be assessed by the said Commissioners, or to sell the same at public auction, and the Court shall proceed to consider and determine the same; and if it shall appear to the Court that it will be for the benefit of all parties interested in the said estate or property that the same should be vested in one or more of the persons entitled to a portion of the same, on the payment of a sum of money assessed as aforesaid, the Court shall determine accordingly, and the said person or persons, on the payment of the consideration money, shall be vested with the estate so adjudged to such person or persons. But if it shall appear to the Court that it would be more for the interest of the parties interested in said estate or property that the same should be sold, and the proceeds of sale be divided among them, then the Court shall direct a sale to be made, on such terms as to the Court shall seem right.

Civ. '12, § 3524; Civ. '02, § 2438; R. S. 1950; 1885, XIX, 314.

Contents of writ and order. *Barnes v. Rodgers*, 54 S. C. 115, 31 S. E. 885; *Trammell v. Trammell*, 57 S. C. 89, 35 S. E. 533; *Love v. Love*, 57 S. C. 530, 35 S. E. 398.

The return of a majority of the Commissioners sufficient. *Yates v. Gridley*, 16 S. C. 496. Return of Commissioners in division of the land, unless clearly erroneous and unjust, will be confirmed by the Court. *Greer v. Winds*, 4 DeS. 35; *Buckler v. Farrow*, Rich. Eq. Ca. 180. In absence of evidence it must be assumed that Commissioners acted impartially. *Riley v. Gaines*, 14 S. C. 454. Interest allowed on money assessed for equality of partition. *Craig v. Craig*, Bail. Eq. 99. In computing value of improvements, not their cost, but the value they have imparted to the premises, is allowed. *Moore v. Williamson*, 10 Rich. Eq. 323; *Scaife v. Thompson*, 15 S. C. 357. Such return, when confirmed, vests title from actual partition. *Hudson v. Wallace*, 1 Rich. Eq. 1. Commissioners may make special return, vesting property in one or more of the parties, upon paying certain sum as its assessed value. *Carnes v. White*, 1 Brev. 458; *Burnside v. Watkins*, 30 S. C. 459, 9 S. E. 518. Return need not fix the precise amount of this sum that each party is to receive, but order of confirmation should distribute it. *Graydon v. Graydon*, McM. Eq. 63; *Commissioners v. Mobley*, 2 Speer 654. It may recommend a credit to whom the land is allotted. *Graydon v. Graydon*, McM. Eq. 63. The return of the Commissioners, if accepted, is the law between the parties as to equality of partition, and Court cannot otherwise determine it. *Buckler v. Farrow*, Rich. Eq. Ca. 178. Such return, when confirmed, vests title only from payment of the money. *Burriss v. Gooch*, 5 Rich. 1. When co-tenant has successfully mortgaged a specific part of the land, it should be allotted to him or sold so as to preserve rights of mortgages, if other co-tenants not prejudiced. *Kennedy v. Boykin*, 35 S. C. 61, 14 S. E. 809. If it appears to the Court that there is or will be a bid for a material advance in price above assessed by the Commissioners, it will direct a sale. *Moore v. Williamson*, 10 Rich. Eq. 323. The rule of *caveat emptor* does not apply to sales under decree for partition. *Boliver v. Zeigler*, 9 S. C. 287; *McMichael v. McMichael*, 51 S. C. 555, 29 S. E. 403.

Parrott v. Barrett, 81 S. C. 260, 62 S. E. 241; *Aldrich v. Aldrich*, 75 S. C. 369, 55 S. E. 887, 117 Am. St. Rep. 909; *Allen v. Allen*, 76 S. C. 499, 57 S. E. 549; *Bowen v. True*, 79 S. C. 394, 60 S. E. 943.

(5295) § 4. Court May Dispense With Writ and Order Sale, Upon Testimony Taken.—Nothing in the preceding Section contained shall be construed to affect the power of the Court of Common Pleas to dispense with the issuing of such writ in cases where, in the judgment of the Court, it would involve unnecessary expense to issue the same; and the Court shall have power in all proceedings in partition, without recourse to the said writ, to determine, by means of testimony taken before the proper officer and reported to the Court, whether a partition in kind among the parties be practicable or expedient, and in cases where such partition cannot be fairly and equally made to order a sale of the property and a division of the proceeds according to the rights of the parties

Civ. '12, § 3525; Civ. '02, § 2439; R. S. 1951; 1886, XIX, 506.

McCady v. Jones, 36 S. C. 136, 15 S. E. 430.

Lien as to rents. See *Vaughan v. Langford*, 81 S. C. 282, 62 S. E. 316, 128 Am. St. Rep. 912, 16 Am. & Eng. Ann. Cas. 91. Lienees and grantees of covenant necessary parties to partition proceedings. *Ex parte Union Mfg. & Power Co.*, 81 S. C. 265, 62 S. E. 259. Sale of entire tract, boundaries. *Poster v. Foster*, 81 S. C. 307, 62 S. E. 320.

ARTICLE IV.

Betterments.

(5296) § 1. **Defendants to Be Awarded Full Value for Improvements in Certain Cases.**—After final judgment in an action to recover lands and tenements, in favor of the plaintiff, if the defendant has purchased the lands and tenements recovered in such action, or taken a lease thereof, or those under whom he holds have purchased a title to such lands and tenements, or taken a lease thereof, supposing at the time of such purchase such title to be good in fee, or such lease to convey and secure the title and interest therein expressed, such defendant shall be entitled to recover of the plaintiff in such action the full value of all improvements made upon such land by such defendant, or those under whom he claims, in the manner hereinafter provided.

Civ. '12, § 3526; Civ. '02, § 2440; G. S. 1835; R. S. 1952; 1870, XIV, 313.

This Act is not unconstitutional. *Lumb v. Pinckney*, 21 S. C. 471. Section enforced. *Jacobs v. Bush*, 17 S. C. 594; *Rabb v. Flenniken*, 32 S. C. 189, 10 S. E. 943. Where party supposed at time of purchase that he had a good title, he is entitled to improvements made after subsequent knowledge of title in another. *Templeton v. Lowry*, 22 S. C. 389. Whether he so supposed, is a question of fact to be determined in the case. *Id.* This Statute recognizes an equitable right and gives a remedy for its enforcement where none existed before. *Tumbleston v. Rumph*, 43 S. C. 279, 21 S. E. 86; *Hall v. Boatwright*, 58 S. C. 544, 36 S. E. 1002. And it applies only to actions for recovery of land, and not to actions for partition between co-tenants, where equity affords a remedy for improvements to the common property. *Id.*; *McGee v. Hall*, 28 S. C. 562, 6 S. E. 566. Applies only in actions for recovery of land, not in foreclosure suits. *Lessly v. Bowie*, 27 S. C. 193, 3 S. E. 199. But parties in possession should not be allowed improvements and interest too during time of possession. *Boykin v. Ancrum*, 28 S. C. 486, 6 S. E. 305.

It applies to improvements made by those under whom the plaintiff claims. *Salinas v. Aultman*, 45 S. C. 283, 22 S. E. 889. See, also, former hearing in same case: 41 S. C. 304, 19 S. E. 617; and *McKnight v. Cooper*, 27 S. C. 94, 2 S. E. 842. Such improvements must be made *bona fide*. *Gadsden v. Desportes*, 39 S. C. 131, 17 S. E. 706; and *Salinas v. Aultman*, *supra*. Accounting as to betterments and rents between co-tenants. *Vaughan v. Langford*, 81 S. C. 282, 62 S. E. 316, 128 Am. St. Rep. 912, 16 Am. & Eng. Ann. Cas. 91; *Shute v. Shute*, 82 S. C. 264, 64 S. E. 145.

Bethea v. Allen, 101 S. C. 350, 85 S. E. 903.

(5297) § 2. **Value of Improvements—How Determined.**—The sum which such land shall be found at the time of the rendition of such judgment to be worth more, in consequence of improvements so made, than it would have been had no such improvements or betterments been made, shall be deemed to be the value of such improvements or betterments.

Civ. '12, § 3527; Civ. '02, § 2441; G. S. 1836; R. S. 1953.

(5298) § 3. **Proceedings to Recover Value of Improvements.**—The defendant in such action shall, within forty-eight hours after such judgment, or during the term of the Court in which the same shall be rendered, file a complaint against such plaintiff for so much money as the lands and tenements are so made better, in the office of the Clerk of such Court, which shall be sufficient notice to the defendant in such complaint to appear and defend against the same; and all subsequent proceedings shall be had in accordance with the practice prescribed in the Code of Procedure.

Civ. '12, § 3528; Civ. '02, § 2442; G. S. 1837; R. S. 1954.

"Final judgment," means the judgment in Circuit Court, even in cases of appeal, and it is too late to bring this action after remittitur of Supreme Court. *Garrison v. Dougherty*, 18 S. C. 436. It does not mean entry of formal judgment, but final determination of rights of parties by verdict. *Godfrey v. Fielding*, 21 S. C. 313. Defendant by answer claimed improvements, alleging only that he believed he had good title in fee at the time of his purchase, was allowed to amend by averring also a belief of good title at time the improvements were made. *McKnight v. Cooper*, 27 S. C. 92, 2 S. E. 842.

(5299) § 4. **Judgment Stayed Until Sale—Special Verdict—Lien for Betterments.**—The Court, on the entry of such action, shall stay all pro-

ceedings upon the judgment obtained in the prior action, except the recovery of such lands, until the sale of the lands recovered as hereinafter provided; and the final judgment shall be upon a special verdict by a jury, under the direction of the Court, stating the value of the lands and tenements without the improvements put thereon in good faith by the defendant, and the value thereof with improvements. The defendant in ejectment shall be entitled for said betterments to a verdict for the value thereof, as of the date when the said lands were recovered from him, and interest on said verdict from said date, and the lands and tenements so recovered shall be held to respond to said judgment for betterments in the same manner and for the same time as if the same had been attached on mesne process.

Civ. '12, § 3529; Civ. '02, § 2443; G. S. 1838; R. S. 1955; 1885, XIX, 432.

Refusal to stay such judgment pending such action for improvements is a denial of substantial right and appealable. *Dill v. Moore*, 14 S. C. 338.

(5300) § 5. Direction of Sale—Disbursement of Proceeds—Proviso as to Payment of Betterment.—When final judgment shall be rendered as provided in Section 4, the Court shall direct a sale of the land recovered in ejectment on the following terms: That out of the proceeds of sale, the plaintiff in ejectment, or his legal representative, be paid the amount ascertained as the value of his land without improvements put thereon in good faith by the defendant, and the surplus, if any, be paid to the occupying claimant, or his legal representative, and said judgment for betterments shall be a lien on such land in preference to all other liens: *Provided, however*, That this Section shall not apply to cases where the plaintiff in ejectment, or his legal representative, shall, within sixty days after the aforesaid special verdict, pay into the office of the Clerk of the Court, for the defendant, the value of the betterments as so found in said special verdict.

Civ. '12, § 3530; Civ. '02, § 2444; G. S. 1839; R. S. 1956; 1885, XIX, 432.

Jacobs v. Bush, 17 S. C. 594.

(5301) § 6. Value of Improvement May Be Alleged in Answer.—In any action hereafter brought, or now pending, and which has not been heard, for the recovery of lands and tenements, whether such action be denominated legal or equitable, the defendant who may have made improvements or betterments on such land, believing at the time he makes such improvements or betterments that his title thereto was good in fee, shall be allowed to set up in his answer a claim against the plaintiff for so much money as the land has been increased in value in consequence of the improvements so made; so, likewise, the defendant shall be allowed to set up a claim against the plaintiff for so much money as the land has been increased in value in consequence of improvements or betterments made by the person or persons under or through whom he claims, if it be shown that the defendant actually believes he was taking a good title, in fee simple thereto, at the time of the alleged taking thereof.

Civ. '12, § 3531; Civ. '02, § 2445; R. S. 1957; 1885, XIX, 343; 1917, XXX, 392.

This Section is merely supplemental to § (5296), and includes improvements made by those under whom he claims. *Salinas v. Aultman*, 45 S. C. 283, 22 S. E. 889; *Gadsden v. Desportes*, 39 S. C. 131, 17 S. E. 706.

Bethea v. Allen, 101 S. C. 350, 85 S. E. 903.

(5302) § 7. Judge or Jury May Assess Value—Charge on Land—Other Property Exempt.—If the verdict or decree shall be for the plaintiff in

such action, the jury or Judge who may render the same may at the same time render a verdict or decree for the defendant for so much money as the lands and tenements are so made better, after deducting the amount of damages, if any, recovered by the plaintiff in such action, and the lands and tenements as recovered shall be held to respond to such judgment for the defendant: *Provided*, That execution on such judgment shall issue only against such lands and tenements so recovered by the plaintiff in such action, and shall not in any such case issue against the goods and chattels or other lands of the defendant.

Civ. '12, § 3532; Civ. '02, § 2446; R. S. 1958; 1885, XIX, 343.

Lien of judgment for improvements prevails over claim of homestead. *Wilson v. Counts*, 52 S. C. 218, 29 S. E. 649.

(5303) § 8. No Recovery for Mesne Profits.—The plaintiff, in an action for the recovery of lands and tenements, shall recover nothing for the mesne profits of the land, except on such improvements as are made by him or those under whom he claims.

Civ. '12, § 3533; Civ. '02, § 2447; G. S. 1840; R. S. 1959; 1870, XIV, 314.

(5304) § 9. Foregoing Provisions Not Applicable in Certain Cases.—The foregoing provisions relating to betterments shall not extend to any person who has entered on land by virtue of any contract made with the legal owner of such land, unless it shall appear, on the trial of the action, that such owner has neglected to fulfill such contract of his part, in which case such person in possession shall be entitled to all the privileges hereinbefore provided for those who entered upon land under supposed title, and the same proceedings shall be had, and the land shall be held in the same manner as hereinbefore provided.

Civ. '12, § 3534; Civ. '02, § 2448; G. S. 1841; R. S. 1960; 1870, XIV, 314.

ARTICLE V.

Miscellaneous Provisions Concerning Real Estate.

(5305) § 1. Liens on Real Estate of No Force After Twenty Years—Provisos.—No mortgage, or deed having the effect of a mortgage, except mortgages or deeds of trust, covering the whole or any part of the real or personal property of a railroad company, no judgment, decree or other lien on real estate, shall constitute a lien upon any real estate after the lapse of twenty years from the date of the creation of the same: *Provided*, That if the holder of any such lien or liens, as aforesaid, shall, at any time during the continuance of such lien, cause to be recorded upon the record of such mortgage, or deed having the effect of a mortgage, or shall file with the record of such judgment, decree or other lien, a note of some payment on account, or some written acknowledgment of the debt secured thereby, with the date of such payment or acknowledgment, such mortgage, deed having the effect of a mortgage, judgment, decree or other lien, shall be, and continue to be, a lien for twenty years from the date of the record of any such payment on account or acknowledgment: *Provided, further*, That nothing herein contained shall be construed to affect the duration of the

liens of judgments as prescribed by the Code of Procedure: *Provided, further*, That on and after the first day of January, 1902, the provisions of this Section shall apply to all mortgages, those executed prior to the 24th day of December, 1879, as well as to those executed since that date, except mortgages or deeds of trust covering the whole or any part of the real or personal property of a railroad company: *Provided, further*, That this Section shall not apply to mortgages securing coupon bonds or corporations.

Civ. '12, § 3535; Civ. '02, § 2449; G. S. 1831; R. S. 1961; 1879, XVII, 167; 1898, XXII, 748; 1903, XXIV, 88; 1904, XXIV, 408.

Applies only to prior judgments—not to those recovered after its enactment, or after the Code. *Henry v. Henry*, 31 S. C. 1. But this Statute, prior to the amendment of 1898, was held not retroactive as to mortgages. *Curtis v. Renneker*, 34 S. C. 468. Record of assignments of mortgages no compliance with requirements. *Ib.* What is sufficient acknowledgment of the debt. *Wood v. Milling*, 32 S. C. 378, 10 S. E. 1081. As to payments. *Patterson v. Baxley*, 33 S. C. 354, 11 S. E. 1065.

Judgment cannot be renewed after twenty years from death of joint debtor, where barred by Statute of Limitations. *Brantley v. Bittle*, 72 S. C. 179, 51 S. E. 561. Declares rule of evidence to rebut presumption of payment. *Lyles v. Lyles*, 71 S. C. 391, 51 S. E. 113. Does it refer to charge of legacy on lands devised? If so, it is not retroactive. *Dixon v. Roessler*, 76 S. C. 415, 57 S. E. 203.

Coleman v. Coleman, 74 S. C. 567, 54 S. E. 758; *Gregory v. Perry*, 71 S. C. 246, 50 S. E. 787; *Montague v. Priestner*, 82 S. C. 492, 64 S. E. 393; *Gainey v. Anderson*, 87 S. C. 47, 68 S. E. 889, 31 L. R. A., N. S., 323n.

Fowke et al v. DeWitt et al, 104 S. C. 159, 88 S. E. 368; *McSweeney v. Windham et al*, 104 S. C. 508, 89 S. E. 500; *Merchants & Planters Nat. Bank of Union v. Hunter et al*, 113 S. C. 394, 102 S. E. 720.

(5306) § 2. Measure of Damages in Actions Upon Covenant.—In any action or suit for reimbursements or damages upon covenant or otherwise, the true measure of damages shall be the amount of the purchase money at the time of alienation, with legal interest from the time of eviction.

Civ. '12, § 3536; Civ. '02, § 2450; G. S. 1832; R. S. 1962; 1879, XVII, 11.

Formerly the interest ran from time of purchase. *Furman v. Elmore*, 2 N. & McC. 189; *Ware v. Weatherall*, 2 McC. 413; *Lowrance v. Robertson*, 10 S. C. 8. The alienation referred to is the alienation by the warrantor. *Lowrance v. Robertson*, 10 S. C. 8; *Murdough v. Tuten*, 76 S. C. 502, 57 S. E. 547.

(5307) § 3. Assessment of Damages for Trespass or Waste—Power of Judge.—In case any action shall be brought for a trespass or waste committed in the plaintiff's lands or tenements, the Judge of the Court having jurisdiction of such action shall have power to appoint one or more sufficient persons to view the said trespass or waste, if need be, who shall return an account thereof, on oath, at the next Court, and the true value of the damages occasioned by such trespass or waste, and the same shall be allowed as evidence, if the Court shall see fit; any law, custom or usage to the contrary thereof in any wise notwithstanding.

Civ. '12, § 3537; Civ. '02, § 2451; G. S. 1822; R. S. 1963; 1722, VII, 177.

(5308) § 4. Surveyors Appointed for Lands in Dispute.—If any cause be depending in the Circuit Courts, or within the jurisdiction of the same, wherein the titles or boundaries of lands or plantations shall be brought into dispute, the Judge of the said Court shall appoint surveyors, at the nomination of the parties, to survey the same, at the charge of the said parties, and to return such survey, on oath, at the next sitting of the said Court.

Civ. '12, § 3538; Civ. '02, § 2452; G. S. 1823; R. S. 1964; 1722, VII, 177.

Section not imperative except when survey necessary. *Fran v. Cruikshanks*, 3 McC. 84. When necessary. *Thomas v. Jeter*, 1 Hill 380; *Scriven v. Heyward*, Chev. 119; *Speer v. Duvall*, 5 Rich. 13; *State v. Sarter*, 2 Strob. 60; *Manning v. Dove*, 10 Rich. 395; *Patterson v. Crenshaw*, 32 S. C. 534, 11 S. E. 390. If necessary trial must be postponed for it. *Gourdine v. Theus*, 2 Brev. 35. Notice to other party of survey under this Section necessary. *Underwood v. Evans*, 2 Bay 437. Not necessary, when. *Keenan v. Keenan*, 7 Rich. 345; *Manning v. Dove*, 10 Rich. 395. Surveyor

compelled to attend only first trial, unless subpoenaed. *Nicklin v. Morrow*, 3 Brev. 405; *Breithaupt v. Clarke*, 1 Hill 399. He must as witness verify his plat. *Davis v. Winsmith*, 5 S. C. 332. As to general rules of surveying. *Colclough v. Richardson*, 1 McC. 167; *Welch v. Phillips*, 1 McC. 215; *Nelson v. Frierson*, 1 McC. 232; *Stokes v. Holliday*, 1 McC. 255; *Bond v. Quattlebaum*, 1 McC. 584; *Martin v. Simpson*, Harp. 454; *Atkinson v. Anderson*, 3 McC. 223; *Sumter v. Bracy*, 2 Bay 515; *Douglas v. Fernandez*, 2 Bail. 75; *Wash. v. Holmes*, 1 Hill 12; *Kershaw v. Starnes*, 1 McM. 74; *Breithaupt v. Clarke*, 1 Hill 399; *Kershaw v. Starnes*, 1 McM. 73; *Davis v. Winsmith*, 5 S. C. 332. Objection to survey, when to be made. *Barmore v. Jay*, 2 McC. 371. As to costs of survey. *Lesly v. Buford*, 1 Brev. 460; *Sturgenegger v. Marsh*, 1 Bail. 592; *Kershaw v. Starnes*, 1 McM. 73. To what cases Section not applicable. *Speer v. Duval*, 5 Rich. 13.
McCreery Co. v. Myers, 70 S. C. 282, 49 S. E. 848.
Welsh v. Atlantic Coast Line R. Co., 107 S. C. 534; 93 S. E. 196.

(5309) § 5. If Parties Refuse, Court to Nominate Surveyor.—In case either of the parties shall refuse to nominate a surveyor duly sworn and qualified, then the said Court shall proceed to nominate two or more such surveyors, as they shall think fit, in order for the better finding out and discovering the truth of the matter in difference; and if the Court shall acquiesce in the return of the surveyors so given in on oath, as aforesaid, the same shall be allowed as evidence.

Civ. '12, § 3539; Civ. '02, § 2453; G. S. 1834; R. S. 1965; 1722, VII, 177.

(5310) § 6. Party Walls in Cities and Towns.—Every person who shall erect in a city or town any building with brick shall have liberty to set half his partition wall in his next neighbor's ground, provided he leave a tooth-ing in the corner of such wall for his neighbor to adjoin unto.

Civ. '12, § 3540; Civ. '02, § 2454; G. S. 1842; R. S. 1966; 1713, VII, 58.

(5311) § 7. Each Owner to Pay Half Expense of Party Wall.—When the owner of such adjoining land shall build, he shall pay for one-half of the said partition wall, so far as he makes use of the same.

Civ. '12, § 3541; Civ. '02, § 2455; G. S. 1843; R. S. 1967; 1713, VII, 58.

TITLE II.

CHAPTER LXVII.

Of the Registration of Legal Instruments.

(5312) § 1. What Instruments Are to Be Recorded—When, Where and Effect.—All deeds of conveyances of lands, tenements or hereditaments, either in fee simple or for life, all deeds of trusts or instruments in writing, conveying either real or personal estate, and creating a trust or trusts in regard to such property, or charging or encumbering the same; all mortgages or instruments in writing in the nature of a mortgage of any property, real or personal; all marriage settlements or instruments in the nature of a settlement of marriage; all leases or contracts in writing made between landlord and tenant for a longer period than twelve months; all statutory liens on buildings and lands for materials or labor furnished on them; all statutory liens on ships and vessels; all certificates of renunciation of dower; and, generally, all instruments in writing now required by law to be recorded in the office of Register of Mesne Conveyances or Clerk of Court in those counties where the office of Register of Mesne Conveyances has been abolished, or in the office of the Secretary of State, deliv-

ered or executed on and after the first day of May, in the year of our Lord one thousand nine hundred and nine, shall be valid, so as to affect from the time of such delivery or execution the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice, only when recorded within ten days from the time of such delivery or execution in the office of Mesne Conveyance or Clerk of Court of the county where the property affected is situated, in the case of real estate; and in the case of personal property of the county where the owner of said property resides, if he resides within the State, or if he resides without the State, of the county where such personal property is situated at the time of the delivery or execution of said deeds or instruments: *Provided, nevertheless*, That the recording and record of the above mentioned deeds and instruments of writing subsequent to the expiration of said ten days shall, from the date of such record, have the same effect as to the rights of all creditors and purchasers without notice as if the said deeds or instruments of writing had been executed and delivered on the date of the record thereof.

Civ. '12, § 3542; Civ. '02, § 2456; G. S. 1776; R. S. 1968; 1879, XVI, 92; 1898, XXII, 746; 1909, XXVI, 190; 1914, XXVIII, 482.

Who are subsequent creditors within the meaning of the Act prior to the amendment of 18981 King v. Fraser, 28 S. C. 543; Carraway v. Carraway, 27 S. C. 576, 5 S. E. 157. Armstrong v. Carwile, 56 S. C. 463, 35 S. E. 200.

As to deeds. Righton v. Righton, 1 Mill 130; Harrison v. Hiller, 2 N. & McC. 578; Barnwell v. Porteous, 2 Hill Ch. 219; Cooper v. Dav, 1 Rich. Eq. 26; Steele v. Mansel, 6 Rich. 437; Godbold v. Lambert, 8 Rich. Eq. 155; Bassard v. White, 9 Rich. Eq. 483; Lott v. DeGraffenreid, 10 Rich. Eq. 346; Leger v. Doyle, 11 Rich. 118; Belk v. Massey, 11 Rich. 614; Youngblood v. Keadle, 1 Strob. 121; Evans v. McLucas, 15 S. C. 67; McNamee v. Huckabee, 20 S. C. 190; Summers v. Brice, 36 S. C. 204, 15 S. E. 374; Levi v. Gardner, 53 S. C. 24, 30 S. E. 617. As to marriage settlements. Settlement upon married woman by Court need not be recorded as marriage settlement. McMeekin v. Edmunds, 1 Hill Chan. 288. Nor need settlement upon her by husband after marriage for present consideration be recorded as such. Bank v. Brown, 2 Hill Ch. 558. Only settlements in consideration of marriage and before, or in pursuance of agreement made before, are required to be recorded as such. Bank v. Brown, 2 Hill Ch. 558; Napier v. Wightman, Speer Eq. 357; LePrince v. Guillemont, 1 Rich. Eq. 187; Amaker v. New, 38 S. C. 28, 11 S. E. 386; Trustees v. Bryson, 34 S. C. 401, 13 S. E. 619. Mere executory agreement is not marriage settlement. Baskins v. Giles, Rich. Eq. 315. Marriage settlements unrecorded void as to creditors concerned. Henion v. McCall, Harp. Eq. 170; LaBorde v. Penn, McM. Eq. 448; Fowke v. Woodward, Speer Eq. 233; Brock v. Bowman, Rich. Eq. Ca. 185; Harper v. Barsh, 10 Rich. Eq. 150; Barsh v. Rials, 6 Rich. 162. As to mortgages. Ash v. Executor, 1 Bay 304; Ashe v. Livingston, 2 Bay 80; Brailsford v. House, 1 N. & McC. 31; Ex parte Leland, 1 N. & McC. 460; Hampton v. Levy, 1 McC. Ch. 107; Thayer v. Cramer, 1 McC. Ch. 395; Nixon v. Bynum, 1 Bail. 148; Martin v. Sale, 1 Bail. Eq. 1; Thayer v. Davidson, Bail. Eq. 412; Smith v. Osborne, 1 Hill Ch. 340; Barnwell v. Porteous, 2 Hill Ch. 219; Schultz v. Carter, Speer Eq. 553; Barr v. Kinard, 3 Strob. 73; Ryan v. Clanton, 3 Strob. 412; Boyce v. Boece, 6 Rich. Eq. 302; Bryce v. Bowers, 11 Rich. Eq. 41; McKnight v. Gordon, 13 Rich. Eq. 222; Williams v. Beard, 1 S. C. 309; Miles v. King, 5 S. C. 146; Hainesworth v. Bischoff, 6 S. C. 159; Annelv v. DeSausure, 12 S. C. 488; McKnight v. Gordon, 13 Rich. Eq. 222; Sternberger v. McSween, 14 S. C. 35; King v. Fraser, 28 S. C. 543; Blohme v. Lynch, 26 S. C. 300, 2 S. E. 136; Loan and Trust Co. v. McPherson, 26 S. C. 431, 2 S. E. 267; McGowan v. Reid, 27 S. C. 262, 3 S. E. 337; Carraway v. Carraway, 27 S. C. 576, 5 S. E. 157; Gregory v. Ducker, 31 S. C. 141, 9 S. E. 780; London v. Youmans, 31 S. C. 147, 9 S. E. 775; Avery v. Wilson, 47 S. C. 78, 25 S. E. 286; Brederberg v. Landrum, 32 S. C. 215, 10 S. E. 956; Mowry v. Crocker, 33 S. C. 436, 12 S. E. 3; Summers v. Brice, 36 S. C. 204, 15 S. E. 374; Norwood v. Norwood, 36 S. C. 431, 15 S. E. 382; Turpin v. Sudduth, 52 S. C. 295, 21 S. E. 245; VanDiere v. Mitchell, 45 S. C. 127, 22 S. E. 759. Instrument in nature of a mortgage, what is not. Arthur v. Screvens, 39 S. C. 77, 17 S. E. 640. Except as to subsequent purchasers from some vendor or as to subsequent creditors, a deed is not affected by not being recorded. Martin v. Quattlebaum, 3 McC. 205; Martin v. Sale, Bail. Eq. 1; Summers v. Brice, 36 S. C. 204, 15 S. E. 374. Only as to such parties is a mortgage so affected. Youngblood v. Keadle, 1 Strob. 121; McKnight v. Gordon, 13 Rich. Eq. 222; Williams v. Beard, 1 S. C. 309; Zorn v. R. R. Co., 5 S. C. 90; Summers v. Brice, 36 S. C. 204, 15 S. E. 374. But a purchaser for value without notice from purchaser in possession with notice is protected against unrecorded chattel mortgage. London v. Youmans, 31 S. C. 147, 9 S. E. 775. Generally. This Act of 1876 applies only to instruments subsequently executed. Bloom v. Sims, 27 S. C. 90, 3 S. E. 45. Mortgage not recorded in time under Act of 1843, void as to purchaser subsequent to its record. Ib. In connection with mechanic's lien. Murphy v. Valk, 30 S. C. 262, 9 S. E. 101.

Record a nullity in County other than that in which land is situate. Cole v. Ward, 79 S. C. 573, 61 S. E. 108; or where deed was not properly probated, Watts v. Whetstone, 79 S. C. 357, 60 S. E. 703; Woolfork v. Graniteville Mfg. Co., 22 S. C. 332. Notice under the recording Act is a legal issue. Armour v. Ross, 75 S. C. 201, 55 S. E. 315; Charleston L. S. Co. v. Collins, 79 S. C. 383, 60 S. E. 944. Innocent purchaser without notice. Williams v. Jones, 74 S. C. 258, 54 S. E. 558. Failure to record chattel mortgage. Wardlaw v. Troy Oil Mill, 74 S. C. 368, 54 S. E. 658, 114 Am. St. Rep. 1004. Constructive notice—change of name. Brayton v. Beall, 73 S. C. 308, 53 S. E. 641. Distinguished. Armour v. Ross, 78 S. C. 294, 301, 58 S. E. 941, 1135. Record of mortgage

—notice to purchasers. *Francis v. Francis*, 78 S. C. 178, 58 S. E. 804. Record of mortgage and assignment effect as notice. *Ex parte Anderson*, 92 S. C. 131, 62 S. E. 513, 63 S. E. 354. Imperfect indexing of deed does not impair rights of those holding under it. *Mitchell v. Cleveland*, 76 S. C. 432, 57 S. E. 33; *Armstrong v. Austin*, 45 S. C. 69, 22 S. E. 763; *Association v. Childs*, 67 S. C. 251, 45 S. E. 167. Recording chattel mortgage—distinguished. *Armour v. Ross*, 75 S. C. 201, 55 S. E. 315. When record of mortgage is not notice of terms of bond. *Equitable B. & L. Association v. Corley*, 72 S. C. 404, 52 S. E. 48, 110 Am. St. Rep. 615; *Miller v. Wroton*, 82 S. C. 97, 63 S. E. 62, 449.

Has no application to where machinery is sold for cash to be paid for when installed by seller, or to goods to be paid for on delivery. *Pridmore v. Puffer Mfg. Co.*, 163 Fed. 499. See, also, *In re Bailey*, 176 Fed. 628.

All claims of antecedent creditors are extinguished by mortgage, and, as between mortgagees and subsequent creditors, rights of latter must prevail. *In re Cannon*, 121 Fed. 582, 587; *Greer v. Simmons*, 164 Fed. 300.

Mortgagee is not entitled to share with subsequent creditors who have acquired rights by failure to record mortgage. *Simmons v. Greer*, 174 Fed. 654.

Simple contract creditor whose debt was contracted after execution of two mortgages, but before record of either out of time and without actual notice, whose debt was reduced to judgment after record of mortgages, divides proceeds arising from sale of mortgaged lands ratably with mortgagees, but he should be paid before simple contract creditor whose debt was contracted since mortgages, without notice, but not reduced to judgment. Amount applicable to two mortgages must be first applied to second. *Brown v. Sartor*, 87 S. C. 116, 69 S. E. 88.

Blackwell v. Harrelson, 99 S. C. 264, 84 S. E. 233; *Williamson et al v. Hotel Melrose et al*, 110 S. C. 1, 96 S. E. 407; *Oliver et al v. McWhirter et al*, 112 S. C. 555, 100 S. E. 533; *R. H. Nesbit Auto Co. v. Whitlock et al*, 113 S. C. 519, 101 S. E. 822; *Cox v. Enterprise Bank et al*, — S. C. —, 104 S. E. 693.

(5313) § 2. Possession Not Notice Where Instrument Is Not Recorded.

—No possession of real property described in any instrument of writing required by law to be recorded shall operate as notice of such instrument; and actual notice shall be deemed and held sufficient to supply the place of registration only when such notice is of the instrument itself or of its nature and purport.

Civ. '12, § 3543; Civ. '02, § 2457; R. S. 1969; 1888, XX, 15.

Generally, as to notice to supply lack of registration. *Tart v. Crawford*, 1 McC. 265; *Ib.*, 1 McC. 479; *Givens v. Branford*, 2 McC. 152; *Cabiness v. Mahon*, 2 McC. 273; *McFall v. Sherrard*, Harp. 295; *Anderson v. Harris*, 1 Bail. 315; *Kottman v. Ayer*, 1 Strob. 552; *Martin v. Sale*, Bail. Eq. 1; *City Council v. Page*, Speer Eq. 159; *Fowke v. Woodward*, Speer Eq. 233; *Cooper v. Day*, 1 Rich. Eq. 26; *Wallace v. Cooker*, 3 Strob. 266; *Ingram v. Phillips*, 3 Strob. 565; *Cape Fear Steamboat Co. v. Conner*, 3 Rich. 335; *Knotts v. Geiger*, 4 Rich. 32; *Anderson v. Aiken*, 11 Rich. Eq. 232; *Aultman v. Utsey*, 34 S. C. 559, 13 S. E. 848. And possession was considered, before this Section, as such notice, not only of equities. *Sheorn v. Robinson*, 22 S. C. 32; *Bieman v. White*, 23 S. C. 490; *Graham v. Nesmith*, 24 S. C. 285; *Sweatman v. Edmunds*, 28 S. C. 58, 5 S. E. 165; but also of unrecorded deed. *Daniel v. Hester*, 29 S. C. 147, 7 S. E. 65.

Notice to agent of corporation. *Wardlaw v. Oil Mill*, 74 S. C. 368, 54 S. E. 658, 114 Am. St. Rep. 1004. Notice that absolute deed was intended as a mortgage. *Manigault v. Lofton*, 73 S. C. 499, 59 S. E. 534. Unrecorded deed by remainderman to grantee in possession. *Ex parte Anderson*, 82 S. C. 131, 62 S. E. 354, 513. Possession not notice. *Foster v. Bailey*, 82 S. C. 378, 64 S. E. 423.

Oliver et al v. McWhirter et al, 112 S. C. 555, 100 S. E. 533.

(5314) § 3. Certain Conveyances Not Endorsed by Auditor Declared

Valid.—All conveyances of real estate which have been recorded by the Clerk of Court and Register of Mesne Conveyances of the several counties since the 14th day of December, 1876, and prior to the first day of May, 1882, without the endorsement of the Auditor of the county, are hereby declared to be as valid and binding, to all intents and purposes, as if the said conveyances had been endorsed by the Auditor of the county, as required by law; and each and every Clerk of the Court and Register of Mesne Conveyances is hereby relieved from all liability or penalty for the recording of such conveyances without the endorsement of the County Auditors thereon.

Civ. '12, § 3544; Civ. '02, § 2458; R. S. 1970; 1877, XVI, 321.

McNamee v. Huckabee, 20 S. C. 201.

(5315) § 4. Certain Deeds to Married Women Subsequent to April 16, 1868, Declared Valid.—All deeds and conveyances made since the 16th day of April, 1868, whereby lands and tenements which were the estate of their husband have been conveyed to married women, and which have

been duly recorded in the office of the Register of Mesne Conveyances, Clerk of Court for the county in which such lands and tenements are situate, shall be deemed good and effectual in the law, to all intents and purposes, as if the same had been recorded in the office of the Secretary of State within the time prescribed by law; anything in said Acts to the contrary thereof in any wise notwithstanding.

Civ. '12, § 3545; Civ. '02, § 2459; G. S. 1779; R. S. 1971.

(5316) § 5. Memorandum of Livery of Seizin to Be Recorded.—When any deeds or conveyances shall be acknowledged or proved, as aforesaid, in order to their being recorded, the memorandum of livery and seizin thereupon made in deeds of feoffment shall in like manner be acknowledged or proved, and shall be recorded with the deeds, and such memorandum, proved and acknowledged as aforesaid, shall be taken and deemed a sufficient livery and seizin of the land or other real estate conveyed.

Civ. '12, § 3546; Civ. '02, § 2460; G. S. 1780; R. S. 1972; 1785, VII, 233.

(5317) § 6. Former Mortgages May Be Redeemed by Second Mortgages.—If it so happen there be more than one mortgage at the same time, by any person or persons to any person or persons, of the same lands and tenements, the several mortgagees which have not registered or recorded their mortgages, their heirs, executors, administrators or assigns, shall have power to redeem any former mortgage or mortgages registered upon payment of the principal debt, interest and cost of suit, to prior mortgagee or mortgagees, their heirs, executors, administrators or assigns.

Civ. '12, § 3547; Civ. '02, § 2461; G. S. 1781; R. S. 1973; 1698, II, 137.

(5318) § 7. Dower Saved Where Widow Did Not Legally Renounce.—Nothing in this Chapter contained shall be construed, deemed or extended to bar any widow of any mortgagor of any lands or tenements from her dowry and right in or to the said lands who did not legally join with her husband in such mortgage, or otherwise bar or exclude herself from such dowry or right.

Civ. '12, § 3548; Civ. '02, § 2462; G. S. 1782; R. S. 1974; 1698, II, 137; 1712, II, 536.

(5319) § 8. United States Tax Commissioners' Titles to Be Recorded in Beaufort.—The holders of all certificates or titles issued by or under the authority of the United States Direct Tax Commissioners for South Carolina shall be allowed to record the same in the office of the Clerk of Court for the County of Beaufort; and when such certificates shall have been so recorded, such recording shall be deemed to be a legal notice of title to the land described in the same.

Civ. '12, § 3549; Civ. '02, § 2463; G. S. 1783; R. S. 1975; 1868, XIV, 14.

(5320) § 9. Filing of Written Instruments Required.—That it shall be the duty of all Clerks of Courts and Registers of Mesne Conveyances in this State to keep a file book in his office in which he shall file all conveyances, mortgages, liens, contracts and papers relating to real and personal property, by entering therein the names of the grantor and

grantee, mortgagor and mortgagee, obligor and obligee, date of filing and nature of the instrument immediately upon its lodgment for record, and such filing shall be notice to all persons, sufficient to put them upon inquiry of the purport of the instrument so filed and the property affected thereby: *Provided, further*, That in the Counties of Charleston, Richland, Sumter and Saluda it shall be a sufficient compliance with this Section for the recording officer to enter any of said papers upon the regular index book, and such entry shall constitute notice as aforesaid: *Provided*, That this Section shall not apply to the County of Clarendon.

Civ. '12, § 3550; 1911, XXVII, 152; 1912, XXVII, 564; 1914, XXVIII, 511; 1916, XXIX, 781.

(5321) § 10. Record of Public Bond Issues to Be Kept and Filed.—

In case any county, township, school district, city, town or other municipality is authorized to issue bonds in pursuance of law, the persons and officers charged therewith shall make a full record of the proceedings connected with such bond issue, and a copy of the record of such proceedings shall be filed and indexed in the office of the Clerk of Court of the county in a special book to be furnished therefor.

1916, XXIX, 922; 1917, XXX, 166; 1918, XXX, 779.

(5322) § 11. Bonds Incontestible from 20 Days After Filing.—No action shall be commenced on account of the issuance of any such bonds after the expiration of twenty (20) days from the date of the filing and indexing of such records, and said bonds so issued in the hands of a *bona fide* purchaser for value shall be incontestible.

1916, XXIX, 922; 1917, XXX, 166; 1918, XXX, 779.

TITLE III.

CHAPTER LXVIII.

Limitation of Estates.

(5323) § 1. Construction of Terms "Failure of Issue," Etc.—When-
ever, in any deed or other instrument in writing, not testamentary, here-
after executed, or in any will of a testator hereafter dying, an estate,
either in real or personal property, shall be limited to take effect on the
death of any person without heirs of the body, or issue, or issue of the
body, or other equivalent words, such words shall not be construed to
mean an indefinite failure of issue, but a failure at the time of the death
of such person.

Civ. '12, § 3551; Civ. '02, § 2464; G. S. 1682; R. S. 1976; 1853, XII, 298.

Applies only to instruments *taking effect* since its date. *Blum v. Evans*, 10 S. C. 56; *Graham v. Moore*, 13 S. C. 115; *Mendenhall v. Mower*, 16 S. C. 303; *Powers v. Bullwinkle*, 33 S. C. 293, 11 S. E. 971; *Selman v. Robertson*, 46 S. C. 263, 24 S. E. 187; *Bradford v. Griffin*, 40 S. C. 468, 19 S. E. 76. This does not abolish rule in *Shelley's case*. *Fields v. Watson*, 23 S. C. 50; *Bethea v. Bethea*, 48 S. C. 440, 26 S. E. 716.

Applied. *Harkey v. Neville*, 70 S. C. 125, 49 S. E. 218; *Mattison v. Mattison*, 65 S. C. 345, 43 S. E. 874.

Owings et al v. Wood et al, 105 S. C. 176, 89 S. E. 667.

(5324) § 2. Feoffment With Livery of Seizin Not to Defeat Remainder.—No estate in remainder, whether vested or contingent, shall be defeated by any deed of feoffment with livery of seizin.

Civ. '12, § 3552; Civ. '02, § 2465; R. S. 1977; 1883, XVIII, 430.

Referred to. *Bowers v. Humphries*, 24 S. C. 452. Cited *O. & W. C. Ry. v. Reynolds*, 69 S. C. 481, 48 S. E. 476; *McCreary v. Coggeshall*, 74 S. C. 42, 53 S. E. 978, 7 Am. & Eng. Ann. Cas. 693, 7 L. R. A., N. S., 433n; *Bank v. Garlington*, 54 S. C. 413, 32 S. E. 513; *Young v. McNeil*, 78 S. C. 143, 59 S. E. 986. As to effect of deed in ordinary form, see *Young v. McNeil*, 68 S. C. 152, 59 S. E. 986. Deed of minor infant contingent remainderman may be vacated after vesting of interest after majority. *Steele v. Poe*, 79 S. C. 407, 60 S. E. 951. Parties contingent remainderman. *Hunt v. Gower*, 80 S. C. 80, 61 S. E. 218.

(5325) § 3. Posthumous Child Takes Under Will or Settlement.—A posthumous child shall take under any will or settlement as though born in the lifetime of the father, and shall not be liable to be defeated on the ground that the remainder was contingent and did not vest at the instant that the prior estate terminated, and that there was no trustee to preserve the contingent remainder.

Civ. '12, § 3553; Civ. '02, § 2466; G. S. 1846; R. S. 1978; 10 and 11 W. 3, c. 16; 1712, II, 542.

Burke v. Wilder, 1 McC. 551.

TITLE IV.

CHAPTER LXIX.

Of Intestates' Estates.

(5326) § 1. Right of Primogeniture Abolished.—The right of primogeniture is abolished.

Civ. '12, § 3554; Civ. '02, § 2467; G. S. 1844; R. S. 1979; 1791, V, 162.

The effect of this Statute on the definition of the word "heirs." *Dukes v. Faulk*, 37 S. C. 255, 16 S. E. 122. Applies to property acquired before passage of Act by intestate who dies afterwards. *Ramsey v. Deas*, 2 DeS. 233.

Rutledge v. Tunno, 69 S. C. 400, 48 S. E. 297; *Childs v. Bolton*, 69 S. C. 555, 48 S. E. 618.

(5327) § 2. Distribution of Property.—When any person shall die without disposing of the same by will, his estate, real and personal, shall be distributed in the following manner:

Civ. '02, § 2468; G. S. 1845; R. S. 1980.

Terms imperative. *Gaffney v. Peeler*, 21 S. C. 55; *Youngblood v. Norton*, 1 Strob. Eq. 122. Homestead does not affect will. *Sloan v. Hunter*, 65 S. C. 235, 43 S. E. 788.

(1) If the intestate shall leave a widow and one or more children, the widow shall take one-third of the estate, and the remainder shall be divided between the children, if more than one; but if only one, the remainder shall be vested in that one absolutely forever.

The lineal descendants of the estate shall represent their respective parents, and shall take among them the share or shares to which their parents would have been entitled had such parent survived the intestate. 1791, V, 162.

A child born alive after death of intestate is entitled to inherit. *Pearson v. Carlton*, 18 S. C. 47. Grandchildren whose father died in lifetime of intestate take his share. *McClue v. Steele*, 14 Rich. Eq. 105. Great grandchildren take *per stirpes*. *Payne v. Harris*, 3 Strob. 39.

(2) If the intestate shall leave no child or other lineal descendant, but shall leave a widow, and a father and mother, and brothers and sisters, or brother or sister of the whole blood, the estate, real and personal, of such intestate shall be distributed in the following manner, that is to say:

C. C.—102.

The widow shall be entitled to one moiety thereof, and the other moiety shall be equally divided amongst the father, and the mother, and the brethren of the whole blood, so that such father and mother, and each brother and sister shall receive an equal share thereof. The children of a deceased brother or sister of the whole blood take among them the share which their parent would have been entitled to had such parent survived the intestate: *Provided*, That there be no representation admitted among collaterals after brothers' and sisters' children. If the intestate leave no father and mother, the provision made in this subdivision for such parents shall go as the rest of the estate is directed to be distributed therein. If the intestate shall not leave a child or other lineal descendant, or brothers or sisters, one or more of the whole blood, or the children of a brother or sister of the whole blood, but shall leave a widow and a father and mother, the widow of the intestate shall be entitled to one moiety of the estate, and the father and the mother the other moiety; and if either father or mother be dead such moiety shall go to the survivor of them.

1791, V, 162; 1920, XXXI, 873.

Grandchild of deceased brother or sister does not take in right of representation. *Poang v. Gadsden*, 2 Bay 293. Nor does child of deceased nephew. *North v. Valk*, Dud. Eq. 212. Nephews and nieces take *per stirpes*. *Stent v. McLeod*, as Ex'ors, 2 McC. Eq. 354. Amendment by Act 1851, XII, 80; *O'Neale v. Dunlap*, 11 Rich. 405.

Trapp v. Billings, 2 McC. Eq. 403.

(3) If the intestate shall not leave a lineal descendant, father or mother, but shall leave a widow and brothers and sisters, or brother or sister of the whole blood, the widow shall be entitled to one moiety of the estate, and the brothers and sisters, or brother or sister, to the other moiety as tenants in common. The children of a deceased brother or sister shall take among them respectively the share which their respective ancestors would have been entitled to, had they survived the intestate.

1791, V, 163.

(4) If the intestate shall leave no child or other lineal descendant, father, mother, brother or sister of the whole blood, but shall leave a widow and a brother or sister of the half blood, and a child or children of a brother or sister of the whole blood, the widow shall take one moiety of the estate, and the other moiety shall be equally divided between the brothers and sisters of the half blood, and the children of the brothers and sisters of the whole blood, the children of every deceased brother and sister of the whole blood taking among them a share equal to the share of a brother or sister of the half blood. If there be no brother or sister of the half blood, then a moiety of the estate shall descend to the child or children of the deceased brother or sister of the whole blood, taking by representation of the parent, and if there be no child of a brother or sister of the whole blood, then said moiety shall descend to the brothers and sisters of the half blood.

1791, V, 163.

Brothers and sisters of half blood do not take when there are those of whole blood. *Wren v. Cates*, 1 De S. 167. *Hill v. Hill*, 1 McC. 177. Nor when intestate left a mother. *Lawson v. Perdriau*, 1 McC. 456. Brothers and sisters of the half blood and children of predeceased brothers and sisters of the whole blood do not take equally; each of the former take an equal share, and each set of such children a like share among them. *Felder v. Felder*, 5 Rich. Eq. 599. Brother of half blood excludes children of predeceased brother of half blood. *Ex parte Mays*, 2 Rich. 61.

(5) If the intestate shall leave no child, or other lineal descendant, father, mother, brother or sister of the whole blood or their children, or brother or sister of the half blood, then the widow shall take one moiety, and the lineal ancestor, if any there be, the other moiety.

1791, V, 163.

(6) If the intestate shall leave no child or other lineal descendant, father, mother, brother or sister of the whole blood, nor child of such brother or sister of the whole blood, nor brother or sister of the half blood, or lineal ancestor, the widow shall take two-thirds of the estate, and the remainder shall descend to the next of kin.

In reckoning the degrees of kindred, the computation shall begin with the intestate and be continued up to the common ancestor, and then down to the person claiming kindred inclusively, each step inclusively being reckoned as a degree.

1791, V, 163.

Maternal aunt inherits before children of paternal uncle. *Shaffer v. Nail*, 2 Brev. 160; *Gilbert v. Hendrix*, 2 Brev. 161. Uncle and aunt of half blood excludes first cousins of whole blood. *Karwon v. Lowndes*, 2 DeS. 210; *Perry v. Logan*, 5 Rich. Eq. 202. Kin in the fifth degree exclude those of sixth degree. *Witsell v. Linder*, 3 DeS. 481. First cousins of the whole and half blood are equal kin and share alike. *Edwards v. Barksdale*, 2 Hill Ch. 416. Generally, the half blood, except where otherwise specially provided, takes with the whole blood in the same degree. *Edwards v. Barksdale*, Rily Eq. 16.

(7) If the intestate shall leave no widow, the provision made for her shall go as the rest of the estate is directed to be distributed in the respective clauses in which the widow is provided for.

1791, V, 163.

(8) On the death of married woman intestate, the husband shall be entitled to the same share of her estate as is herein given to the widow out of the estate of the husband, and the remainder of her estate shall be distributed among her descendants and relations in the same manner as is directed in case of the intestacy of a married man.

1885, XIX, 45.

Matheney, v. Guess, 2 Hill Ch. 63.

(9) If the intestate leave no husband, the provision herein made for him shall go as the rest of the estate is directed to be distributed in the preceding clauses.

1826, VI, 285.

(10) If any married person shall die without leaving any child or other lineal descendant, father, mother, brother or sister of the whole blood, or their children, or brother or sister of the half blood, or lineal ancestor, or next of kin, then the wife shall inherit from the husband, and the husband from the wife, the whole of the real and personal estate of which the other died seized or possessed, was interested in or entitled unto.

Civ. '12, § 3555; 1797, V, 49; 1826, VI, 284.

Persons by force of this Statute. *North v. Valk*, Dudley Eq. 212. Rights of posthumous children. *Fearson v. Charlton*, 18 S. C. 47. Discharge of distributee in bankruptcy. Effect on claim of estate against him. *Wilson v. Kelley*, 16 S. C. 216. Generally, as to Act 1791, § 2363. Rights under, do not vest in possession immediately upon death of intestate; but in interest only. *Speight v. Meigs*, 1 Brev. 486; *Rabb v. Aiken*, 2 McC. Ch. 113. But are then fixed. *Teague v. Dendy*, 2 McC. Ch. 207. It did not make any change of the law as to bastards. *Barwick v. Gale*, 4 DeS. 434. It abolished courtesy of husband in fee simple estate of wife. *Gray v. Givens*, 1 Hill Ch. 511; *Withers v. Jenkins*, 14 S. C. 597; *Gaffney v. Peeler*, 21 S. C. 55. But not in her fee conditional estate. *Wright v. Herron*, 5 Rich. Eq. 44; *Gaffney v. Peeler*, 21 S. C. 55. (Estate of

tenancy by courtesy was abolished by Act of 1883, XVIII, 339, § 2982 of this Code.) Leasehold estates are distributed under it. *Payne v. Harris*, 3 Strob. 39. Has no application to legal estates in trust property, and estate of trustee descends to his heir at law. *Martin v. Price*, 2 Rich. Eq. 412. Contingent remainders and executory devises are distributable under it among heirs existing at death of person entitled in expectancy. *Hicks v. Pegues*, 4 Rich. Eq. 413. The meaning of the word "heirs." *Dukes v. Faulk*, 37 S. C. 255, 16 S. E. 122. Statute applies only where ancestor dies entirely intestate. *Richardson v. Sinkler*, 2 DeS. 127; *Snellgrove v. Snellgrove*, 4 Ib., 274. Devise to heirs of testator. *Seabrook v. Seabrook*, 1 McMul. Eq. 201.

Trout v. Burnette et al, 99 S. C. 276, 83 S. E. 684.

(5328) § 3. Aliens May Inherit as Natural Born Citizens.—Real and personal property of every description may be taken, acquired, held and disposed of by alien in the same manner in all respects as by a natural born citizen; and a title to real and personal property of every description may be derived from, through, or in succession to an alien, in the same manner, in all respects, as through, from or in succession to a natural born citizen.

Civ. '12, § 3556; Civ. '02, § 2469; G. S. 1847; R. S. 1981; 1872, XV, 73.

Hume v. Ins. Co., 23 S. C. 190.

(5329) § 4. Aliens' Widows.—If any citizen of the United States shall die seized, possessed of or interested in, any land or real property situated and being within this State, and leave a widow born without the limits of the United States, and who has not been naturalized, such widow shall be entitled to all the same rights, interest and estate in and to such land and real property, and be possessed of the same powers, privileges and capacities to hold, enjoy, convey and transmit the same as if she were naturalized.

Civ. '12, § 3557; Civ. '02, § 2470; G. S. 1848; R. S. 1982; 1872, XV, 73.

(5330) § 5. Property to Be Equally Divided—Portions Advanced by Intestate to Be Deducted.—Nothing herein contained shall be construed to give to any child or issue (or his or her legal representatives) of the intestate, a share of his or her ancestor's estate, where such child or issue shall have been advanced by the intestate in his lifetime by portions or portion equal to the share which shall be allotted to the other children. But in case any child, or the issue of any child, who shall have been so advanced, shall not have received a portion equal to the share which shall be due to the other children (the value of which portion being estimated at the death of the ancestor, but so as that neither the improvements of the real estate by such child or children, nor the increase of the personal property, shall be taken into the computation), then so much of the estate of the intestate shall be distributed to such child or issue as shall make the estate of all the children to be equal.

Civ. '12, § 3558; Civ. '02, § 2471; G. S. 1849; R. S. 1983; 22 and 23 C. 2, c. 10; 1712, II, 524; 1791, V, 163.

Applies to gift by mother as well as to gifts by father. *Rees v. Rees*, 11 Rich. Eq. 86. Construed to mean that the estate of the ancestor is to be considered as a common fund, out of which each child is to draw, at the death, an equal portion. That part which has been given is to be estimated at its value at death, relation being had as to its character at time of gift. *McCaw v. Blewit*, 2 McC. 90; *McDougald v. King*, Bail. Eq. 154; *Ison v. Ison*, 5 Rich. Eq. 15; *Youngblood v. Morton*, 1 Strob. Eq. 122; *Manning v. Manning*, 12 Rich. Eq. 423; *McClure v. Steele*, 14 Rich. Eq. 105. Doctrine of advancements applies solely to cases of intestacy. *Newman v. Wilbourne*, 1 Hill Ch. 10; *McDougald v. King*, Bail. Eq. 154. Or where directed by will. *Allen v. Allen*, 13 S. C. 512; *McFall v. Sullivan*, 17 S. C. 512. Interest charged on advancements from time of distribution or death. *McDougald v. King*, 1 Hill Ch. 10; *Ex parte Glenn*, 20 S. C. 64. What is an advancement? Gift for pleasure merely, not advancement. *Ison v. Ison*, 5 Rich. Eq. 15. Parting with the title in the subject advanced is necessary to make advancement; mere permission to use is not. *Ison v. Ison*, 5 Rich. Eq. 15; *Rickenbacker v. Zimmerman*, 10 S. C. 110; *Wilson v. Kelley*, 21 S. C. 535. Note payable after death given to child as advancement to equalize advancements to others, void. *Priester v. Priester*, Rich. Eq. Ca. 26. Money expended on education of child no advancement.

Cooner v. May, 3 Strob. Eq. 185; White v. Moore, 23 S. C. 456. Gift of land by deed to child, parent using it for life, was advancement as of the date of his death. Hughey v. Eichelberger, 11 S. C. 36. Slaves given and emancipated before intestate's death, no advancement. *Ib.*; Ex parte Glenn, 20 S. C. 64; Wilson v. Kelly, 21 S. C. 535. No loss of advancement, as by emancipation, subsequent to death of intestate, can affect liability therefor. Manning v. Manning, 12 Rich. Eq. 410; McClure v. Steele, 14 Rich. Eq. 105; Rickenbacker v. Zimmerman, 10 S. C. 120. A purchase of land by father for son is presumed to be an advancement. Catoe v. Catoe, 32 S. C. 595, 10 S. E. 1078. Child receiving advancement not obliged to bring it into hotchpot, unless he claims further share of the estate. Hamer v. Hamer, 4 Strob. Eq. 124. Gift to son treated as advancement as to a grandson. Rees v. Rees, 11 Rich. Eq. 86. Discharge of bond against son is an advancement. *Ib.*; Ex parte Glenn, 20 S. C. 64. Payment on land for children an advancement. O'Neale v. Dunlap, 11 Rich. Eq. 405. Grandchildren must account for advancement to their father who died in lifetime of ancestor. McClure v. Steele, 14 Rich. Eq. 105. And for advancement made to them, even after death of their parent. Rees v. Rees, 11 Rich. Eq. 86. Insurance for child and premiums therefor are advancements. Rickenbacker v. Zimmerman, 10 S. C. 110. Debt by note of son to father is not an advancement, nor land conveyed to son by father therefor. White v. Moore, 23 S. C. 456. What is or is not advancement may depend upon the circumstances. Murrell v. Murrell, 2 Strob. Eq. 148; Cooner v. May, 3 *Ib.* 185; Ison v. Ison, 5 Rich. Eq. 157; McCaw v. Blewit, 2 McC. Eq. 90. But it is not a question of intention, and mere declaration of donor cannot alter the operation of the law, either as to the character of the gift or the mode of valuation. Youngblood v. Norton, 1 Strob. Eq. 122; Reese v. Reese, 11 Rich. Eq. 108; Rickenbacker v. Zimmerman, 10 S. C. 121; Stokes v. Wallace, 16 S. C. 619. Widow's third unaffected by advancements to children. Ex parte Lawton, 3 DeS. 199. Stokes v. Stokes, 62 S. C. 346, 40 S. E. 662.

(5331) § 6. Property Not Mentioned in Will.—Lands and personal property which shall be purchased or otherwise acquired by any person after the making of his or her will shall pass thereby, and no person shall be considered as having died intestate as to the said lands and personal estate.

Civ. '12, § 3559; Civ. '02, § 2472; G. S. 1850; R. S. 1984; 1791, V, 163; 1808, V, 573; 1858, XI, 700.

Applied where will executed before these Acts took effect. Means v. Evans, 4 DeS. 242; Garrett v. Garrett, 2 Strob. Eq. 272; Bell v. Towell, 18 S. C. 94; Moore v. Davidson, 22 S. C. 92; Welborn v. Townsend, 31 S. C. 408, 10 S. E. 96. Under the Act of 1858 there is no room for implied revocation of will, by the simple act of alteration of the estate. Scaife v. Thompson, 15 S. C. 337. Whether Act of 1858 changed the rule that makes all devises specific, suggested. Laurens v. Reed, 14 Rich. Eq. 256; Moore v. Davidson, 22 S. C. 92; McFadden v. Hefley, 28 S. C. 317, 5 S. E. 812.

(5332) § 7. Distribution of a Joint Tenancy.—Where any person shall be, at the time of his or her death, seized or possessed of any estate in joint tenancy, the same shall be adjudged to be severed by the death of the joint tenant, and shall be distributable as if the same were a tenancy in common.

Civ. '12, § 3560; Civ. '02, § 2473; G. S. 1851; R. S. 1985; 1791, V, 163.

McMeekin v. Bennett, 2 Hill Ch. 638; Varn v. Varn, 32 S. C. 77, 10 S. E. 829. Section has no effect except in case of the interest actually vested. Herbermont v. Thomas, Cheves Eq. 21; Ball v. Deas, 2 Strob. Eq. 24.

Estates in entirety between husband and wife. Green v. Cannady, 77 S. C. 193, 57 S. E. 832.

(5333) § 8. Provision for Widows of Intestates to Be in Lieu of Dower.—In all cases where provision is made by this Chapter for the widow of a person dying intestate, the same shall, if accepted, be considered as in lieu of and in bar of dower; and if she shall have forfeited her dower, she shall also forfeit her distributory share of her husband's real estate.

Civ. '12, § 3561; Civ. '02, § 2474; G. S. 1852; R. S. 1986; 1791, V, 163; 1880, XVII, 525.

Such provision, if accepted, is in lieu and bar of all dower. Douglass v. Clarke, 4 DeS. 143; Avant v. Robertson, 2 McM. 215; Buist v. Dawes, 3 Rich. Eq. 281; Evans v. Pierson, 9 Rich. 9. And the acceptance of her distributive share of personality under Act 1891 barred widow's dower. Evans v. Pierson, 9 Rich. 9. But under the law then governing, it was held that it did not. Phinneer v. Johnson, 23 S. C. 25. Acceptance of dower by a widow bars her claim as distributee. Buist v. Dawes, 3 Rich. Eq. 281; Evans v. Pierson, 9 Rich. L. 12; Glover v. Glover, 45 S. C. 51, 22 S. E. 739.

(5334) § 9. Illegitimate Child Inherits from Mother—Mother Inherits from Illegitimate Child—Death by Wrongful Act.—Any illegitimate child or children, whose mother shall die intestate, possessed of any real or personal property, shall be, so far as said property is concerned, an heir or heirs at law as to such property, notwithstanding any law or usage

to the contrary. Whenever any illegitimate child shall die in this State, leaving property, real or personal, the mother of such child shall have the same right to inherit from such child as she would have if said child had been legitimate, and illegitimate children of the same mother shall have the same right to inherit from each other that they would have had they been legitimate; and all children of the same mother, whether legitimate or illegitimate, shall likewise inherit from each other, as to any property, real or personal, inherited from their mother. In the event of death of such illegitimate child, or the mother of such illegitimate child, by the wrongful or negligent act of another, such illegitimate child, or the mother or brother or sister of such illegitimate child, shall have the same rights and remedies in regard to such wrongful or negligent act as though such illegitimate child had been born in lawful wedlock.

Civ. '12, § 3562; 1906, XXV, 156; 1920, XXXI, 1039.

Croft v. Southern Cotton Oil Co., 83 S. C. 232, 65 S. E. 216.

Crawford v. Masters, 98 S. C. 458, 82 S. E. 793; Trout v. Burnette et al, 99 S. C. 276, 83 S. E. 684.

TITLE V.

CHAPTER LXX.

Of Wills.

(5335) § 1. **Right and Capacity to Devise Rights or Title to Real Property.**—Any person having right or title to any lands, tenements or hereditaments whatsoever (persons of unsound mind and infants excepted), may dispose thereof by will, in writing, at his or her own free will and pleasure, except as hereinafter provided; but all wills or testaments made of any lands, tenements or other hereditaments, by any person within the age of twenty-one years, idiot, or by any person *de non sane* memory, shall not be taken to be good and effectual in law.

Civ. '12, § 3563; Civ. '02, § 2475; G. S. 1853; R. S. 1987; 34 and 35 H. 8, c. 5; 1712, II, 551; 1733, III, 342; 1789, VI, 106.

Municipal corporation may take by devise. McIntosh v. Charleston, 45 S. C. 584, 23 S. E. 943. A minor of eighteen can make a will of personalty, as this Section only restricts such right as to realty. Posey v. Posey, 3 Strob. 167. Any form of words that expresses intention to dispose of estate at death is a will. Lyles v. Lyles, 2 N. & McC. 531; Brown v. Shand, 1 McC. 409; McGee v. McCants, 1 McC. 517; Kinard v. Kinard, Speer Eq. 256. Provided it be formally executed. Carter v. King, 11 Rich. 125.

Buchanan v. Anderson, 70 S. C. 454, 50 S. E. 12; Major v. Hunt, 64 S. C. 97, 41 S. E. 816; Sloan v. Hunter, 65 S. C. 235, 43 S. E. 788; Kennedy v. Kennedy, 74 S. C. 541, 54 S. E. 773.

A female over twelve years of age, may during her minority, make a will disposing of her personal property. Major v. Hunt, 64 S. C. 97, 41 S. E. 816.

May et al v. Thomas et al, 94 S. C. 158, 78 S. E. 85.

(5336) § 2. **Devises Shall Be in Writing, Attested by Three or more Witnesses.**—All wills and testaments of real and personal property shall be in writing, and signed by the party so devising the same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor, and of each

other, by three or more credible witnesses, or else they shall be utterly void and of none effect.

Civ. '12, § 3564; Civ. '02, § 2476; G. S. 1854; R. S. 1988; 29 C. 2, c. 3; 1712, II, 526; 1789, V, 106; 1824, VI, 238.

Must be in writing, except nuncupative wills as prescribed by this Chapter. Ex parte Turner, 24 S. C. 214. As to signing by testator, may be by his mark. Wright v. Lewis, 3 Strob. 302. He must sign in presence of the witnesses or so acknowledge his signature. Turnipseed v. Hawkins, 1 McC. 272; Black v. Ellis, 3 Hill 68; Tucker v. Oxner, 12 Rich. 141. Blind testator may sign by his mark on the will. Ray v. Hill, 3 Strob. 297. Or otherwise show his cognizance by contents. Harleston v. Corbett, 12 Rich. 604. As to undue influence, O'Neale v. Farr, 1 Rich. 8; Floyd v. Floyd, 3 Strob. 52; Means v. Means, 5 Strob. 9; Means v. Means, 6 Rich. 1. It is a question of fact for jury. Thompson v. Farr, 1 Speer 103; Martin v. Teague, 2 Speer 265. That question is whether testator was a free agent; and each case depends upon its circumstances. Thompson v. Farr, 1 Speer 103. There must not only be proof of influence, but that it was brought to bear on execution of the will. Ib. As to witnesses, two witnesses not sufficient. Dunlap v. Dunlap, 4 DeS. 305. Since Act of 1824, wills of both realty and personalty are required to have three witnesses. Houston v. Houston, 3 McC. 491; Johnson v. Clarkson, 3 Rich. Eq. 305. The three alleged witnesses to a lost will must be proved; jury cannot say another subscribed in place of one who denied it. Bauskett v. Keitt, 22 S. C. 195. Credible means competent at the time. Garland v. Crow, 2 Bail. 24; Taylor v. Taylor, 1 Rich. 531; Workman v. Dominick, 3 Strob. 589; Noble v. Burnett, 10 Rich. 505; Harleston v. Corbett, 12 Rich. 604. Witness may attest by his initials. Adams v. Chaplin, 1 Hill Ch. 265. It is imperative that witnesses sign in presence of testator—where he may see them; otherwise will is void. Reynolds v. Reynolds, 1 Speer 253; Wright v. Lewis, 5 Rich. 212; Tucker v. Oxner, 12 S. C. 141. Prior to amendment to Section in 1882, they need not have signed in presence of each other. Tucker v. Oxner, 12 S. C. 141. If testator be blind and witnesses attest within reach of his senses, it is sufficient. Ray v. Hill, 3 Strob. 297. They are also to help determine the capacity of the testator. Heyward v. Hazard, 1 Bay 335. Generally, no formal publication of will, or even declaration of the nature of the instrument, is necessary. Black v. Ellis, 3 Hill 68; Verdier v. Verdier, 8 Rich. 135. Wills of personalty must be executed according to law governing at death. Houston v. Houston, 3 McC. 491; *in re* Elock, 4 McC. 39. As to attestation: Ex parte Brock, 37 S. C. 348, 16 S. E. 38; Kaufman v. Caughman, 49 S. C. 159, 27 S. E. 16. *In re* Crawford's Will, 46 S. C. 299, 24 S. E. 69. Signing by another. Ex parte Leonard, 39 S. C. 518, 18 S. E. 216.

Instrument construed to be a will. Rountree v. Rountree, 85 S. C. 383, 67 S. E. 471.

(5337) § 3. **Estates Pur Autre Vie Devisable Shall Be Assets in Heirs' Hands, Etc.**—Any estate for the life of another shall be devisable by a will in writing, signed by the party so devising the same, or by some other person in his presence and by his express directions, attested and subscribed in the presence of the devisor by three or more witnesses; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy, as assets by descent, as in case of lands in fee simple; and in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be assets in their hands.

Civ. '12, § 3565; Civ. '02, § 2477; G. S. 1855; R. S. 1989; 29 C. 2, c. 3; 1712, II, 527.

(5338) § 4. **Devises of Crops and Lands.**—Any widow may bequeath by will the crop or crops standing or growing on the grounds of her dower, or on other lands planted for her use.

Civ. '12, § 3566; Civ. '02, § 2478; G. S. 1856; R. S. 1990; 1783, III, 342.

(5339) § 5. **Subscribing Witnesses Not to Be Incompetent Because of Interest—Limitation.**—No subscribing witness to any will, testament or codicil shall be held incompetent to attest or prove the same by reason of any devise, legacy or bequest therein in favor of such witness, or the husband or wife of such witness, or by reason of any appointment therein of such witness, or the husband or wife of such witness, to any office, trust or duty; and such devise, legacy or bequest shall be valid and effectual, if otherwise so, except so far as the property, estate or interest so devised or bequeathed shall exceed in value any property, estate or

interest to which such witness, or the husband or wife of such witness, would be entitled upon the failure to establish such will, testament or codicil; but, to the extent of such excess, the said devise, legacy, or bequest, shall be null and void; and such appointment shall be valid, if otherwise so, but the person or persons so appointed shall not, in such case, be entitled by law to take or receive any commissions or other compensation on account thereof.

Civ. '12, § 3567; Civ. '02, § 2479; G. S. 1857; R. S. 1991; 1865, XIII, 312.

Where devisee of life estate is a witness the remainders are accelerated and take effect at once. *Key v. Weathersbee*, 43 S. C. 414, 21 S. E. 324. Legatee competent witness, if he have equal or greater interest against the will. *Garland v. Crow*, 2 Bail. 24. As to rule prior to enactment of this Section in 1865, see *Henderson v. Kenner*, 1 Rich. 474; *Taylor v. Taylor*, 1 Rich. 533; *Workman v. Dominick*, 3 Stro. 530. Generally, *Richardson v. Richardson*, Dud. Eq. 184; *Henderson v. Kenner*, 1 Rich. 474; *Taylor v. Taylor*, 1 Rich. 531; *Filson v. Filson*, 3 Stro. 288; *Workman v. Dominick*, 3 Stro. 589; *Cannon v. Setzler*, 6 Rich. 471; *Mathis v. Guffin*, 8 Rich. Eq. 79; *Noble v. Burnett*, 10 S. C. 505; *Harleston v. Corbett*, 12 Rich. 604.

(5340) § 6. **Creditor May Attest Execution of Will or Codicil Charging Lands, Etc., With Debt.**—In case by any will or codicil any lands, tenements or hereditaments shall be charged with any debt or debts, and any creditor whose debt is so charged shall attest the execution of such will or codicil, every such creditor, notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil.

Civ. '12, § 3568; Civ. '02, § 2480; G. S. 1858; R. S. 1992; 25 G. 2, c. 6; 712, II, 580.

(5341) § 7. **Wills Revoked Only by Writing or by Being Destroyed by Testator.**—No will or testament, in writing, of any real or personal property or any clause thereof, shall be revocable but by some other will or codicil in writing, or other writing declaring the same, attested and subscribed by three witnesses as aforesaid, or by destroying or obliterating the same by the testator himself, or some other person in his presence, and by his directions and consent.

Civ. '12, § 3569; Civ. '02, § 2481; G. S. 1859; R. S. 1993; 29 C. 2, c. 3; 1712, II, 526; 1789, V, 107; 1824, VI, 238.

As to revocation by written instrument. *Legare v. Ash*, 1 Bay 464; *Johnson v. Brailsford*, 2 N. & McC. 272; *Taylor v. Taylor*, 2 N. & McC. 482; *O'Neill v. Farr*, 1 Rich. 80; *Peoples v. Smith*, 8 Rich. 90; *Godbold v. Vance*, 14 S. C. 475. By destroying. *Johnson v. Brailsford*, 2 N. & McC. 272; *Durant v. Ashmore*, 2 Rich. 184; *Watkins v. Watkins*, 13 Rich. 66; *Bauskett v. Keitt*, 22 S. C. 192. By obliteration. *Pringle v. McPherson*, 2 Brev. 279; *Pringle v. McPherson*, 2 DeS. 524; *Means v. Moore*, Harp. 314. By change of property. *Scaife v. Thompson*, 15 S. C. 353; *Prater v. Whittle*, 6 S. C. 44. Revocation must be intended to be *effectual*. *Johnson v. Brailsford*, 2 N. & McC. 272; *Taylor v. Taylor*, 2 N. & McC. 482; *Means v. Moore*, Harp. 314; *O'Neill v. Farr*, 1 Rich. 80; *Durant v. Ashmore*, 2 Rich. 184. Such intention may be implied. *Scaife v. Thompson*, 11 S. C. 353. Devised lands conveyed to devisee, and reacquired by deviser. *Gregg v. McMillan*, 54 S. C. 378, 32 S. E. 447.

(5342) § 8. **Marriage a Revocation, Unless Will Contain Provisions for Future Wife and Children.**—If any person making a will shall afterwards marry, and die, leaving his widow or leaving issue of such marriage, unless the will shall have been made in contemplation of marriage expressed on its face, and shall contain provision for future wife and children, if any, it shall be deemed and taken to be a revocation to all intents and purposes.

Civ. '12, § 3570; Civ. '02, § 2482; G. S. 1860; R. S. 1994; 1789, V, 107.

In re Roton's Will, 95 S. C. 118, 78 S. E. 711.

(5343) § 9. Words of Limitation Unnecessary to Convey a Fee by Devise.—No words or limitation shall be necessary to convey an estate in fee simple by devise, but every gift of land by devise shall be considered as a gift in fee simple, unless such a construction be inconsistent with the will of the testator, expressed or implied.

Civ. '12, § 3571; Civ. '02, § 2483; G. S. 1861; R. S. 1995; 1824, VI, 237.

Applied in *Haynesworth v. Goodwin*, 35 S. C. 54, 14 S. E. 491. This Section is retroactive. *Hall v. Goodwin*, 4 McC. 442; *Peyton v. Smith*, 4 McC. 476; *Dunlap v. Crawford*, 2 McC. Ch. 171; *Bowers v. Newman*, 2 McM. 472.

C. & W. C. Ry. v. Reynolds, 69 S. C. 481, 48 S. E. 476; *Joyce v. Bode*, 74 S. C. 164, 54 S. E. 239.

Rish v. Wingard et al, 105 S. C. 38, 89 S. E. 400; *Owings et al v. Wood et al*, 105 S. C. 176, 89 S. E. 667; *Williams v. Gadsden*, 109 S. C. 228, 95 S. E. 519.

(5344) § 10. Posthumous Children to Receive Equal Share.—If no provision shall be made by the will of the testator for any child or children that may be born after his death, such child or children shall be entitled to an equal share of all real and personal estates given to the other child or children, who shall contribute to make up such share or shares according to their respective interests or portions deriving to them under such will.

Civ. '12, § 3572; Civ. '02, § 2484; G. S. 1863; R. S. 1996; 1789, V, 107; 1858, XII, 700.

Talbird v. Verdier, 1 DeS. 592; *Burke v. Wilder*, 1 McC. Ch. 551; *Myers v. Myers*, 2 McC. Ch. 214; ex parte *Wamer*, Dud. Eq. 154; ex parte *Warren*, Chev. Eq. 44.

(5345) § 11. Provision for Children Born After Will.—Any child or children of any person, which may be born after the making and executing the last will and testament, but previous to the decease of such person, shall be provided for and by the preceding Section.

Civ. '12, § 3573; Civ. '02, § 2485; G. S. 1864; R. S. 1997; 1808, V, 572.

Richardson v. Sinkler, 2 DeS. 137; *Ewing v. Ewing*, 2 DeS. 451; *McLemore v. Blocker*, Harp. Eq. 137; *Heath v. Heath*, 2 Hill Ch. 100.

(5346) § 12. Share of Child Dying in Lifetime of Testator.—If any child should die in the lifetime of the father or mother, leaving issue, any legacy of personalty or devise of real estate given in the last will of such father or mother shall go to such issue, unless such deceased child was equally portioned with the other children by the father or mother when living.

Civ. '12, § 3574; Civ. '02, § 2486; G. S. 1865; R. S. 1998; 1789, V, 107; 1883, XVIII, 325.

Mathis v. Hammond, 9 Rich. Eq. 137; *Pegues v. Pegues*, 11 Rich. Eq. 554; *Roundtree v. Roundtree*, 26 S. C. 450, 2 S. E. 474. But prior to the amendment of 1883 a devise of land lapsed; the Section was restricted to legacies. *Pratt v. McGhee*, 17 S. C. 428; *Logan v. Brunson*, 56 S. C. 7, 33 S. E. 737. The term children does not include grand children and great-grandchildren. *Ib.*

Under terms of will in question, children of son dying several years before testator and not mentioned in will are not included in term, "all my children," in connection in which they are here used. *Suber v. Nash*, 84 S. C. 12, 65 S. E. 947.

(5347) § 13. Certain Legacies Declared Void.—If any person who is an inhabitant of this State, or who has any estate therein, shall beget any bastard child, or shall live in adultery with a woman, the said person having a wife or lawful children of his own living, and shall give, by legacy or devise, for the use and benefit of the said woman with whom he lives in adultery, or of his bastard child or children, any larger or greater proportion of the real clear value of his estate, real or personal, after paying of his debts, than one-fourth part thereof, such legacy or

devise shall be null and void for so much of the amount or value thereof as shall or may exceed such fourth part of his real and personal estate.

Civ. '12, § 3575; Civ. '02, § 2487; G. S. 1866; R. S. 1999; 1703, II, 226; 1795, V, 271.

See, also, ante, § (5217).

The gift, or devise, while voidable as to the excess over one-fourth, is a particular estate sufficient to support a remainder. *Beatty v. Richardson*, 56 S. C. 173, 34 S. E. 73. Adultery is the illicit intercourse of two persons, one of whom, at least, is married. *Hull v. Hull*, 2 Strob. Eq. 174. So a divorced husband may give to a single woman more than one-fourth of his estate. *Ib.* Such gift is voidable only at instance of lawful wife and children. *Ib.*; *Powers v. McEachern*, 7 S. C. 290. Legacy in trust. *Gore v. Clarke*, 37 S. C. 537, 16 S. E. 614.

Action brought to set aside so much of will as gives more than one-fourth of testator's property to a bastard child and to have excess partitioned among heirs at law is in equity. *Williams v. Newton*, 84 S. C. 98, 65 S. E. 959.

(5348) § 14. **Wills Fraudulent as Against Creditors—Proviso.**—All wills and testament, limitations, dispositions or appointment of or concerning any lands, tenements or hereditaments, or of any rent, profit, term or charge out of the same, whereof any person or persons, at the time of his, her or their decease, shall be seized in fee simple, in possession, reversion or remainder, or have power to dispose of the same, by his, her or their last wills and testaments, shall be deemed and taken (only as against such creditor or creditors as aforesaid, his, her and their heirs, successors, executors, administrators and assigns, and every of them) to be fraudulent, and clearly, absolutely and utterly void, frustrate, and of none effect; and pretense, color, feigned or presumed consideration, or any other matter or thing to the contrary notwithstanding: *Provided*, That where there has been or shall be any limitation or appointment, devise or disposition, of or concerning any lands, tenements or hereditaments, for the raising or payment of any real and just debt or debts, or any portion or portions, sum or sums of money, for any child or children of any person, other than the heir at law, according to, or in pursuance of, any marriage contract or agreement in writing *bona fide* made before such marriage, the same and every of them shall be in full force; and the same lands, tenements and hereditaments shall and may be holden and enjoyed by every such person or persons, his, her and their heirs, executors, administrators and assigns, for whom the said limitation, appointment, devise or disposition was made, and by his, her and their trustee or trustees, his, her and their heirs, executors, administrators and assigns, for such estate or interest as shall be so limited or appointed, devised or disposed, until such debt or debts, portion or portions, shall be raised, paid and satisfied.

Civ. '12, § 3576; Civ. '02, § 2488; G. S. 1867; R. S. 2000; 3 and 4 W. & M., c. 14; 1712, II, 533.

Brock v. Kirkpatrick, 60 S. C. 322, 38 S. E. 784.

(5349) § 15. **Wills—Where Proved.**—Wills shall be proved before the Judge of Probate of the county where the testator resided; or, he having no place of residence within the State, in the county where the greater part of his estate may be.

Civ. '12, § 3577; Civ. '02, § 2489; G. S. 1868; R. S. 2001; 1789, V, 108; 1839, XI, 59; 1868, XIV, 77.

In re Mayo's Estate, 60 S. C. 401, 38 S. E. 636.

"Residence" defined. *Lehardy v. Dibble*, 80 S. C. 482, 61 S. E. 950.

(5350) § 16. **Will of a Femme Covert Made in Execution of a Power**—The probate, before the proper Judge of Probate, of any last will and

testament of a *femme covert*, heretofore or hereafter made in the execution of a power, shall be good, sufficient and effectual in law, in the same manner, and to the same extent as if the testatrix was a *femme sole*, and a devise or bequest under such will shall be admitted in evidence in the same manner, and have the same effect in the Courts of law in this State, as if no coverture existed at the time of making thereof.

Civ. '12, § 3578; Civ. '02, § 2490; G. S. 1869; R. S. 2002; 1866, XIII, 473.

Burkett v. Whittemore, 36 S. C. 428, 15 S. E. 616.

(5351) § 17. Wills—How Proved.—When a paper is offered before a Judge of Probate as the last will and testament of a person deceased, he may admit it to probate in either of the following forms, that is to say:

Civ. '02, § 2491; G. S. 1870; R. S. 2003.

The admission of a will to probate merely establishes the fact that it has been made as required by Statute. Burkett v. Whittemore, 36 S. C. 428, 15 S. E. 616.

(1) **COMMON FORM.**—Without citing or calling before him such as have interest, he may examine one of the subscribing witnesses thereto, or, in case of their death, or their removal from the State, by proof of the handwriting of the testator or testatrix and of the subscribing witnesses, or any other secondary evidence admissible and sufficient by the rules of the common law; and if such proof shall satisfy the Judge of Probate that the paper is the last will and testament of the deceased, he shall admit it to probate in common form.

Ordinary on application for probate of will in solemn form can revoke probate in common form by his predecessor. Gibson v. Brown, 1 N. & McC. 326. To complete probate, letters testamentary must be granted. *In re Drayton*, 1 McC. 46.

Any person interested in invalidating will is proper party to proof of will in solemn form in Probate Court. Mordecai v. Canty, 86 S. C. 470, 68 S. E. 1049.

When the whereabouts of the subscribing witnesses are unknown or it is for any reason impossible to prove the handwriting of all of such witnesses by proof of the handwriting of the testator or testatrix and of at least one of the subscribing witnesses, or any other secondary evidence admissible and sufficient by the rules of the common law; and if such proof shall satisfy the Judge of Probate that the paper is the last will and testament of the deceased he shall admit it to probate in common form: *Provided*, That the provisions of this paragraph shall apply only to wills executed by a person in the service of the United States in the war between the United States and Germany which are offered for probate before the first day of January, 1923.

1839, XI, 59; 1920, XXXI, 825.

(2) **DUE FORM OF LAW.**—Probate in common form shall be good, unless some person or persons interested to invalidate the said paper as a will shall give notice to the Judge of Probate, within four years next after such probate (or, if any party interested therein be subject to the disability of infancy, then, within four years next after such disability removed), that he, she or they do require it to be proved in due form of law, which is as follows: The Judge of Probate shall require the party producing the will for probate to prefer a petition in writing, praying to be permitted to swear and examine witnesses upon the same, for the publishing or confirming thereof; and, thereupon, all such persons as would

have been entitled to distribution of the estate, if the deceased had died intestate, shall be summoned to answer the petition, in like manner as is provided for the summons of parties to civil actions in the Courts of Common Pleas; whereupon he shall, after swearing all the subscribing witnesses to the same, proceed to examine severally, and to take down in writing such depositions of other witnesses as are made for or against the confirmation of the will, upon all matters touching its legal validity, or formal execution; and, in case the proof be sufficient, he shall, by his decree, pronounce for the validity of the will.

1889, XI, 59.

Aquiescence in probate in common law for four years thereafter, or after removal or disabilities, will bar this proceeding. *Kinard v. Riddlehoeover*, 3 Rich. 258; *Ward v. Glenn*, 9 Rich. 127. Non-resident next of kin ignorant of the will permitted to litigate it for fraud, after probate. *McDowell v. Peyton*, 2 Dec. 313. If no executor or administrator, parties interested in sustaining the will may be required to so prove the will. *Ib.* Will established thus, and confirmed on appeal, cannot be disturbed by Court of Equity. *Irby v. McCrane*, 4 DeS. 422. Probate Court cannot construe will on such application—only determines execution and capacity. *Prater v. Whittle*, 16 S. C. 40. And lapse of four years thereafter will not bar the right to dispute validity of provisions of the will. *Craig v. Beatty*, 11 S. C. 375. As to validity—subscribing witnesses are to testify to capacity of testator. *Heyward v. Hazard*, 1 Bay 335. Generally, as to capacity. *Palmer v. Mikell*, 2 DeS. 342; *Hutson v. Blalock*, 2 Mill 231; *Lee v. Lee*, 4 McC. 183; *Tompkins v. Tompkins*, 1 Bail. 92; *Black v. Ellis*, 3 Hill 68; *Boyd v. Boyd*, 3 Hill 341; *Martin v. Teague*, 2 Speer 260; *McNinch v. Charles*, 2 Rich. 229; *Jones v. Harris*, 3 Rich. 14; *Wright v. Lewis*, 5 Rich. 212; *Butler v. Jennings*, 8 Rich. Eq. 87; *McKnight v. Wright*, 12 Rich. 232; *Jeter v. Tucker*, 1 S. C. 245. Undue influence. *Tillman v. Hatcher*, Rice 271; *Farr v. Thompson*, Cheves, 37; *Thompson v. Farr*, 1 Speer 93; *Martin v. Teague*, 2 Speer 260; *Farr v. O'Neale*, 1 Rich. 80; *Floyd v. Floyd*, 3 Strob. 44; *Woodward v. James*, 3 Strob. 552; *Means v. Means*, 5 Strob. 16; *Ib.* 6 Rich. 1; *Kirkwood v. Gordon*, 7 Rich. 479; *Joliffe v. Fanning*, 10 Rich. 186. Invalidity, on legal grounds. *Joliffe v. Fanning*, 10 Rich. 186. As to execution—all witnesses must be sworn. *Wooster v. Wooster*, 4 Rich. 409. Testator's signature need not be proved by each witness; sufficient if proved by others. *Welch v. Welch*, 9 Rich. 133. If witnesses deny their attestation, other clear proof of execution admissible. *Pearson v. Wightman*, 1 Mill 336; *Howell v. House*, 2 Mill 80. Proof of execution does not determine its construction. *Prater v. Whittle*, 16 S. C. 46. As to verbal instructions before execution. *Whitlock v. Wardlaw*, 7 Rich. 453. When will not produced. *Watkins v. Watkins*, 13 Rich. 66. Will not produced. *Watkins v. Watkins*, 13 Rich. 66.

(3) PROCEEDINGS IN CASES OF NONRESIDENTS—SUMMONS—NONAPPEARANCE.—When the person producing said will for probate is a nonresident of the State, or cannot, after due diligence, be found within the State, and that fact appears by affidavit to the satisfaction of the Probate Judge, and it in like manner appears that there is cause for the commencement of proceedings for the probate of said will in solemn form, the said Probate Judge may grant an order that a summons requiring the filing of the petition herein provided for be served on such absent or nonresident person by publication in such manner and for such period and with like force and effect as provided by law in regard to the publication of summons in civil actions. If such absent or nonresident person shall fail or neglect to file his or her petition pursuant to said summons within twenty days after the expiration of the period of publication thereof, it shall be lawful for the Probate Judge, upon application by the party or parties moving in the proceedings, to enter judgment *pro confesso* against such absent or nonresident person, and to issue a summons to all such persons as would have been entitled to share in the distribution of the estate if the deceased had died intestate, requiring them to attend at the said Court on a day therein fixed. And such further proceedings shall thereupon be had as provided by paragraph 2 of this Section.

Civ. '12, § 3579; 1891, XX, 1120.

(5352) § 18. **Proof of Signatures of Subscribing Witnesses.**—Upon occasion of proving a will in solemn form, if it appear to the Judge of Probate that the witnesses to the will, or any of them, are dead, or insane, proof of the handwriting of the witnesses so dead or insane, and of the handwriting of the testator, shall be admitted by the Judge of Probate as *prima facie* evidence that the testator did execute the will in question, in the presence of the witnesses thereto.

Civ. '12, § 3580; Civ. '02, § 2492; G. S. 1871; R. S. 2004; 1839, XI, 59.

Hopkins v. DeGraffenreid, 2 Bay 187; Hopkins v. Albertson, 2 Bay 484; Sampson v. White, 1 McC. 74; Duncan v. Beard, 2 N. & McC. 400; Wooster v. Wooster, 4 Rich. 409; Verdier v. Verdier, 8 Rich. 135.

Thames v. Rouse, 82 S. C. 40, 62 S. E. 254.

(5353) § 19. **Executor to Have Affirmative of Issue, Will or No Will.**—In all trials upon appeals from the Probate Court, in which the question of will or no will is in issue, the executor or parties propounding the will shall be admitted to open the case, and to reply in evidence and argument.

Civ. '12, § 3581; Civ. '02, § 2493; G. S. 1872; R. S. 2005; 1839, XI, 60.

In re Brock, 37 S. C. 348, 16 S. E. 38.

Farr v. Thompson, 1 Speer 93; Floyd v. Floyd, 3 Stroob. 44; Jones v. Harris, 3 Rich. 14; Means v. Means, 6 Rich. 1; Watkins v. Watkins, 13 Rich. 66. Such issue is tried *de novo*. Peeples v. Smith, 8 Rich. 90; Prater v. Whittle, 16 S. C. 46. But it must be tried by the Court, and issue of fact can only be referred to the jury under Circuit Court Rule 28. *Ex parte Apeier*, 35 S. C. 417, 14 S. E. 931. As to costs. *McNight v. Wright*, 12 Rich. Eq. 229; *Bennett v. Mathewes*, 5 S. C. 478. *Ex parte Jackson*, 67 S. C. 55, 45 S. E. 132.

Meier v. Kornahrens et al, 113 S. C. 270, 102 S. E. 235.

(5354) § 20. **Exemplified Copies of Wills May Be Given in Evidence—Proviso.**—In all actions, exemplifications of wills under the hand of the Judge of Probate and seal of the Court in which such will may have been admitted to probate, or under the hand and seal of any other officer who has legal possession of the same, shall be admissible in evidence in any of the Courts of this State, whether the same may regard the title to real or personal property: *Provided*, The party offering such exemplification shall give to the opposite party, or his attorney, at least ten days' notice of such intention previous to the trial.

Civ. '12, § 3582; Civ. '02, § 2494; G. S. 1874; R. S. 2006, 2359; 1823, VI, 209; 1865, XIII, 312; 1901, XXIII, 744.

The probating of the will is necessary as evidence only. *Satcher v. Grice*, 53 S. C. 126, 31 S. E. 3. Copy as evidence. *Counts v. Wilson*, 45 S. C. 571, 23 S. E. 942. Probate Judge presumed to have received proof of will before allowing executors to act under it. *Ib*.

This Section intended to obliterate distinction between the effect of a probate as to bequests and devises. *Rumph v. Hiott*, 35 S. C. 444, 15 S. E. 239. Probate simply establishes the fact that the will has been made according to the form prescribed by Statute. *Burkett v. Whittemore*, 36 S. C. 428, 15 S. E. 616.

Copy of will, unaccompanied by certificate, signed and sealed, cannot be deemed to be exemplification of will. *Pineland Club v. Robert*, 171 Fed. 341, 343.

(5355) § 21. **Foreign Probates Admitted to Probate Upon Exemplification and Certificate—Proviso.**—If a will be regularly proved in any foreign Court, an exemplification of such will may be admitted to probate in this State upon the exemplification and certificate of the Judge of the Court of Probate; and the exemplification shall also be evidence of the devise of lands in this State where the title of land comes in question: *Provided*, That if the will be not proved in solemn form, the parties interested against the will shall not be concluded by such probate, but may examine witnesses as to the sanity of the testator, or as to any fraud

or imposition practiced upon him in obtaining the will; and the other side may apply for an order to perpetuate testimony in support of the will.

Civ. '12, § 3583; Civ. '02, § 2495; G. S. 1875; R. S. 2007; 1759, IV, 102.

Gause v. Gause, 4 McC. 382; *Sally v. Gunter*, 13 Rich. 72; *Abrams v. Mosely*, 7 S. C. 150; *Paterson v. Pagan*, 18 S. C. 334; *Thornton v. Dean*, 19 S. C. 583; *Gravely v. Gravely*, 20 S. C. 93; *Id.*, 25 S. C. 1; *Blount v. Walker*, 28 S. C. 545, 6 S. E. 558.

Probate of will in another State establishes that will was executed according to law of that State but does not establish that the will was executed according to the law of South Carolina. *Blount v. Walker*, 184 U. S. 607, 613, 33 L. Ed. 1036.

(5356) § 22. Nuncupative Wills Exceeding Fifty Dollars to Be Proved by Three Witnesses.—No nuncupative will shall be good where the estate thereby bequeathed shall exceed the value of fifty dollars, that is not proved by the oaths of three witnesses at the least, who were present at the making thereof, and bid by the testator to bear witness that such was his will, or words to that effect; nor unless such will was made in the last sickness of the deceased, in the house or place where he or she shall die.

Civ. '12, § 3584; Civ. '02, § 2496; G. S. 1876; R. S. 2008; 29 C. 2, c. 3; 1712, II, 528; 1789, V, 107.

McGee v. McCants, 1 McC. 517; *Ex parte Turner*, 24 S. C. 214.

(5357) § 23. Time of Proving Nuncupative Wills.—No testimony shall be admitted to prove any nuncupative will if six months have elapsed after speaking the pretended testamentary words, except such testimony or the substances thereof were committed to writing within six days after the making of the said will, and then twelve months shall be allowed, and no more, for the probate of such will.

Civ. '12, § 3585; Civ. '02, § 2497; G. S. 1877; R. S. 2009; 1789, V, 107.

(5358) § 24. Competency of Witnesses to Nuncupative Will.—All such witnesses as are and ought to be allowed to be good witnesses upon trial at law by the laws and customs of this State shall be deemed good witnesses to prove any nuncupative will, or anything relating thereunto.

Civ. '12, § 3586; Civ. '02, § 2498; G. S. 1878; R. S. 2010; 4 Ann., c. 16; 1712, II, 435; 1733, III, 342.

(5359) § 25. Kindred to Be Cited That They May Contest Nuncupative Will.—No nuncupative will shall at any time be received to be proved, unless process shall have first issued to call in the widow or next of kindred to the deceased, to the end that they may contest the same, if they please.

Civ. '12, § 3587; Civ. '02, § 2499; G. S. 1879; R. S. 2011; 1879, V, 107.

(5360) § 26. Soldiers' and Mariners' Wills.—Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his movable, wages and personal estate as he or they might have done at common law.

Civ. '12, § 3588; Civ. '02, § 2500; G. S. 1880; R. S. 2012; 29 C. 2, c. 3; 1712, II, 529.

(5361) § 27. "Writing" to Include Typewriting.—Wherever the word "writing" is used in this Title and Chapter it shall be construed to include typewriting; and any and all wills and testaments heretofore or hereafter admitted to probate which may have been, or may be, in typewriting are

hereby validated and confirmed and declared to be as effectual as they would have been had they been written by hand.

Civ. '12, § 3589; 1909, XXVI, 82.

(5362) § 28. **Fixing Time for Probating Wills.**—That every executor, devisee, legatee, trustee, guardian, attorney or other person having in his possession, custody or control any last will and testament, including any codicil or codicils thereto, of any person hereafter dying shall, within thirty days after notice or knowledge of the death of the testator or testatrix, deliver such last will or testament, including any codicil or codicils thereto, to the Judge of the Probate Court having jurisdiction to admit the same to probate, and thereupon such Judge of Probate shall file the same in his Court, and if proceedings for the probate thereof are not begun within thirty days he shall publish a notice of such delivery and filing in one of the newspapers in his county for fifteen days.

1912, XXVII, 765.

(5363) § 29. **Probate Judge May Institute Proceedings.**—That in case it shall be known or brought to the knowledge of the Judge of the Probate Court to whom any last will and testament may be delivered, as hereinbefore provided, that any of the devisees or legatees named in such last will and testament labors under any disability, then it shall be the duty of such Judge of Probate to require the general guardian, committee or trustee of any of the devisees or legatees so laboring under disability, to institute and prosecute proceedings for the probate of such last will and testament, where such proceedings have not been instituted by some other person within a reasonable time after the delivery to and filing by him of such last will and testament. In the event there be no such general guardian, committee or trustee, or if such proceedings are not instituted by such guardian, committee or trustee, within reasonable time, the Judge of Probate shall appoint some fit and proper person as guardian *ad litem* to institute and prosecute such proceedings.

1912, XXVII, 765.

(5364) § 30. **Codicils.**—That every last will and testament, including any codicil or codicils thereto hereafter becoming effective, shall be null and void as to subsequent purchasers for value without notice of property included in said will unless the same be filed for probate, in one of the modes allowed by law, within six years after the death of the testator or testatrix.

1912, XXVII, 765.

(5365) § 31. **Penalty.**—That any executor, devisee, legatee, guardian, attorney or other person who shall fail to deliver any last will and testament, including any codicil or codicils thereto, as required in Section 28, upon conviction thereof, shall be punished as for a misdemeanor.

1912, XXVII, 765.

(5366) § 32. **Further Penalty.**—That any person who shall intentionally or fraudulently destroy, suppress, conceal or fail to file with the

Judge of the Probate Court having jurisdiction to admit it to probate any last will and testament, including any codicil or codicils thereto, for the purpose and with the intent to prevent the institution of proceedings for its probate shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars, or by imprisonment not more than one year, or both, in the discretion of the Court.

1912, XXVII, 765.

TITLE VI.

OF THE SETTLEMENT OF ESTATES OF DECEASED PERSONS; TRUSTS AND SPECIAL PROVISIONS RELATING TO TRUSTS.

- CHAPTER LXXI. Letters Testamentary and Proceedings on the Probate of Wills, 1631.
- CHAPTER LXXII. Administration of Intestates' Estates and Derelict Estates, 1635.
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- CHAPTER LXXIV. Payments of Debts and Legacies, 1642.
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- CHAPTER LXXVI. Settlement and Distribution of Intestate Estates, 1650.
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- CHAPTER LXXVIII. Trusts and Special Provisions Relating to Trusts, 1654.
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CHAPTER LXXI.

Letters Testamentary and Proceedings on the Probate of Wills.

(5367) § 1. **Letters of Administration With the Will Annexed—Rules Governing Appointment.**—Whenever a deceased person shall have left a will in writing without having appointed an executor therein, or, having appointed one or more executors, all of them shall have departed this life without having qualified thereon, or, being alive, shall have refused to qualify, or, some or all of them having qualified, shall have departed this life, leaving the estate not fully administered, or been discharged by the order of the Probate Judge, it shall be the duty of the Judge of Probate, in whose Court such wills have been proved, to grant letters of administration, with the will annexed to such persons as shall have the greatest interest in sustaining such will, in the order of their interests. And in case no person taking interests under such will shall apply within three months after the death of the testator, then to the greatest creditor or creditors; and in default of such applying, then to such other persons as may apply therefor. That all sales heretofore made by administrators *cum testamento annexo* under the powers of sale contained in wills upon which administration *cum testamento annexo* had been duly granted after the executors of said wills had been duly discharged by the Judge of Probate, be, and the same are

hereby, validated and confirmed. The Probate Judge may accept the resignation of the executors when in his opinion such resignation will not be injurious to the estate, and in such cases he shall appoint an administrator or administrators with the will annexed as in case of failure to qualify.

Civ. '12, § 3590; Civ. '02, § 2501; G. S. 1881; R. S. 2013; 1880, XVII, 363; 1856, XII, 533; 1916, XXIX, 701; 1918, XXX, 737.

Who is such creditor. *Burkhim v. Pinkussohn*, 58 S. C. 469, 36 S. E. 908. A non-resident of the State cannot be appointed administrator. *Ib.* See, also, *Smith v. Wingo*, Rice 287; *State v. Watson*, 2 Speer 97; *Rose v. Thornley*, 33 S. C. 313, 12 S. E. 11.

(5368) § 2. Nonresident May Act as Executor Upon Certain Conditions Named.—From and after the first day of July, A. D. 1902, no letters testamentary shall be granted or issued to any executor named in any will admitted to probate in this State, who is at the time when such letters are granted a nonresident of this State, unless such executor shall first enter into bond in the same manner as is required by law with regard to an administrator with the will annexed, nor unless such executor shall first file with the Probate Judge of the county where such will is admitted to probate, his consent, by written instrument, that service may be made upon him of the summons or other process in suits or actions concerning the administration of the estate in his charge, in this State, by service of the same upon such resident of said county as may be appointed by said nonresident executor in such instrument; and in case of the death or absence from the State of the person so appointed, or any successor named by similar instrument, filed with the Probate Judge, then upon the Probate Judge of said county.

Civ. '12, § 3591; 1902, XXIII, 1064.

(5369) § 3. Powers of Nonresident Executor.—Upon the granting of such letters such nonresident executor shall be vested with all the powers of resident executors.

Civ. '12, § 3592; 1902, XXIII, 1064.

(5370) § 4. Renunciation of Office by Nonresident Executor—How Established.—After the lapse of twelve months from the date of the admission to probate of any will in this State, if it be made to appear to the satisfaction of the Probate Judge of the county where such will has been admitted to probate that any executor named in said will is a nonresident of this State and has not prior thereto qualified upon said will, then it shall be the duty of the said Probate Judge to cite such executor to qualify before him on a day named in the citation, which shall be not less than sixty days from the date thereof, and such citation shall be served upon such nonresident executor in the manner now required by law with regard to an executor who may have changed his domicile beyond the limits of this State; and if such nonresident executor fails to appear in person or by attorney upon the day named, or, appearing, shall fail to disprove that he is a nonresident, and failing so to appear or disprove that he is a nonresident, shall not within thirty days after the day fixed in said citation qualify in the manner herein provided for nonresident executors, then such failure shall be received as a formal renunciation by him of his appointment or nomination as executor under the terms of said will.

Civ. '12, § 3593; 1902, XXIII, 1064.

(5371) § 5. Executor of an Executor Not to Represent Estate of First Testator.—No executor of an executor shall have authority, as such, to administer the estate of the first testator; but on the death of the sole or surviving executor of any last will and testament, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as would have been entitled thereto had the first testator died intestate.

Civ. '12, § 3594; Civ. '02, § 2502; G. S. 1901; R. S. 2014; 1880, XVII, 364.

Reeves v. Tappan, 21 S. C. 6; *Reeves v. Brayton*, 36 S. C. 384, 15 S. E. 658; *Ketchin v. Rion*, 68 S. C. 260, 47 S. E. 376.

(5372) § 6. Executor or Administrator, With Will Annexed, to Take Oath—Form of Oath.—Every executor or administrator with the will annexed, at the time of proving the will or the granting of administration, shall take the following oath: "I do solemnly swear that this writing contains the true last will of the within named A B, deceased, so far as I know or believe; and that I will well and truly execute the same, by paying first the debts and then the legacies contained in the said will, so far as his goods and chattels will thereunto extend and the law charge me, and that I will make a true and perfect inventory of all such goods and chattels. So help me, God."

Civ. '12, § 3595; Civ. '02, § 2503; G. S. 1882; R. S. 2015; 1789, V, 109.

(5373) § 7. Administrator, With Will Annexed, to Give Bond—Amount—How Fixed.—The administrator with the will annexed shall enter into bond in a penalty double the estimated value of the personal property of the intestate, and shall have two or more good sureties, the aggregate value of whose estates, over and above their indebtedness, shall not be less than the full amount of the penalty of the bond.

Civ. '12, § 3596; Civ. '02, § 2504; G. S. 1883; R. S. 2016; 1789, V, 100; 1855, XII, 403.

(5374) § 8. Trustees, Guardians, Executors, Etc., May Charge Premium on Bond to Estate.—Any person appointed executor, administrator, guardian, receiver, trustee, or to act in any fiduciary capacity, who is required by law to give bond, and who gives bond signed by any surety company authorized to do business in this State, and which bond is approved, shall be allowed and may include as part of his expenses a reasonable sum paid to such company as a premium for signing such bond, the reasonableness to be passed upon by the Court or officer that passes upon the sufficiency of the bond: *Provided*, That in no case shall the premium amount to more than one per cent. of the penalty of the bond.

Civ. '12, § 3597; 1907, XXV, 541.

(5375) § 9. Condition of Bond.—The condition of the said bond shall be in the following form, to wit: "The condition of this obligation is such that if the above bound C D, administrator, with the will annexed, of the goods, chattels, and credits of E F, deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come into the hands or possession or knowledge of the said C D, or into the hands or possession of any other persons for him, and the same so made do exhibit into the said Court of Pro-

bate such time as he shall be thereunto required by the said Court, and the same goods, chattels and credits do well and truly administer according to law, and make a just and true account of his actings and doings therein when lawfully required; and, further, do well and truly pay and deliver all the legacies contained and specified in the said will, as far as the goods, chattels and credits will extend, and the law require, then this obligation to be void, or else to remain in full force.

Civ. '12, § 3598; Civ. '02, § 2505; G. S. 1884; R. S. 2017; 1789, V, 100.

Walker v. Crossland, 3 Rich. Eq. 23.

(5376) § 10. Bond Payable to Judge of Probate.—The said bond shall be made payable to the Judge of Probate of the county and his successors, and may be sued by any person injured by the breach of the condition; and judgment for the penalty shall stand as security for the amount recovered by the party grieved, and for all others in similar circumstances who may, from time to time, by suggestion on the record, have their damages assessed until the whole penalty be exhausted.

Civ. '12, § 3599; Civ. '02, § 2506; G. S. 1885; R. S. 2018; 1789, V, 101.

Kennedy v. Adickes, 37 S. C. 174, 15 S. E. 922; McCorkle v. Williams, 43 S. C. 66, 20 S. E. 744.

(5377) § 11. Infirm or Distant Executors May Be Qualified by Commission, Etc.—When a person appointed executor is infirm, or lives at a great distance from the office of the Judge of Probate where the will has been proved, the Judge of Probate shall have power to grant a commission to some two or more respectable persons in his neighborhood to administer to him the oaths, and perform the other requisites for granting probate of the will.

Civ. '12, § 3600; Civ. '02, § 2507; G. S. 1886; R. S. 2019; 1839, XI, 60.

(5378) § 12. What Shall Be Sufficient Probate of Will of Real or Personal Property.—The probate, in due form of law, by and before the proper Judge of Probate, of any last will and testament, whether the same be of real property exclusively, or of real and personal property mixed, shall be good, sufficient and effectual in law in the same manner and to the same extent as if the said last will and testament were exclusively of personal estate; and no devise of real estate shall be admitted as evidence in any case until after probate, either in common form or due form of law.

Civ. '12, § 3601; Civ. '02, § 2508; G. S. 1887; R. S. 2006; 1858, XII, 701; 1865, XIII, 312; 1903, XXIV, 88.

See, also, ante § (5250).

(5379) § 13. Time of Letters Testamentary or Probate of Nuncupative Will After Testator's Death.—No letters testamentary or probate of any nuncupative will shall pass the seal of any Court till fourteen days, at the least, after the decease of the testator.

Civ. '12, § 3602; Civ. '02, § 2509; G. S. 1888; R. S. 2020; 29 C. 2, c. 3; 1712, II, 529.

(5380) § 14. Persons Under Twenty-One Years Not to Be Executors or Administrators.—No executor or executrix shall take upon himself or herself the administration of any will or devise, unless he or she be of the full age of twenty-one years.

Civ. '12, § 3603; Civ. '02, § 2510; G. S. 1889; R. S. 2021; 1824, VI, 237.

(5381) § 15. **If Debtor Be Executor, Debt Not Thereby Extinguished.**—If any person shall, by will, appoint his debtor to be his executor, such appointment shall not, in law or equity, be construed to be a release or extinguishment of the debt, unless the testator shall, in his will, expressly declare his intention to release the same.

Civ. '12, § 3604; Civ. '02, § 2511; G. S. 1890, R. S. 2022; 1879, XVII, 111.

Debt is considered as cash in hands of executor. *Hall v. Hall*, 2 McC. Ch. 269.

CHAPTER LXXII.

Administration of Intestates' Estates and Derelict Estates.

(5382) § 1. **Letters of Administration—To Whom Granted.**—In case any person die intestate, the Judge of Probate of the county where the will of such person, had he left a will, would have been proved, shall grant administration of the goods, chattels, rights, and credits of such person deceased, to his or her relations, in the order following, to wit:

1. To the husband or wife of the deceased: *Provided, always*, That if any widow, after having obtained letters of administration, shall marry again, the Judge of Probate shall have power to revoke the administration before granted, or join one or more of the next of kin in the administration with her;

2. If there be no husband or wife of the deceased, or they do not apply, then to the child or children, or their legal representatives;

3. In default of them, then to the father or mother;

4. In default of them, to the brothers and sisters;

5. In default of them, to such of the next of kindred of the deceased, at the discretion of the Judge of Probate, as shall be entitled to a distributive share of the intestate's estate; and,

6. In default of such, to the greatest creditor or creditors, or such other persons as the Court shall appoint.

Civ. '12, § 3605; Civ. '02, § 2512; G. S. 1893; R. S. 2023; 1789, V, 108; 1839, XI, 57.

The fact of death jurisdictional. *Moore v. Smith*, 11 Rich. L. 569, 73 Am. Dec. 122.

Who is such creditor. *Burkheim v. Pinkussohn*, 58 S. C. 469, 36 S. E. 908. Letters should not be granted a non-resident. *Id.*

This order compulsory. *Smith v. Wingo*, Rice 287. Applies where executors of will are dead or refuse to qualify, as in case of intestacy. *Smith v. Wingo*, Rice 287. Administration granted to husband and wife is administration of husband alone. *Lewis v. Price*, 3 Rich. Eq. 172. Widow cannot transfer her right. *McBeth v. Hunt*, 2 Strob. 335. Judge may grant to such child or children as he sees fit. *State v. Mitchell*, 3 Brev. 520. As to selection among next of kin. *Smith v. Wingo*, Rice 287. Grandchildren preferred to mere next of kin. *Smith v. Wingo*, Rice 287. As to creditors. *Screven v. Bostick*, 2 McC. Ch. 410; *Ex parte Ostendorff*, 17 S. C. 24. Any persons enumerated preferred to stranger, and at their instance administration committed to stranger must be revoked. *Thompson v. Huchet*, 2 Hill 347; *Smith v. Wingo*, Rice 287. In absence of kindred and creditors it is discretionary with Judge to whom administration shall be granted. *Thompson v. Huchet*, 2 Hill 347; *Ex parte Crafts*, 28 S. C. 281, 5 S. E. 718. The wishes of those having greatest interest in estate should have great, but not controlling, weight with him. *McBeth v. Hunt*, 2 Strob. 335. *Ex parte Ostendorff*, 17 S. C. 24. First grant of administration conclusive until annulled by direct proceeding. *Petigrew v. Ferguson*, 6 Rich. Eq. 378. Grant of administration has relation to the time of intestate's death. *McVaughers v. Elder*, 2 Brev. 307; *Hamer v. Bethea*, 11 S. C. 428; *Cook v. Cook*, 24 S. C. 206. It vests in administrator only the movable property within the State which grants it; does not include choses in action in State where debtor resides. *Dial v. Gar*, 14 S. C. 573. But administrator is liable for property brought by him here from another State. *Cureton v. Mills*, 13 S. C. 423. As to revocation. *McLaurin v. Thompson*, Dud. 335; *Smith v. Wingo*, Rice 287; *Rollin v. Whipper*, 17 S. C. 34; *Ex parte Crafts*, 28 S. C. 281, 5 S. E. 718; *Ex parte White*, 38 S. C. 41, 16 S. E. 286. Error in grant or administration can be corrected by appeal only. *State v. Mitchell*, 3 Brev. 520.

Right of tortfeasor liable for causing death of intestate under Lord Campbell's Act to attack grant of letters of administration on estate of decedent. *In re Mayo's Estate*, *Ex parte N. E. R. R.*

Co., 60 S. C. 401, 38 S. E. 634. Such liability on assets sufficient to authorize grant of letters. *Ib.* Grant of letters on estate of non-resident. *Ib.*

Probate Judge may deny administration to party named in statute, if unfit, etc. *Ex parte Small*, 69 S. C. 46, 48 S. E. 40. Persons having action for damages against deceased is creditor. *Ex parte Conrad*, 75 S. C. 1, 54 S. E. 799. Question as to survival of cause of action is for the common pleas and not probate court. *Ex parte Conrad*, 75 S. C. 1, 54 S. E. 799. Proof as to assets in county, in absence of allegation. *Ex parte Conrad*, 75 S. C. 1, 54 S. E. 799. *In re Brown's Estate*. *Brown et al v. Frierson*, — S. C. —, 79 S. E. 791.

(5383) § 2. Letters to One Creditor to Be for the Benefit of All the Other Creditors.—No letters of administration shall be granted to any person or persons whomsoever, as principal creditor or creditors to any intestate, but upon special trust and confidence, and for the benefit of all the rest of the creditors.

Civ. '12, § 3606; Civ. '02, § 2513; G. S. 1894; R. S. 2024; 1745, III, 667.

(5384) § 3. Payment of Debts to Be in Proportion to Assets.—All debts of an annual nature shall be discharged by such administrator in average and proportion, as far as the assets of the intestate shall extend, and no preference shall be given among the creditors in equal degree.

Civ. '12, § 3607; Civ. '02, § 2514; G. S. 1895; R. S. 2025; 1745, III, 667.

(5385) § 4. Granting Letters De Bonis Non on Death of Executor or Administrator.—When a sole surviving executor or administrator shall die, the estate in his hands not having been fully administered, it shall be the duty of the Judge of Probate of the county in which letters testamentary of the administration were first granted, to grant letters of administration *de bonis non* with the will annexed, or of administration *de bonis non* of the estate.

Civ. '12, § 3608; Civ. '02, § 2515; G. S. 1896; R. S. 2026; 1789, V, 108; 1839, XI, 58; 1880, XVII, 363.

Williams v. Seabrook, 3 McC. 371; *Johnston v. Lewis*, Rice Eq. 40; *Villiard v. Roberts*, 1 Strob. Eq. 393.

(5386) § 5. Mode of Granting Administration—Kindred and Creditors May Be Cited—Publishing Citation.—The Judge of Probate shall grant administration in the following manner: After requiring the person or persons applying therefor to file a petition in writing, he shall issue a citation to the kindred or creditors of the intestate or person deceased, to show cause, if any they have, why administration shall not be granted to the person or persons applying therefor, and he shall cause the same to be published on the Court House door of the county in which his office is for two successive weeks, and also by having it printed once a week for two successive weeks after it had been issued in some public gazette, if any be published in the county.

Civ. '12, § 3609; Civ. '02, § 2516; G. S. 1901; R. S. 2027; 1839, XI, 58.

In the absence of testimony the Court will presume that publication was made. *Hendrix v. Holden*, 58 S. C. 495, 36 S. E. 1010.

On refusing petitioner, Judge may grant letters to another without further citation. *Ex parte Small*, 69 S. C. 46, 48 S. E. 40; *Phoenix Bridge Co. v. Castleberry*, 131 Fed. 175, 177.

(5387) § 6. Administrator to Give Oath in Open Court.—Every administrator shall, in open Court, when letters of administration are granted him, take the following oath or affirmation, as the case may be, to wit: "I do solemnly swear, or affirm, that A B, deceased, died without any will, as far as I know or believe, and that I will well and truly administer all and singular the goods and chattels, rights and credits, of the said deceased,

and pay all his just debts, as far as the same will extend, and the law require me, and that I will make a true and perfect inventory of all the said goods and chattels, rights and credits, and return a just account thereof when thereunto required. So help me, God."

Civ. '12, § 3610; Civ. '02, § 2517; G. S. 1897; R. S. 2028; 1789, V, 110.

(5388) § 7. Bond of Administrator With Two or More Sureties—Amount of—How Determined—Form.—Such administrator shall also enter into bond, with two or more good sureties, the aggregate value of whose estates, over and above their indebtedness, shall not be less than the full amount of the penalty of the bond, to be approved by the Court in a sum equal to double the estimated value of the personal property of the intestate, with the condition following: "The condition of the above obligation is such, that if the above bound A B, administrator of the goods, chattels, and credits of C D, deceased, do make a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which have or shall come to the hands, possession, or knowledge of the said A B, or into the hands or possession of any other person or persons for him, and the same so made do exhibit unto the said Court of Probate, when he shall be thereto required, and such goods, chattels, and credits do well and truly administer, according to law, and do make a just and true account of his actings and doings therein when required by the said Court, and all the rest of the said goods, chattels, and credits, which shall be found remaining upon the account of the said administration, the same being first allowed by the said Court, shall deliver and pay unto such persons respectively as are entitled to the same by law; and if it shall hereafter appear that any last will and testament was made by the said deceased, and the same be proved in Court, and the executors obtain a certificate of the probate thereof, and the said A B do, in such case, if required, render and deliver up the said letters of administration, then this obligation to be void, otherwise to remain in full force."

Civ. '12, § 3611; Civ. '02, § 2518; G. S. 1898; R. S. 2089; 22 and 23 C. 2, c. 10; 1712, II, 523; 1789, V, 110; 855, XII, 403.

Such bond may be given in a surety company.

This form must be followed. Ordinary v. Blanchard, 3 Brev. 136. Residence no part of qualification of surety. State v. Watson, 2 Speer 97. Action on bond may be brought in name of Probate Judge. Johnson v. Dawkins, 20 S. C. 532; Burnside v. Robertson, 28 S. C. 583, 6 S. E. 843. Liability of sureties. None at law to distributees until decree has been had against administrator on accounting. Ordinary v. Giles, 3 Brev. 530; Bayne v. Blacklock, 2 DeS. 602; Ordinary v. Williams, 1 N. & McC. 587; Ordinary v. Powers, 2 N. & McC. 213; Lyles v. Caldwell, 3 McC. 225; Shelton v. Cureton, 3 McC. 412; Anderson v. Maddox, 3 McC. 237; Harrington v. Cole, 3 McC. 509; Jones v. Anderson, 4 McC. 112; Lyles v. Brown, Harp. 31; Lyles v. Robinson, 1 Bail. 25; Chambers v. Patton, 1 Bail. 130; Mitchell v. Connelly, 1 Bail. 203; Ross v. Chambers, 1 Bail. 548; Ross v. Pettus, 11 Rich. 543; Ordinary v. Martin, 4 Rich. 271; McAfee v. McAfee, 28 S. C. 188, 218, 5 S. E. 480, 593. And such decree is only *prima facie* evidence and may be shown to be incorrect. Ordinary v. Cobb, 2 Bail. 60; Ordinary v. Trail, 2 Bail. 480; Schnell v. Schroder, Bail. No. 334; Ordinary v. Coudy, 2 Hill 313; Ordinary v. Carlisle, 1 McM. 100; Ordinary v. Archer, 1 McM. 35; Ordinary v. Wallace, 1 Rich. 507; Ordinary v. Osborn, 2 Rich. 90; Ordinary v. Bailey, 5 Rich. 68; Ordinary v. McCully, 5 Rich. 80. But cannot be shown to be fraudulent. Ordinary v. Wallace, 2 Rich. 460; Ordinary v. Caldwell, 4 Rich. 117. Yet creditors can sue sureties as soon as they have established debt against administrator and failed to make it. Ordinary v. Hunt, 1 McM. 380; Kaminer v. Hope, 18 S. C. 561; Wilbur v. Hutto, 25 S. C. 246; Burnside v. Robertson, 28 S. C. 583, 6 S. E. 843; Ordinary v. Johnsey, 6 Rich. 355. Remedy against surety is at law. Teague v. Dendy, 2 McC. Ch. 207. But they may be joined, in Equity, with principal or his representative. Aiken v. Miller, Harp. Eq. 69; Magwood v. Butler, Harp. Eq. 265; McBee v. Crocker, McM. Eq. 485; Gayden v. Gayden, McM. Eq. 435; O'Neale v. Herbert, McM. Eq. 495; Swindersine v. Miscally, Bail. Eq. 304; Taylor v. Taylor, 2 Rich. Eq. 123; Wright v. Eaves, 10 Rich. Eq. 582. Sureties of one administrator not liable to another. Haell v. Blanchard, 4 DeS. 21; Knox v. Pickett, 4 DeS. 92. Discharge of. Ordinary v. Corbett, 1 Bay. 323; Moodie v. Penman, 3 DeS. 482; Beckham v. Pride, 6 Rich. Eq. 78. Generally. Watson v. Whitten, 3 Rich. 224; Ericks v. Powell, 2 Strob. Eq. 196; Glenn v. Wallace, 4 Strob. Eq. 149; Rhame v. Lewis, 13 Rich. Eq. 269; Bomar v. Ezell, 22 S. C. 398.

(5389) § 8. Bond Payable to Judge of Probate—Suits—Penalty for Insufficient Security.—The said bond shall be made payable to the Judge of Probate and his successors, and recorded in his office, in a book to be kept for that purpose, and may be sued in like manner as is prescribed in Section (5376), in the case of bonds given by administrators with the will annexed; and if the Judge of Probate shall fail to take bond and security as aforesaid, such Judge of Probate shall be liable to be sued for all damages arising from such neglect by any person or persons interested in the estate.

Civ. '12, § 3612; Civ. '02, § 2519; G. S. 1899; R. S. 2030; 1789, V, 110.

The ability of the sureties must be looked to. *McRae v. David*, 5 Rich. Eq. 475. The Judge acts ministerially and not judicially. *Ib.* Judge not liable if not negligent and harm arises from unforeseen causes. *Ib.* Where the bond is void and for an insufficient amount, the damages will not be limited to that amount. *Wilson v. Waterman*, 6 Rich. Eq. 255. Bond may be sued in name of Judge of Probate. *Johnson v. Dawkins*, 20 S. C. 532.

(5390) § 9. Sureties on Bond May Petition for Relief When in Danger of Loss.—It shall be the duty of the Judge of Probate in whose office an administration bond is lodged, upon a petition filed by any of the sureties to the same who conceive themselves in danger of being injured by such suretyship, to summon the administrator before him, and make such order or decree, for the relief of the petitioner, as may not impair or affect the rights of the parties interested in the estate.

Civ. '12, § 3613; Civ. '02, § 2520; G. S. 1900; R. S. 2031; 1789, V, 111; 1839, XI, 62.

Not necessary that accounting be had and letters revoked before relief of surety; the surety remains liable for property in hands of his principal at time of discharge, but not for property subsequently coming into his hands. *Hall v. Hall*, 45 S. C. 166, 23 S. E. 813.

Surety may be relieved on his own motion and without proof of danger. *McKay v. Donald*, 8 Rich. 331. Court may require new bond with additional sureties or revoke administration. *Owens v. Walker*, 2 Strob. Eq. 289; *Ordinary v. Bigham*, 3 Hill 512; *Ordinary v. Wallace*, 11 Rich. 507; *Gilliam v. McJunkin*, 2 S. C. 442. If relief is granted by revoking administration, the sureties are still liable for default before that time. *Shelton v. Coreton*, 3 McC. 412. But if granted by requiring new bond, it is primary security as to amount fixed by accounting. *Bobo v. Vaiden*, 20 S. C. 279; *Ordinary v. Trail*, 2 Bail. 480; *Ordinary v. Bigham*, 3 Hill 512. But if same administrator is appointed administrator *de bonis non*, and his accounts are fixed, that discharges the sureties. *Ordinary v. Trail*, 2 Bail. 480; *Ericks v. Powell*, 2 Strob. Eq. 196. No money decree can be given against the administrator. *Gilliam v. McJunkin*, 2 S. C. 442.

(5391) § 10. Proceedings on Alleged Loss or Destruction of Will.—If a person applying for letters of administration on the estate and effects of any person deceased will make it appear, upon oath, that such deceased person had made a will, which cannot be proved by such person or persons so applying, and that such person or persons applying for such administration verily believes or believe the said will to be lost or destroyed, together with the causes and reasons for such belief, it shall be the duty of the Judge of Probate to whom such application is made to grant letters of administration to the person or persons applying for the same, during such time as the said last will and testament shall be lost, and until the same shall be found and duly proved: *Provided*, That all such oaths as are required in this Section shall be in writing, subscribed by the party to be sworn, administered by the Judge of Probate, and filed and recorded by him.

Civ. '12, § 3614; Civ. '02, § 2521; G. S. 1902; R. S. 2032; 1778, IV, 429.

(5392) § 11. Executors or Administrators of Executors or Administrators Liable for Wrongful Conversion of Goods.—The executor or administrator or any executor or administrator of right, who may waste or convert to his own use the goods or estate of his testator or intestate, shall be

liable and chargeable in the same manner as their testator or intestate would have been if he had been living.

Civ. '12, § 3615; Civ. '02, § 2522; G. S. 1903; R. S. 2033; 4 and 5 W. & M., c. 24; 1712, II, 552.

(5393) § 12. Clerk of Court to Make Application for Administration of Derelict Estates—Liability.—Whenever it shall come to the knowledge of any Clerk of any Court of Common Pleas of any county in this State that the estates and effects of any deceased person, as to which administration could legally be granted by the Judge of Probate of his county, remain for the period of six months, entirely or partially, unadministered, either by reason of no application, for letters of administration, or from any other cause, so that there is no legally appointed representative of such deceased person, it shall be the duty of such Clerk of the Court to make application to the Judge of Probate of the county for letters of administration on the estate of such deceased person, accompanied with a statement of the nature, condition, and value of the said estate, so far as it may be known to him, and, thereupon, it shall be the duty of such Judge of Probate to insert a notice of such application, in the usual form, for forty days, in some public newspaper published in such county, or, if there be none such, in some adjoining county, and also at the door of the Court House, and, after such notice, to grant to such Clerk of the Court letters of administration on the estate of such deceased person, with the will annexed, in case there be a will, and the Clerk shall be held liable, on his official bond, for the faithful discharge of his duties as such administrator.

Civ. '12, § 3613; Civ. '02, § 2523; G. S. 1908; R. S. 2033; 1873, XV, 413; 1874, XV, 704.

Failure to publish notice for forty days a jurisdictional defect. *Hartley v. Glover*, 56 S. C. 69, 33 S. E. 796; *Hendrix v. Holden*, 58 S. C. 495, 36 S. E. 1021. Heirs and distributees cannot acquire title to personal assets so as to collect same without administration. *Darwin v. Moore*, 58 S. C. 164, 36 S. E. 539; *Bradford v. Felder*, 2 McC. Ch. 168; *Pickens v. Bryant*, 45 S. C. 17, 22 S. E. 750; *Richardson v. Cooley*, 20 S. C. 347; *Elders v. Vautess*, 4 DeS. 155. See, also, *Haley v. Thames*, 30 S. C. 270, 9 S. E. 110. Nor can suit be brought by creditors until administration by some one. *Screven v. Bostick*, 2 McC. Ch. 410.

When sole distributee may collect assets without administration. *Grant v. Poyas*, 62 S. C. 426, 40 S. E. 891.

(5394) § 13. Administrators, Trustees, Etc., May Pay for Surety Bond Out of Trust Funds.—See Section 8 of Chapter LXXI of this Code.

Civ. '12, § 3617.

(5395) § 14. Clerks of Court to Transmit Administrations to Successors.—All administrators of derelict estates heretofore granted to Clerks of the Court of Common Pleas, or that may hereafter be granted to them, under the preceding Section, shall be transmitted to the successors in office of such Clerks, by virtue of such succession in office, without new application on the part of such successor in office, and without further order of the Court of Probate making the original grant of administration.

Civ. '12, § 3618; Civ. '02, § 2524; G. S. 1909; R. S. 2035; 1875, XV, 954.

(5396) § 15. Acts of Successors of Clerks Valid.—All acts done by such said successors in office of the said Clerks of the Court, not inconsistent with the duty of administrators, are hereby ratified and affirmed, and made of the same force and effect as if done by the Clerks of the Court originally appointed to administer such said estate.

Civ. '12, § 3619; Civ. '02, § 2525; G. S. 1910; R. S. 2036; 1875, XV, 954.

(5397) § 16. **Duty of Clerks to Turn Over to Successors All Moneys.**—It shall be the duty of all outgoing Clerks of the Court of Common Pleas to turn over to their successors in office all property, choses in action, money, and other assets of such estates in their hands; and such successors shall have the right to compel the performance of that duty by proceedings for that purpose in the Court of Probate having jurisdiction of the particular estate.

Civ. '12, § 3620; Civ. '02, § 2526; G. S. 1911; R. S. 2037; 1875, XV, 954.

(5398) § 17. **Cases of a Person Charged as Executor in His Own Wrong.**—Any person who shall obtain, receive, and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any fraud, or without such valuable consideration as shall amount to the value of the same goods or debts, or near thereabouts (except it be in or towards satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the intestate at the time of his decease), shall be charged and chargeable as executor of his own wrong, so far as such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting, nevertheless, to and for himself, allowance of all just, due, and principal debts upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him which lawful executors or administrators may and ought to have and pay by the laws and statutes of this State.

Civ. '12, § 3621; Civ. '02, § 2527; G. S. 1905; R. S. 2038; 43 Eliz., c. 8; 1712, II, 507.

What will make an executor *de son tort*. Lloyd v. Cannon, 2 Des. 232; Howell v. Smith, 2 McC. 516; Givens v. Higgins, 4 McC. 286; Johnson v. Gaithers, Harp. 6; Leach v. House, 1 Bail. 42; Tucker v. Williams, Dud. 329; Salvo v. Schmidt, 2 Speer 512; Carter v. Robbins, 8 Rich. 29; Frier-son v. Westberry, 11 Rich. 353; Cook v. Sanders, 15 Rich. 63; Haley v. Thames, 30 S. C. 270, 9 S. E. 110; Ex parte DeVaga, 31 S. C. 413, 10 S. E. 72. Only chargeable with assets in hand, not with those not reduced to possession. Kinard v. Young, 2 Rich. Eq. 247; Cook v. Sanders, 15 S. C. 63. His promise to pay debt of deceased not binding. Haseldon v. Whitesides, 2 Strob. 353. Must be sued as executor. Gregory v. Forrester, 1 McC. Ch. 318. May plead *plene administravit*. Leach v. House, 1 Bail. 42; Cook v. Sanders, 15 S. C. 63. But if he only denies such character he will be charged with whole debt sued. Hobbell v. Fogartie, 1 Hill 167. Judgment against him binds when he becomes administrator. Walker v. May, 2 Hill 22. But cannot be levied on lands of testator. Warren v. Raymond, 17 S. C. 191. Does not arrest Statute of Limitations. Bolt v. Dawkins, 16 S. C. 211. Payment to trustee appointed by heirs and distributees. Pickens v. Bryant, 45 S. C. 17, 22 S. E. 750.

McElveen et al v. Adams, 108 S. C. 437, 94 S. E. 733.

(5399) § 18. **Executors in Their Own Wrong Deemed Trespassers Required to Make Discovery, Etc.**—The Judge of Probate of the county in which a deceased person may have died shall have power (either of his own accord, or at the instance of any creditor or other person interested in the estate of the deceased) to cite before him such person or persons, as neither being appointed executor nor having obtained administration of the effects of such deceased person, shall, nevertheless, possess himself or themselves of the goods and chattels, rights and credits of such person deceased; and, upon such person or persons being cited as aforesaid, the Judge of Probate shall require of him or them a discovery and account of all and singular the goods and chattels, rights and credits of the deceased, and shall proceed to decree against him or them for the value of the estate and effects of the deceased, which he or they may have wasted, or which may have been lost by his or their illegal interference, charging them as

executors of their own wrong are made liable at common law, as far as assets shall have come into their hands.

Civ. '12, § 3622; Civ. '02, § 2528; G. S. 1906; R. S. 2039; 30 C. 2, c. 7; 1712, II, 529; 1789, V, 112; 1839, XI, 63.

Haley v. Thames, 30 S. C. 270, 9 S. E. 110; *Davega v. Henry*, 31 S. C. 413, 10 S. E. 72.

(5400) § 19. Liability of Executors of Executors in Their Own Wrong.—

Every executor and administrator of any person or persons who, as executor in his own wrong, or administrator, shall waste or convert any goods, chattels, estate, or assets of any person deceased, to his own use, shall be liable and chargeable in the same manner as their testator or intestate would have been if he had been living.

Civ. '12, § 3623; Civ. '02, § 2529; G. S. 1907; R. S. 2040; 1789, V, 113.

(5401) § 20. When Executor May Pay Fund to Legatee and Be Discharged from Liability.—If, after the expiration of two years from the time when any legacy becomes due and payable under any will or testament, it shall be made to appear to the satisfaction of the Judge of the Court of Probate by whom letters testamentary were granted that the executor or executors of such will or testament, or the administrator or administrators with such will or testament annexed, is or are unable to ascertain the whereabouts of any legatee under such will or testament, or to ascertain whether such legatee be dead or not, it shall be lawful for the executor or executors, or the administrator or administrators with the will annexed, to pay over to the Judge of said Court of Probate the amount of the legacy of such legatee and any interest that may be legally due thereon, and such payment of the amount of such legacy to the Judge of the said Court of Probate shall be a full and complete discharge to the executor or executors, or the administrator or administrators, with the will annexed. The said amount so paid to the Judge of the said Court of Probate shall be protected by his official bond, and shall be held by such Court of Probate for such legatee, subject to the order of such Probate Court or any other Court of competent jurisdiction.

Civ. '12, § 3624; Civ. '02, § 2530; 1897, XXII, 432; 1898, XXII, 697.

CHAPTER LXXIII.

Of Inventories and Appraisements.

(5402) § 1. Inventory and Appraisement Made Upon Probate of Will or Application for Administration.—Where a will is proved, or application is made for administration of the estates of a person dying intestate, the Judge of Probate of the county shall require the executors or administrators to make out an exact inventory of the personal estate of the deceased, and shall appoint three or more respectable qualified electors to appraise the same on oath, which inventory and appraisement shall be returned into his office within such time as he shall limit.

Civ. '12, § 3625; Civ. '02, § 2531; G. S. 1919; R. S. 2041; 1745, III, 666; 1789, V, 108; 1839, XI, 61; 1902, XXIII, 1065.

Omission to insert property in inventory is breach of bond. *Ordinary v. Geiger*, 1 Brev. 484. Administrator's own debt is assets in his hand. *Schnell v. Schroder*, Bail. Eq. 334. But if note out of date, putting it in inventory does not renew the debt. *Black v. White*, 13 S. C. 87. Life tenant who is executrix not bound to return inventory. *Brooks v. Brooks*, 12 S. C. 462.

(5403) § 2. **Appraisement to Be Made in Each County Where Goods Are.**—If the goods be in several counties, the Judge of Probate of such counties respectively shall order appraisement and appoint appraisers in each, which appraisement, when made, shall be returned by the appraisers into the office of the Judge of Probate where the will is recorded, or by whom administration is granted.

Civ. '12, § 3626; Civ. '02, § 2532; G. S. 1920; R. S. 2042; 1789, V, 108; 1839, XI, 61.

(5404) § 3. **Appraisement—Evidence to Prove Value.**—Every appraisement made as aforesaid may be given in evidence in any legal proceedings against such executors and administrators to prove the value of the estate, but shall not be conclusive if it shall appear upon a trial of the cause that the estate was really worth or *bona fide* sold for more or less than such appraisement.

Civ. '12, § 3627; Civ. '02, § 2533; G. S. 1921; R. S. 2043; 1745, III, 667; 1839, XI, 61.

Appraisement as evidence. *Epperson v. Jackson*, 83 S. C. 157, 65 S. E. 217.

(5405) § 4. **Pay of Appraisers.**—Upon the settlement of their accounts by executors and administrators, it shall be the duty of the Judge of Probate to allow them the sum of one dollar per day for the expense of every appraiser during the time that he is proved to have been employed in appraising the estate of the testator or intestate.

Civ. '12, § 3628; Civ. '02, § 2534; G. S. 1922; R. S. 2044; 1839, XI, 61.

(5406) § 5. **No Person to Act as Appraiser Until Sworn.**—No appraisers appointed to appraise any testator's or intestate's goods and chattels shall enter upon that office before they shall have taken the following oath before the Judge of Probate of the county, or before any officer authorized by law to administer an oath, who is hereby empowered to administer the same:

"You, A B, C D, E F, etc., do swear that you will make a just and true appraisement of all and singular the goods and chattels (ready money, only, excepted) of G H, deceased, as shall be produced by J K, the executor or administrator of the estate of the said G H, deceased, and that you will return the same, certified under your hands, unto the Judge of Probate of County within the time prescribed by law."

Civ. '12, § 3629; Civ. '02, § 2535; G. S. 1923; R. S. 2045; 1745, III, 667; 1904, XXIV, 441.

CHAPTER LXXIV.

Payment of Debts and Legacies.

ARTICLE 1. Payment of Debts and Legacies, 1642.

ARTICLE 2. Sale of Land in Aid of Deficient Personal Assets, to Pay Debts, 1644.

ARTICLE I.

Payment of Debts and Legacies.

(5407) § 1. **Notice to Creditor to Render Accounts—Debts Ascertained Within a Year.**—Every executor or administrator shall give three weeks'

notice, by advertisement in one of the gazettes printed in the county, or if there be none, in some gazette of general circulation in the county, for creditors of the estate in his charge to render an account of their demands, duly attested, and he shall be allowed twelve months to ascertain the debts due from the deceased, reckoning from probate of will or grant of administration.

Civ. '12, § 3630; Civ. '02, § 2536; G. S. 1924; R. S. 2046; 1789, V, 111.

Time sufficient in absence of special difficulty. *Lowman v. Lowman*, 69 S. C. 543, 48 S. E. 536, cited in *Galloway v. Galloway*, 76 S. C. 524, 57 S. E. 528.

(5408) § 2. If Creditor Fail to Render Account, Executors or Administrators Not Liable.—If any creditor shall neglect to give in a statement of his debts within the time aforesaid, the executors or administrators shall not be liable to make good the same.

Civ. '12, § 3631; Civ. '02, § 2537; G. S. 1925; R. S. 2047; 1789, V, 111.

Nicholson v. Whitlock, 57 S. C. 36, 35 S. E. 412; *Miller v. Mitchell*, Bail. Eq. 437; *Walker v. Gill*, 2 Bail. 105; *Sebring v. Keith*, 2 Hill 340; *Lesesne v. Witte*, 5 S. C. 450; *Lanier v. Griffin*, 11 S. C. 155; *Crane v. Moses*, 13 S. C. 578; *Willingham v. Chick*, 14 S. C. 99.

(5409) § 3. Order of Payment of Debts—No Preference to Creditors in Equal Degree.—The assets which come to the hands of an executor or administrator, after proper allowance to the executor or administrator, in a due course of administration, shall be applied to the payment of his debts in the following order, that is to say:

1. Funeral and other expenses of the last sickness, charges of probate, or letters of administration.

2. Debts due to the public.

3. Judgments, mortgages, and executions—the oldest first.

4. Rent.

5. Bonds, debts by specialty, and debts by simple contract.

Mortgages, however, not to be entitled to priority over rents and debts by specialty or by simple contract, except as to the particular parts of the estate affected by the liens of such mortgages.

No preference shall be given among the creditors in equal degree, where there is a deficiency of assets, except according to legal priorities.

Civ. '12, § 3632; Civ. '02, § 2538; G. S. 1926; R. S. 2048; 1789, V, 111; 1874, XV, 609; 1878, XVI, 686.

Rank determined at death. *Hutchinson v. Bates*, 1 Bail. 11; *Tucker v. Condy*, 7 Rich. Eq. 281; *Morton v. Caldwell*, 3 Strob. Eq. 161; *Wilson v. McConnell*, 9 Rich. Eq. 500; *Frazer v. City Council*, 23 S. C. 381. Nursing included in expenses of last illness. *McVoy v. Percival*, Dud. 337. No rule as to duration of last illness. *Ib.* This provision to be construed liberally. *Ib.* Administrator cannot pay attorney's fees in prosecution of slayer of intestate. *Woodard v. Woodard*, 36 S. C. 118, 15 S. E. 355. State taking mortgage does not lose its priority. *Lenoir v. Winn*, 4 DeS. 65. Debt by secret on County Treasurer's bond is a debt due to the public. *Baxter v. Baxter*, 23 S. C. 118. Judgments mean final judgments. *Thomas v. McElwee*, 3 Strob. 131; *Ex parte Farrars*, 13 S. C. 259. Foreign judgment ranks only as simple contract. *Cameron v. Wortz*, 4 McC. 278. Mortgage of chattels is embraced in mortgages. *Edward v. Sanders*, 6 S. C. 316. Mortgage only ranks as such to extent of its specific lien. *Piester v. Piester*, 22 S. C. 146; *McLure v. Melton*, 24 S. C. 506. *Ex parte Hardin*, 34 S. C. 277, 13 S. E. 613. Where treasurers of County and town deposit municipal funds in unincorporated bank, debt created by deposit is due municipality, and upon death of banker and insolvency of his estate, these are debts due public. *Lockwood v. Lockwood*, 68 S. C. 328, 47 S. E. 441. Its *pro rata* beyond that is the unpaid balance of the debt. *Wheat v. Dingle*, 32 S. C. 473, 11 S. E. 394. Rent does not mean rent for any prescribed period, and immaterial whether by parol or specialty. *Chappell v. Brown*, 1 Bail. 528. Bonds and specialty debts prior to March 9, 1874, retain preference over bonds, specialty debts and simple contract debts since then. *Heath v. Belk*, 12 S. C. 582. Order not disturbed by prior judgments against executor or administrator. *Hutchinson v. Bates*, 1 Bail. 111; *Tucker v. Condy*, 7 Rich. Eq. 281. Executor or administrator paying debts out of legal order, liable to creditors. *Lenoir v. Winn*, 4 DeS. 65. Administrator or executor may retain funds to pay his debt, though not due, in preference to debts of lower rank. *Ralph v. Gist*, 4 McC. 267. But not so as to one barred at death. *Cooper v. Peyton*, Rich. Eq. Ca. 259. Yet may retain for his whole debt against creditor who has not rendered in his claim. *Sebring v. Keith*, 2 Hill 340. Act directory, intended for protection of administrator or executor. *Huger v. Dawson*, 3 Rich. 328. It directs the general assets according to the rank of the debt; it

does not deal with the lien. *Rutledge v. Rutledge*, 1 McC. Ch. 471; *Keckley v. Keckley*, 2 Hill Ch. 257; *Haynesworth v. Frierson*, 11 Rich. 476; *Edwards v. Sanders*, 6 S. C. 316; *Shell v. Young*, 32 S. C. 462, 11 S. E. 299. Funeral expenses and expenses of last illness to be paid before judgment recovered in lifetime of deceased. *DeLoach v. Sarratt*, 58 S. C. 117, 36 S. E. 533. Nothing in Constitution to prevent Legislative change in order of payment of debts. *McLure v. Melton*, 24 S. C. 568. Distribution of funds, right to follow. *Wulbern v. Timmons*, 55 S. C. 456, 33 S. E. 568. See *Hopkins v. McLure*, 133 U. S. 380, 33 L. Ed. 660.

(5410) § 4. Crops to Be Assets.—If any person shall die after the first day of March in any year, the crop on the lands which were in the occupation of the deceased shall be assets in the executor's or administrator's hands, subject to debts, legacies, and distribution, the taxes and expenses of cultivation of such crop being first paid.

Civ. '12, § 3633; Civ. '02, § 2539; G. S. 1927; R. S. 2049; 1789, V, 111.

Berry v. Berry, 55 S. C. 303, 33 S. E. 363; *State v. Hogan*, 2 Brev. 437; *Wharley v. Wharley*, Bail. Eq. 397; *Waring v. Purcell*, 1 Hill Ch. 193; *Freeman v. Tompkins*, 1 Strob. Eq. 53; *Gage v. Rogers*, 1 Strob. Eq. 370; *McLauren v. McCall*, 3 Strob. 21; *Huff v. Latimer*, 33 S. C. 255, 11 S. E. 758.

Judgment having lost active energy, but twenty years not elapsed, will operate as judgment against estate of debtor. *Ex parte Goldsmith*, 68 S. C. 528, 47 S. E. 984. One who provides the reasonable funeral expenses of deceased is entitled to recover them back from his estate as money justly due on a *quasi* contract, which the law implies and imputes to the personal representatives on the ground that the administrator or executor is bound under the law to provide a decent funeral from the assets of the estate. *Waters v. Register*, 76 S. C. 132, 56 S. E. 849. Judgment for bill for non-resident, unlicensed physician. *Parks v. McDaniel*, 75 S. C. 7, 54 S. E. 801, 117 Am. St. Rep. 373.

Where a life tenant dies after March first, rent contracts made before that date for the year go to the personal representative of life tenant, under Rev. Stats. 1893, § 2049. *Newton v. Odom*, 67 S. C. 1, 45 S. E. 105.

(5411) § 5. When Emblements Shall Be Assets, and When Pass With Lands.—The emblements of such lands which shall be severed before the last day of December following, shall, in like manner, be assets in the hands of the executors or administrators; but all such emblements growing on the lands on that day, or at the time of the testator's or intestate's death, if that happens after the said last day of December and before the first day of March, shall pass with the lands.

Civ. '12, § 3634; Civ. '02, § 2540; G. S. 1928; R. S. 2050; 1789, V, 111.

(5412) § 6. Effects of Deceased Nonresidents Liable for Debts to Citizens as Upon Specialty.—Where any person not a citizen of this State has died, or shall die, already indebted to a citizen of this State, the assets and effects within the same, of such deceased person, being sufficient for the payment of all his debts, shall be liable to discharge the debts due the citizens of the State, in the same manner as if the same had been liquidated by bond or other specialty; any law, usage, or custom to the contrary notwithstanding.

Civ. '12, § 3635; Civ. '02, § 2541; G. S. 1929; R. S. 2051; 1788, V, 86.

(5413) § 7. Administrators, Etc., May Compromise Demands.—All administrators and executors may, by and with the consent of the Probate Judge, compromise all demands coming into their hands as such, where the same are appraised doubtful or worthless; and where such compromises are made, the same shall be fully shown in their annual returns.

Civ. '12, § 3636; Civ. '02, § 2542; G. S. 1930; R. S. 2052; 1870, XIV, 313.

Does not apply to debts contracted with executor or administrator. *Geiger v. Kaigler*, 9 S. C. 401.

ARTICLE II.

Sale of Land in Aid of Deficient Personal Assets to Pay Debts.*

(5414) § 1. Sale of Real Estate on Insufficiency of Assets for Debts.—The Judges of Probate of the several counties in this State shall have

*The order for sale is binding on all parties to the proceedings and destroys their right to claim homestead in the land sold. *Culler v. Crim*, 52 S. C. 574, 30 S. E. 635.

power, if the personal estate of any intestate, testator, or testatrix, in the hands of the administrators or executors, or if the assets set apart by a last will and testament, be insufficient to pay the debts of the deceased, to pay over to the administrators or executors of such estate the whole or so much of the proceeds of the sale of the real estate of the deceased, sold by them, the said Judges, as will pay the outstanding debts of the deceased; and the administrators or executors receiving the same shall be chargeable therewith as with other assets which have come into their possession in the regular course of administration.†

Civ. '12, § 3637; Civ. '02, § 2543; G. S. 1931; R. S. 2053; 1842, XI, 232; 1875, XV, 868.

†McNamee v. Waterbury, 4 S. C. 156; Suber v. Allen, 13 S. C. 317; Scruggs v. Foote, 19 S. C. 274.

Dyson v. Jones, 65 S. C. 308, 43 S. E. 667.

(5415) § 2. Bond of Executor or Administrator on Sale of Real Estate.—

Before paying over to any executors or administrators any moneys arising from the sale of real estate, as provided and directed in the preceding Section, Judges of Probate shall require the said administrators or executors to enter into bond, with good and sufficient surety, payable to the Probate Judge, and in a penal sum equal to double the amount to be paid over, the condition of which bond shall be the just and faithful administration of the fund according to law.

Civ. '12, § 3638; Civ. '02, § 2544; G. S. 1932; R. S. 2054; 1842, XI, 233.

Suber v. Allen, 13 S. C. 317.

(5416) § 3. Moneys Arising from Sale to Be Paid Upon Petition of Creditors—Proviso.—On application by a creditor or creditors of the deceased, by petition in writing, stating the indebtedness of the deceased, the deficiency of assets, and praying that the proceeds of the sale of real estate of the deceased may be paid over to the executor or administrator (as the case may be), and applied to the satisfaction of the debts of the deceased, the Probate Judge shall pay over to the executor or administrator, taking bond and surety, as provided by this Chapter, such proceeds, or so much thereof as shall be necessary: *Provided*, The heirs at law, or devisees, shall have notice thereof and be required to show cause if any they can, to the contrary.

Civ. '12, § 3639; Civ. '02, § 2545; G. S. 1933; R. S. 2055; 1842, XI, 233.

But not *Ex parte* application of administrator. *Ex parte* Foster, Rice Eq. 19.

(5417) § 4. Upon Application, Executor or Administrator to Account for Assets.—The Probate Judge shall, on such application, forthwith cite the executor or administrator to appear and account for the assets of the deceased, if such accounting has not been previously had.

Civ. '12, § 3640; Civ. '02, § 2546; G. S. 1934; R. S. 2056; 1842, XI, 233.

(5418) § 5. Heirs or Devisees to Be Summoned—Form of Summons.—He shall also summon the heirs at law, or devisees, of the deceased, as the case may be. The form of the summons shall be as follows:

“To A B and C D, heirs at law of E F (or devisees) of E F:

“You are hereby required to appear at the Court of Probate, to be holden at Court House, for County, on the day of, Anno Domini, to show cause, if any you can,

why the proceeds of the sale of the real estate of E F, deceased, sold by me should not be paid over to G H, executor (or administrator) of the said E F, to be applied by him to the payment of the debts of the said E F.

“Given under my hand and seal, this . . . day of . . . , A. D. . . .

(Signed)

“I K, [L. s.]

“Probate Judge of . . . County.”

Civ. '12, § 3641; Civ. '02, § 2547; G. S. 1935; R. S. 2057; 1842, XI, 233.

Epperson v. Jackson, 83 S. C. 157, 65 S. E. 217.

(5419) § 6. Service of Copy of Summons—Proviso.—A copy of the said summons shall be served on the parties interested, in like manner as summonses are served in civil actions in the Circuit Courts; and if there be minors, the Probate Judge shall appoint guardians *ad litem*, who shall be served with a copy of such summons, and the appointment and acceptance of such guardianship shall be endorsed on the petition: *Provided*, That nothing herein contained shall preclude any of the parties from accepting the service of such summons, or from consenting to the application of the funds as prayed for in such petition.

Civ. '12, § 3642; Civ. '02, § 2548; G. S. 1936; R. S. 2058; Code of Proc., §§ 180, 186, 187.

Proceedings prior to adoption of Code of Civil Procedure. Rollins v. Brown, 37 S. C. 347, 16 S. E. 44.

(5420) § 7. Citation of Nonresidents by Publication—Application of Proceeds.—If any of the parties reside beyond the limits of this State, or whose residence is unknown, and do not consent, in writing, that the funds be so applied, the Probate Judge shall advertise for his, or her, or their appearance, by publication of the summons as provided by the Code of Civil Procedure; and if such party shall not appear and show sufficient cause, within the time named in the said summons, then the Judge of Probate shall enter of record his, her, or their consent as confessed, and shall take an account of the executor or administrator relative to the assets of the estate of the deceased; and if he shall be satisfied that they are sufficient to pay the debts thereof, of which he shall make an exhibit in the said account he shall pay over to the executor or administrator the whole or so much of the proceeds of the sale of the real estate in his hands as may be necessary to pay the debts of the said deceased.

Civ. '12, § 3643; Civ. '02, § 2549; G. S. 1937; R. S. 2059; 1842, XI, 233.

Sale without order for sale void. Hunter v. Hunter, 58 S. C. 382, 36 S. E. 734.

(5421) § 8. Full Records to Be Kept.—The Probate Judge shall file and keep in his office the petition and all the papers connected therewith, and shall enter in his cash book the amount abstracted from the sale of the real estate, and paid over to the executor or administrator, after deducting all costs; and the balance remaining in his hands, if any, shall be disposed of as provided by law.

Civ. '12, § 3644; Civ. '02, § 2550; G. S. 1938; R. S. 2060; 1842, XI, 233.

(5422) § 9. Fee of Probate Judge.—The Probate Judge shall receive for his services required by Sections 1 to 9 inclusive, of this Chapter, the sum of five dollars, and no more, out of the proceeds of the sale of the real estate of the deceased, unless the application be refused or rejected by the Probate Judge, in which case the same shall be paid by the petitioner or

petitioners, and the Probate Judge is empowered to enforce execution against him or them for the same.

Civ. '12, § 3645; Civ. '02, § 2551; G. S. 1939; R. S. 2061; 1842, XI, 233.

(5423) § 10. **Sheriff to Execute Process—Fees.**—The Sheriffs of the several counties in this State are required to serve all processes which may be issued by the Probate Judge under the provisions of Sections 4 to 7 inclusive, of this Chapter, for which they shall receive the same fees as are allowed them by law for similar services.

Civ. '12, § 3646; Civ. '02, § 2552; G. S. 1940; R. S. 2062; 1842, XI, 234.

(5424) § 11. **Sheriff's Costs—How Collected.**—The Sheriff's costs shall be paid out of the proceeds of the sale of the real estate of the deceased, or by the petitioner or petitioners, as provided for in Section 10 of this Chapter.

Civ. '12, § 3647; Civ. '02, § 2553; G. S. 1941; R. S. 2063; 1842, XI, 234.

CHAPTER LXXV.

Accounts and Commissions of Executors and Administrators.

(5425) § 1. **Executors and Administrators to Make Returns—When and to Whom.**—Executors or administrators shall annually, while any estate remains in their care or custody, at any time before the first day of July of each year, render to the Judge of Probate of the county from whom they obtained letters testamentary or letters of administration a just and true account, upon oath, of the receipts and expenditures of such estate the preceding calendar year, which, when examined and approved, shall be deposited with the inventory and appraisement, or other papers belonging to such estate, in the office of said Judge of Probate, there to be kept for the inspection of such persons as may be interested in the estate.

If any executor or administrator should neglect to render such annual accounts he shall not be entitled to any commissions for his trouble in the management of the said estate, and shall moreover be liable to be sued for damages by any person or persons interested in such estate.

Civ. '12, § 3648; Civ. '02, § 2555; G. S. 1942; R. S. 2064; 1880, XVII, 422; 1894, XXI, 802; 1897, XXII, 491.

Logan v. Logan, 1 McC. Ch. 1; *Wright v. Wright*, 2 McC. Ch. 196; *Lewis v. Price*, 3 Rich. Eq. 172; *Koon v. Munroe*, 11 S. C. 141; *Johnson v. Henegan*, 11 S. C. 93; *McGougan v. Hall*, 21 S. C. 601. Mode of stating account. *Cunningham v. Cauthen*, 37 S. C. 124, 15 S. E. 917.

Administrator who fails to make returns is not entitled to commissions except on balance decreed to be paid into Court. *Epperson v. Jackson*, 83 S. C. 157, 65 S. E. 217.

Sherwood et al v. McLaurin et al, 103 S. C. 370, 88 S. E. 363; *Blackmon et al v. Blackmon*, 113 S. C. 478, 101 S. E. 827.

(5426) § 2. **Duty of Probate Judge—Penalty for Default in Making Returns.**—When an administrator or executor, appointed by the Judge of Probate, shall neglect to make his annual return within the time prescribed in Section 1 of this Chapter, it shall be the duty of the Judge of Probate forthwith to cite him or her so to do; and upon his or her neglect or refusal to render such account within twenty days from the service of the said citation, such defaulter shall be adjudged in contempt, and the Judge of Probate is empowered and required to issue his attachment against such

defaulter, and he or she shall purge such contempt by rendering such account. Such defaulter shall be fined in a sum not exceeding twenty dollars (\$20) for each and every day during which such default may continue. And in case of such recusant administrator, he may further revoke the letters of administration: *Provided*, That upon good and sufficient cause shown before such Judge of Probate, he may excuse the omission on the part of such executor and administrator to make the return required in this Chapter within the time herein limited, and the said Judge of Probate may give to such executor or administrator so in default a reasonable time within which to file his return, not exceeding sixty days.

Civ. '12, § 3649; Civ. '02, § 2556; G. S. 1943; R. S. 2065.

(5427) § 3. Administrator Not Obligated to Account Beyond Inventories Except to Persons Interested.—No administrator shall be cited to render an account of the personal estate of his intestate (otherwise than by an inventory or inventories thereof) unless it be at the instance or prosecution of some person or persons in behalf of a minor, or having a demand out of such personal estate as a creditor or next of kin, nor be compellable to account otherwise than is herein provided.

Civ. '12, § 3650; Civ. '02, § 2557; G. S. 1944; R. S. 1066; 1 J. 2, c. 17; 1712, II, 530.

(5428) § 4. Judge of Probate May Cite Executors, Etc., Removing Beyond the State.—When any executor or administrator has, since the grant of letters testamentary or of administration, or any trustee, guardian of minors, committee of lunatics and persons *non compos mentis*, changed his domicile to a place beyond the limits of this State, or has been absent from the State for ten consecutive months then last past, and such change or absence is made to appear to the satisfaction of the Judge of Probate of the county wherein the letters were granted or appointment made, it shall be the duty of such Judge of Probate to cite such executor or administrator, trustee, guardian of minors, committee of lunatics and persons *non compos mentis*, to account in person before him on a day named in the citation, which shall not be less than sixty days from the date thereof; and such citation shall be served upon such absent executor or administrator, trustee, guardian of minors, committee of lunatics and persons *non compos mentis*, by publication forthwith, once a week for four weeks, in the newspaper in which the said Judge of Probate publishes his official advertisements, and a copy shall be mailed to such absent executor or administrator, trustee, guardian of minors, committee of lunatics and persons *non compos mentis*, at his or her or their place of residence, if it is known or can with reasonable diligence be ascertained.

Civ. '12, § 3651; Civ. '02, § 2558; G. S. 1891; R. S. 2067; 1878, XVI, 700.

A non-resident may be appointed administrator. *In re Neubert*, 58 S. C. 469, 36 S. E. 908; *Ex parte Peele*, 85 S. C. 140, 67 S. E. 135.

(5429) § 5. Authority, Office, Appointment, and Letters of Absent Executors, Etc., Revoked.—If, upon such citation, such absent executor or administrator, trustee, guardian of minors, committee of lunatics and persons *non compos mentis*, fail to appear in person upon the day named and render a return of his administration up to date, or, appearing by attorney, fail to disprove a change of domicile and continuous absence for ten months

next preceding the date of citation, in the case of an administrator, the letter of administration shall be revoked; and in the case of an executor, such failure shall be received as a formal renunciation of the office, notwithstanding his previous acceptance; and in case of any trustee, committee, or guardian, the appointment shall be revoked and annulled.

Civ. '12, § 3652; Civ. '02, § 2559; G. S. 1892; R. S. 2068; 1878, XVI, 701.

Ex parte Peele, 85 S. C. 140, 67 S. E. 135.

(5430) § 6. Commissions.—Every executor or administrator shall, for his, her, or their care, trouble, and attendance, in the execution of their several duties, take, receive, or retain in his, her, or their hands, a sum not exceeding the sum of two dollars and fifty cents for every hundred dollars which he, she, or they shall receive, and the sum of two dollars and fifty cents for every hundred dollars which he, she, or they shall pay away, in credits, debts, legacies, or otherwise, during the course and continuance of their or either of their managements or administrations, and so in proportion for any sum or sums less than one hundred dollars: *Provided*, That no executor or administrator shall, for his, her, or their trouble in letting out any moneys upon interest, and again receiving the same, be entitled to take or retain any sum exceeding ten dollars for every hundred dollars for all sums arising by moneys let out to interest, and in like proportion for a larger or lesser sum; nor shall any executors or administrators who may be creditors of any testator or intestate, or to whom any sum of money or other estate may be bequeathed, be entitled to any commissions for paying or retaining to themselves any such debts or legacies.

Civ. '12, § 3653; Civ. '02, § 2560; G. S. 1945; R. S. 2069; 1789, V, 112.

Jenkins v. Fickling, 4 DeS. 369; Benson v. Bruce, 4 DeS. 463; Jones v. Blakeley, 2 McC. Ch. 1; Wright v. Wright, 2 McC. Ch. 185; Deas v. Spann, Harp. Eq. 176; Kiddle v. Hammond, Harp. Eq. 223; Edmunds v. Crenshaw, Harp. Eq. 224; Burns v. Ford, 1 Bail. 507; Ball v. Brown, Bail. Eq. 374; Corbin v. Jones, Rich. Eq. Ca. 52; Howard v. Schmidt, Rich. Eq. Ca. 452; Frazier v. Vaux, 1 Hill Ch. 203; Brown v. McCall, 3 Hill 385; Massey v. Massey, 2 Hill Ch. 492; Vance v. Gary, Rice Eq. 2; Ex parte Commissioner, 3 Rich. Eq. 13; Griffin v. Bonham, 9 Rich. Eq. 71; Bobo v. Peele, 12 Rich. Eq. 224; Koon v. Munroe, 11 S. C. 139; Brooks v. Brooks, 12 S. C. 442; Davidson v. Moore, 14 S. C. 251; Tompkins v. Tompkins, 18 S. E. 29; McGowan v. Hall, 21 S. C. 601; Roberts v. Johns, 24 S. C. 589; Woodward v. Woodard, 36 S. C. 118, 15 S. E. 355; Cobb v. Fant, 36 S. C. 1, 14 S. E. 959; Turnipseed v. Sirrine, 60 S. C. 272, 38 S. E. 423; Tucker v. Richards, 58 S. C. 22, 36 S. E. 3; DeLoach v. Sarratt, 58 S. C. 117, 36 S. E. 532; Cunningham v. Cauthen, 44 S. C. 95, 21 S. E. 800; Jones v. Jones, 39 S. E. 247, 17 S. E. 587.

Administrator not entitled to commissions on estate bequeathed to him. Ex parte Hilton, 64 S. C. 201, 41 S. E. 978, 92 Am. St. Rep. 800. Amount of commissions. Cunningham v. Cunningham, 81 S. C. 506, 62 S. E. 845. Extra compensation. Anderson v. Silcox, 82 S. C. 109, 63 S. E. 128. Herndon v. Caine et al, 106 S. C. 230, 91 S. E. 1; Smith, Probate Judge, v. Moore et al, 109 S. C. 196, 95 S. E. 351.

(5431) § 7. Executors Not Satisfied May Bring Action for Additional Compensation.—Any executors or administrators, who shall have had extraordinary trouble in the management of the estates under their care, and shall not be satisfied with the sums hereinbefore mentioned, may be at liberty to bring an action in the Court of Common Pleas for their services; and the verdict of the jury and judgment of the Court thereupon shall be final and conclusive in such cases: *Provided, always*, That no verdict shall be given for more than five per centum over and above the sums allowed by this Chapter.

Civ. '12, § 3654; Civ. '02, § 2561; G. S. 1946; R. S. 2070; 1745, III, 668.

Ruff v. Summers, 4 DeS. 529; Logan v. Logan, 1 McC. Ch. 1; Wallace v. Ellerbe, Rich. Eq. Ca. 49; Frazier v. Vaux, 1 Hill Ch. 203; Cunningham v. Cunningham, 81 S. C. 506, 62 S. E. 845. Where, under agreement and waiver of jury, trial Court passes on question, its findings are final when supported by any evidence. Anderson v. Silcox, 82 S. C. 109, 63 S. E. 128. Sartor v. Newberry Land & Security Co. et al, 104 S. C. 184, 88 S. E. 467.

(5432) § 8. **Commissions to Be Divided According to Service.**—The commissions given by this Chapter shall be divided amongst executors and administrators in proportion to the services by them respectively performed, to be rated and settled by the Judge of Probate who granted probate of the will or letters of administration, if the executors or administrators cannot agree amongst themselves concerning the same.

Civ. '12, § 3655; Civ. '02, § 2562; G. S. 1947; R. S. 2071; 1789, V, 112.

Where one of two executors performs all the services, he is entitled to all the commissions. *Ex parte Hilton*, 64 S. C. 201, 41 S. E. 978, 92 Am. St. Rep. 800.

(5433) § 9. **Executor, Etc., Dying, His Estate Allowed Commissions.**—When any executor or administrator dies, after having settled the estate of the testator or intestate, except allowed commissions for paying over such legacies or distributees, the estate of such executor or administrator shall be allowed commissions for paying over such legacies or distributive shares, as well as for receiving them.

Civ. '12, § 3656; Civ. '02, § 2563; G. S. 1948; R. S. 2072; 1859, XII, 815.

CHAPTER LXXVI.

Settlement and Distribution of Intestate Estates.

(5434) § 1. **No Distribution Till After One Year.**—No distribution of goods of any person dying intestate shall be made till after one year be fully expired after the intestate's death.

Civ. '12, § 3657; Civ. '02, § 2564; G. S. 1912; R. S. 2073; 1878, XVI, 402; 1879, XVII, 25.

Pearson v. Charlton, 18 S. C. 55.

(5435) § 2. **Distribution of Estates, Where Parties Are Absent, Etc.**—If, after the expiration of twelve months from the grant of letters of administration on the estate of any person dying intestate, it shall be made to appear to the satisfaction of the Judge of the Court of Probate by which said letters of administration were granted, that the administrator or administrators of such estate are unable to ascertain the whereabouts of any person supposed to be entitled as distributee of such estate, or whether any person who, if living, would be entitled as distributee of said estate, be dead or not, and that such person has never been domiciled in this State, it shall be lawful for the said Judge of Probate to issue a citation addressed to all persons interested in the said estate as distributees, calling on such person whose whereabouts or the fact of whose death is unknown, his personal representatives or distributees, to be and appear before the said Probate Court on a day and at a certain hour to be specified in said citation, and to show cause why the said administrator or administrators should not be decreed to distribute said estate as if the said person whose whereabouts or the fact of whose death is unknown had died before the said intestate, and notifying all persons entitled to the said estate as distributee or otherwise, to appear on the day and at the time so to be appointed, before the said Court to intervene for their interest in said estate. The day fixed in said citation, on which cause shall be shown as aforesaid, shall be the first Monday in the month, and shall not be less than three months after the date of said citation. The said citation shall be published once a week

for six successive weeks in one newspaper published in the county in which said Probate Court is held; the first publication of the said citation to be made within ten days after the date thereof; said newspaper to be designated by the said Judge of Probate: *Provided*, The said Judge of Probate shall have right, in his discretion, to order such citation to be published once a week for three successive weeks in one other newspaper published in such other place as he shall think most likely to give notice to the parties interested in said estate.

Civ. '12, § 3658; Civ. '02, § 2565; G. S. 1913; R. S. 2074; 1882, XVII, 1088.

Distributee absent from State for more than seven years before death of intestate presumed to be dead then, and administrator must distribute accordingly. *Burns v. Ford*, 1 Bail. 507.

(5436) § 3. Proof of Advertisement to Be Filed.—The publication of said citation as hereinbefore prescribed shall be proved by filing with the said Judge of Probate copies of the newspapers containing the publication of said citation, and the affidavit of the publisher or printer of the said respective newspapers.

Civ. '12, § 3659; Civ. '02, § 2566; G. S. 1914; R. S. 2075; 1882, XVII, 1089.

(5437) § 4. Decree of Distribution Made, When Parties Do Not Appear.—At the time fixed in said citation for cause to be shown as aforesaid, due proof of publication having been made and filed as hereinbefore required, if no person appear as therein required, the said Probate Court shall decree distribution of said estate to be made as if the person whose whereabouts or the fact of whose death is unknown had died before the intestate, and distribution so made by the administrator or administrators shall be a full and complete discharge to the administrator or administrators.

Civ. '12, § 3660; Civ. '02, § 2567; G. S. 1915; R. S. 2076.

(5438) § 5. Proceedings Discharged if Parties Appear.—At the time fixed in the said citation for cause to be shown as aforesaid, due proof of publication having been made and filed as hereinbefore required, if the person whose whereabouts or the fact of whose death was unknown shall appear, all further proceedings shall be discharged: *Provided, however*, If the identity of such person so appearing shall be disputed by the administrator or administrators or any distributee of such intestate or the legal representatives of any such distributee, the said Probate Court shall proceed to hear and determine the said controversy, and if the same be determined against the said person so appearing, distribution of the said estate shall be made as prescribed in Section 4 of this Chapter; but if the same be determined in favor of said party so appearing, he shall be held and deemed to be the person whose whereabouts or the fact of whose death was unknown, such determination in either case, however, to be subject to appeal as provided by law in other cases of appeal from the Probate Court.

Civ. '12, § 3661; Civ. '02, § 2568; G. S. 1916; R. S. 2077; 1882, XVII, 1090.

(5439) § 6. When Parties Appear After Expiration of Time.—At the expiration of the time fixed in the said citation for cause to be shown as aforesaid, due proof of publication having been made and filed as hereinbefore required, if any person or persons shall appear claiming to be heir, or distributee, or personal representative of the person whose whereabouts

or the fact of whose death is unknown, or otherwise entitled to his estate, and claiming a distributive share in the intestate's estate, the said Probate Court shall proceed to hear and determine whether the said person, whose whereabouts or the fact of whose death is unknown, died before or after the intestate, and if the determination be that such person whose whereabouts or the fact of whose death is unknown died before the intestate, distribution of such intestate's estate shall be made accordingly; but if the determination be that the said person whose whereabouts or the fact of whose death is unknown died after the death of the intestate, the said distributive share of such person shall be paid and delivered by the said administrator or administrators to the person or persons legally entitled to receive the same, such determination in either case, however, to be subject to appeal as provided by law in other cases of appeal from the Probate Court.

Civ. '12, § 3662; Civ. '02, § 2569; G. S. 1917; R. S. 2078; 1882, XVII, 1090.

(5440) § 7. Right to Distribution Not Barred Within Three Years.— Nothing herein contained shall debar or prevent any such person whose whereabouts was unknown at the time of the distribution of the said estate as aforesaid, and who shall, within three years after the distribution of the estate as aforesaid, appear and claim his or her said distributive share as heir at law or distributee, from recovering from the other distributees between whom the said estate has been divided as aforesaid, or any of them, his or her said share, or such portion thereof as any such distributee may have received from the said estate, over and above his or her individual share, by reason of the absence of such person whose whereabouts was not known at the time of the said distribution.

Civ. '12, § 3663; Civ. '02, § 2570; G. S. 1918; R. S. 2079; 1882, XVII, 1090.

Acceptance of dower by widow bars her right to distributive share of estate. *Glover v. Glover*, 45 S. C. 51, 22 S. E. 739; *Buist v. Dawes*, 3 Rich. Eq. 281; *Evans v. Pierson*, 9 Rich. L. 12.

CHAPTER LXXVII.

Liability of Heirs and Devisees.

(5441) § 1. Debt Upon Specialty Suable Against the Heirs and Devisees Jointly.— Where several persons have, by bonds or other specialties, bound themselves and their heirs, and have afterwards died seized in fee simple of and in lands, tenements, and hereditaments, or having power or authority to dispose of or charge the same by their wills or testaments, have, to the defrauding of their creditors, by their last wills or testaments devised the same, or disposed thereof in such manner that such creditors have lost their said debts, every such creditor shall and may have and maintain his, her, or their action upon his, her, and their said bonds and specialties, against the heir and heirs at law of such obligor and obligors, and such devisee and devisees jointly.

Civ. '12, § 3664; Civ. '02, § 2571; G. S. 1949; R. S. 2080; 3 and 4 W. & M., c. 14; 1712, II, 533.

Lands devised subject to lien of judgment against executor of devisor. *Brock v. Kirkpatrick*, 60 S. C. 322, 38 S. E. 779. Cases on liability of heirs and devisees reviewed. *Ib.* *Wheeler v. Floyd*, 24 S. C. 413; *Hendrix v. Holden*, 58 S. C. 495, 36 S. E. 1020; *Ariail v. Ariail*, 29 S. C. 84, 7 S. E. 35; *Causey v. Varn*, 28 S. C. 608, 6 S. E. 152. Necessity of exhausting personal property. *Mobley v. Cureton*, 6 S. C. 49. Priority of creditors claim over mortgage by heir. *Adger v. Pringle*, 11 S. C. 527.

In such action at law the executor cannot be joined. *Vernon v. Valk*, 2 Hill Ch. 257. But when creditor sues in equity the executor should be made a party. *Vernon v. Valk*, 2 Hill Ch. 257; *Goodhue v. Barnwell*, Rice Eq. 198. Time of bringing action. *Cleveland v. Mills*, 9 S. C. 430.

(5442) § 2. **Devisee Chargeable for False Answer.**—Such devisee or devisees shall be liable and chargeable for a false answer by him or them made, in the same manner as any heir should have been for any false answer by him made, or for not confessing the lands and tenements to him descended.

Civ. '12, § 3665; Civ. '02, § 2572; G. S. 1950; R. S. 2081; 1712, II, 533.

(5443) § 3. **Devise for Raising Portions Pursuant to a Marriage Contract Good.**—Where there has been, or shall be, any limitation or appointment, devise or disposition of or concerning any lands, tenements, or hereditaments, for the raising or payment of any real and just debt or debts, or any portion or portions, sum or sums of money, for any child or children of any person, other than the heir at law, according to or in pursuance of any marriage contract or agreement in writing, *bona fide* made before such marriage, the same and every of them shall be in full force; and the said lands, tenements, and hereditaments shall and may be holden and enjoyed by every such person or persons, his, her, or their heirs, executors, administrators, and assigns, for whom the said limitation, appointment, devise, or disposition was made, and by his, her, and their trustee or trustees, his, her, and their heirs, executors, administrators, and assigns, for such estate or interest as shall be so limited or appointed, devised, or disposed, until such debt or debts, portion or portions, shall be raised, paid, and satisfied.

Civ. '12, § 3666; Civ. '02, § 2573; G. S. 1951; R. S. 2082; 1712, II, 533.

(5444) § 4. **Heirs Selling Before Action Liable for Debt of Ancestor.**—In all cases where any heir at law shall be liable to pay the debt of his ancestor in regard of any lands, tenements, or hereditaments, descending to him, and shall sell, alien, or make over the same before any action brought against him, such heir at law shall be answerable for such debt or debts to the value of the said land so by him sold, aliened, or made over.

Civ. '12, § 3667; Civ. '02, § 2574; G. S. 1952; R. S. 2083; 3 and 4 W. & M., c. 14; 1712, II, 534.

Martin v. Jennings, 52 S. C. 371, 29 S. E. 807; *Lowry v. Jackson*, 27 S. C. 318, 3 S. E. 473; *Hendrix v. Seabrook*, 25 S. C. 481.

Exempts lands *bona fide* alienated before action brought. *Galloway v. Galloway*, 76 S. C. 524, 57 S. E. 528.

(5445) § 5. **Creditors Preferred.**—In any of the cases referred to in the last Section, creditors shall be preferred as in actions against executors and administrators, and execution shall be taken out upon any judgment or judgments so obtained against such heir, to the value of the said land, as if the same were his own proper debt or debts, saving that the lands, tenements, and hereditaments, *bona fide* aliened before the action brought, shall not be liable to such execution.

Civ. '12, § 3668; Civ. '02, § 2575; G. S. 1953; R. S. 2084; 1712, II, 534.

Jones v. Wightman, 2 Hill 579; *Richardson v. Chappell*, 6 S. C. 146; *Lanier v. Griffin*, 11 S. C. 583; *Adger v. Pringle*, 11 S. C. 548; *Warren v. Raymond*, 12 S. C. 22; *Smith v. Grant*, 15 S. C. 147; *Warren v. Raymond*, 17 S. C. 196; *Galloway v. Galloway*, 76 S. C. 524, 527, 57 S. E. 528.

(5446) § 6. **Heir May Plead Nothing by Descent.**—Where any action upon any specialty is brought against any heir, he may answer that he has nothing by descent at the time of the commencement of action. If

upon issue joined thereupon a verdict be found for the plaintiff, the jury shall inquire of the value of the lands, tenements, or hereditaments, so descended, and thereupon judgment shall be given, and execution may be issued accordingly.

Civ. '12, § 3669; Civ. '02, § 2576; G. S. 1954; R. S. 2085; 1712, II, 534.

(5447) § 7. Judgment Against Heir by Confession, Etc.—If judgment be given against such heir by confession of the action, without confessing the assets descended, or upon demurrer or default, it shall be for the debt and damages, without any order to inquire of the lands, tenements, or hereditaments so descended.

Civ. '12, § 3670; Civ. '02, § 2577; G. S. 1955; R. S. 2086; 1712, II, 534.

(5448) § 8. Devisee by This Chapter Made Liable to Be Chargeable as Heir.—All and every devisee or devisees made liable by this Chapter shall be liable and chargeable in the same manner as the heir at law, notwithstanding the lands, tenements, and hereditaments, to him or them devised, shall be aliened before the action brought.

Civ. '12, § 3671; Civ. '02, § 2578; G. S. 1956; R. S. 2087; 1712, II, 535.

Trust executed. *Uzzell v. Horn*, 71 S. C. 426, 51 S. E. 253.

CHAPTER LXXVIII.

Trusts and Special Provisions Relating to Trusts.

(5449) § 1. Trust Deed of Chattels to Use of Grantor Void.—All deeds of gift of goods and chattels in trust, to the use of the person or persons that made the same deed of gift, shall be void and of none effect.

Civ. '12, § 3672; Civ. '02, § 2579; G. S. 1957; R. S. 2088; 3 H. 7, c. 4; 1712, II, 453.

Uzzell v. Horn, 71 S. C. 426, 51 S. E. 253.

(5450) § 2. Estate and Possession of Trust Estates to Be in Beneficiaries Thereof.—Where any person or persons shall be seized of and in any lands, tenements, rents, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, covenant, contract, agreement, will or otherwise, the person, persons, or bodies politic, that have or shall have any such use, confidence, or trust, in fee simple, fee tail, for term of life or for years, or otherwise, or any use, confidence, or trust, in remainder of reversion, shall be deemed and adjudged in lawful seizin, estate, and possession of and in the same lands, tenements, rents, reversions, remainders, and hereditaments, with their appurtenances, to all intents, constructions, and purposes in law, of and in such like estates as they had or shall have in use, trust, or confidence of or in the same.

Civ. '12, § 3673; Civ. '02, § 2580; G. S. 1958; R. S. 2089; 27 H. 8, c. 10; 1712, II, 467.

Trusts of personality not embraced herein. *Rice v. Burnett*, Speer Eq. 583; *Harley v. Platt*, 6 Rich. 315; *Creighton v. Pringle*, 3 S. C. 78; *Lanier v. Brunson*, 21 S. C. 41; *Blount v. Walker*, 31 S. C. 13, 9 S. E. 804. Applied. *Pledger v. Easterling*, 4 Rich. 101; *Pearce v. McClenaghan*, 5 Rich. 178; *Lamar v. Simpson*, 1 Rich. Eq. 71; *McNish v. Guerard*, 4 Strob. Eq. 66; *Faber v. Police*, 10 S. C. 376; *Boutknight v. Epting*, 11 S. C. 71; *Farrow v. Farrow*, 12 S. C. 168; *Howard v. Henderson*, 18 S. C. 184; *Covar v. Cantelou*, 25 S. C. 35; *Weiters v. Timmons*, 25 S. C. 488; *McNair v. Craig*, 36 S. C. 100, 15 S. E. 185; *Reeves v. Brayton*, 36 S. C. 384, 15 S. E. 658. Where the intention is that the State shall not be executed in the *cestui que use*, and any object is to be effected by its remaining in the trustee, then it shall be executed. *Wilson v. Cheshire*, 1 McC. Ch. 283; *Ramsey v. Marsh*, 2 McC. 252; *Posey v. Cook*, 1 Hill 413; *Laurens v. Jenney*, 1 Speer 356; *Porter v. Doby*,

3 Rich. Eq. 53; *Williman v. Holmes*, 4 Rich. Eq. 475; *McCaw v. Galbraith*, 7 Rich. 80; *Creighton v. Pringle*, 3 S. C. 77; *Smith v. Smith*, 24 S. E. 313; *Bowen v. Humphreys*, 24 S. C. 455; *Bristow v. McCall*, 16 S. C. 548; *Farr v. Gilreath*, 23 S. C. 511; *Huckaby v. Newton*, 23 S. C. 291; *Ayer v. Ritler*, 29 S. C. 135, 7 S. E. 53; *Blount v. Walker*, 31 S. C. 13, 9 S. E. 804; *Snelling v. Lamar*, 32 S. C. 72, 10 S. E. 825; *State v. Evans*, 33 S. C. 184, 11 S. E. 697; *Carrigan v. Drake*, 36 S. C. 354, 15 S. E. 339; *Mims v. Macklin*, 53 S. C. 6, 30 S. E. 585; *Foster v. Glover*, 46 S. C. 522, 24 S. E. 370; *Robinson v. Ostendorff*, 38 S. C. 66, 16 S. E. 371. Nor where a use is limited upon a use. *Wilson v. Cheshire*, 1 McC. Ch. 233; *Blount v. Walker*, 31 S. C. 13, 9 S. E. 804. Conveyance in fee reserving usufruct for life to the grantor. *Cook v. Cooper*, 59 S. C. 560, 38 S. E. 218; *Cribb v. Rodgers*, 12 S. C. 564.

Equitable interest cannot prevail over legal title on motion for non-suit. *Mitchell v. Cleveland*, 76 S. C. 432, 57 S. E. 33. Assignee holding title in trust to pay debts—after payments of debts, title vests in assignor. *Early v. Early*, 75 S. C. 15, 54 S. E. 827. Trust to preserve contingent remainders not executed. *Young v. McNeill*, 78 S. C. 143, 59 S. E. 986; *Pope v. Patterson*, 78 S. C. 334, 58 S. E. 945.

(451) § 3. Several Seized Jointly to Use of One of Them.—Where divers and many persons shall happen to be jointly seized of and in any lands, tenements, rents, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any of them that be so jointly seized, such person or persons which have or shall have any such use, confidence, or trust in any such lands, tenements, rents, reversions, remainders, or hereditaments, shall have, and be deemed and adjudged to have, such estate, possession, and seizin, of and in the same lands, tenements, rents, reversions, remainders and other hereditaments only to him or them that have, or shall have, any such use, confidence, or trust, in like nature, manner, form, condition, and course, as he or they had before in the use, confidence, or trust of the same lands, tenements, or hereditaments, saving and reserving to all and singular persons and bodies politic, their heirs and successors, other than such person or persons which are, or shall be, seized of any lands, tenements, or hereditaments, to any use, confidence, or trust, all such right, title, entry, interest, possession, rents, and action, as they or any of them had, or might have had, without this Section; and, also saving to all and singular those persons, and to their heirs, which are, or shall be, seized to any use, all such former right, title, entry, interest, possession, rents, customs, services, and action, as they or any of them might have had to his or their own proper use, in or to any lands, tenements, rents, or hereditaments, whereof they are, or shall be, seized to any other use, anything contained in this Chapter to the contrary notwithstanding.

Civ. '12, § 3674; Civ. '02, § 2581; G. S. 1959; R. S. 2090; 1712, II, 453.

(452) § 4. Beneficiaries' Title to Rent Out of Trust Same as Conveyed by Grant, Etc.—In every case where divers persons are seized of and in any lands, tenements, or hereditaments, in fee simple or otherwise, to the use and intent that some other person or persons shall have and receive yearly to them, and to his or their heirs, one annual rent out of such lands and tenements, and some other person one other annual rent, to him and his assigns for term of life or years, or for some other special time, according to such intent and use as has been before declared, limited, and made thereof, the persons, their heirs and assigns, that have such use and interest, to have and receive any such annual rents out of any lands, tenements, or hereditaments, and every of them, their heirs and assigns, shall be adjudged and deemed to be in the possession and seizin of the same rent, of and in such like estate as they had in the title, interest or use of the said rent or profit, and as if a sufficient grant, or other lawful conveyance, had been

made and executed to them, by such as were or shall be seized to the use or intent of any such rent to be had, made or paid, according to the trust and intent thereof; and all and every such person and persons as have or shall have any title, use, and interest in or to any such rent or profit, shall have all suits, entries, and remedies for such rents, according to such conditions, pains, or other things, limited and appointed, upon the trust and intent for payment or surety of such rent.

Civ. '12, § 3675; Civ. '02, § 2582; G. S. 1960; R. S. 2091; 27 H. 8, c. 10; 1712, II, 467.

(5453) § 5. All Creations of Trust Shall Be in Writing.—All declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such uses or trust, or by his last will in writing, or else they shall be utterly void and of none effect.

Civ. '12, § 3676; Civ. '02, § 2583; G. S. 1961; R. S. 2092; 29 C. 2, c. 3; 1712, II, 526; 4 Ann., c. 16; 1712, II, 435.

Referred to. Elliott v. Mackerrell, 19 S. C. 238. Trust need not be created by writing. Rutledge v. Smith, 1 McC. Ch. 119; Brown v. Brown, 1 Strob. Eq. 363. Any writing showing it made after creation of the trust is sufficient proof. Massey v. McIlwaine, 2 Hill Ch. 428; Brown v. Brown, 1 Strob. Eq. 363; Reid v. Reid, 12 Rich. Eq. 213; Price v. Brown, 4 S. C. 144. But the writing must manifest a previous trust. Barrett v. Cochran, 11 S. C. 29; Kennedy v. Gramling, 33 S. C. 367, 11 S. E. 1081. Yet if trustee execute a trust, proved only by parol, he is bound by it. Elliott v. Morris, Harp. Eq. 281. Voluntary acknowledgment will dispense with written proof. Rutledge v. Smith, 1 McC. Ch. 119.

(5454) § 6. Trusts Arising Transferred or Extinguished by Implication of Law Excepted.—Where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by act or operation of law, then and in every such case, such trust or confidence shall be of the like force and effect as the same would have been without this Chapter.

Civ. '12, § 3677; Civ. '02, § 2584; G. S. 1962; R. S. 2093; 29 C. 2, c. 3; 1712, II, 526.

Rutledge v. Smith, 1 McC. Ch. 119.

(5455) § 7. Assignment of Trusts to Be in Writing.—All grants and assignments of any trust or confidence shall be in writing, signed by the party granting or assigning the same, or by such last will or devise, or else shall be utterly void and of none effect.

Civ. '12, § 3678; Civ. '02, § 2585; G. S. 1963; R. S. 2094; 1712, II, 526.

(5456) § 8. Trusts Shall Be Assets in the Hands of Heirs.—If any *cestui que trust* shall die, leaving a trust in fee simple to descend to his heir, such trust shall be deemed and taken, and is hereby declared to be, assets by descent, and the heir shall be liable to and chargeable with the obligation of his ancestors for and by reason of such assets, as fully and amply as he might or ought to have been if the estate in law had descended to him in possession in like manner as the trust descended; any law, custom, or usage to the contrary in any wise notwithstanding.

Civ. '12, § 3679; Civ. '02, § 2586; G. S. 1964; R. S. 2095; 1712, II, 526.

(5457) § 9. Heir Not Chargeable of His Own Estate for Debts of His Ancestor.—No heir that shall become chargeable by reason of any estate or trust made assets in his hands by this Chapter, shall, by reason of any kind of plea or confession of the action, or suffering judgment by default,

or any other matter, be chargeable to pay the condemnation out of his own estate; but execution shall be sued of the whole estate so made assets in his hands by descent, in whosoever hands it shall come after the commencement of the action.

Civ. '12, § 3680; Civ. '02, § 2587.

(5458) § 10. Substitution of Trustees—Proviso.—In every case of trust estate where the person or persons entitled to the use of any property or estate vested in trustees, being of age, or his, her, or their guardian, if under age, may be willing to have other trustees substituted in the room of those in whom the legal estate is vested, or to have any one or more trustees substituted in the room of any one or more of the first or former trustees, the Court of Common Pleas is authorized to permit such one or more of the first or former trustees to surrender his, her, or their trust, and to appoint such one or more trustees in his, her, or their room, as to the said Court may appear fit, proper, and advisable; and the trustee or trustees so appointed and substituted shall then be considered, to all intents and purposes, as vested completely and absolutely with all the estate, right, title, interest, powers, privileges, and authority, and as liable to all the conditions, terms, and restrictions as that trustee or those trustees were vested with or liable to, in whose stead, room, or place, he, she, or they may be so appointed or substituted; and the first or former trustee or trustees shall be therefrom completely exonerated and discharged: *Provided, always*, That a certificate of such appointment and substitution shall be endorsed by the Clerk of the Court of Common Pleas upon the original trust deed, if the trust be created by deed, and the deed can be found, and that such a certificate shall be annexed to the original will, if the trust be created by will, and be lodged therewith in the office where the will may be lodged; and that such a certificate shall also be recorded in the office where the deed or will may be recorded or lodged, or ought to be recorded or lodged.

Civ. '12, § 3681; Civ. '02, § 2588; G. S. 1966; R. S. 2097; 1796, V, 277.

Ex parte Turner, Bail. Eq. 395; Ex parte Kunst, Bail. Eq. 489; Ex parte Robert, 2 Strob. Eq. 86; Ex parte Mayrant, Rich. Eq. Ca. 1; Davant v. Guerard, 1 Speer 242; McNish v. Guerard, 4 Strob. Eq. 66; Ex parte Trustees, 7 Rich. Eq. 471; Morrow v. Odom, 14 S. C. 623.

(5459) § 11. Trustees to Make Annual Returns.—It shall be the duty of every trustee appointed by the Court to make an annual return of the estate in his possession, setting out all the items of money received and paid out, with the proper vouchers. The Judge of Probate shall set apart certain days for the examination of such accounts, and give notice thereof to all trustees whose duty it shall be to account before him.

Civ. '12, § 3682; Civ. '02, § 2589; G. S. 1967; R. S. 2098; 1824, VII, 327.

Myers v. Myers, 2 McC. Ch. 214; James v. Wallace, 4 McC. 121; Lyles v. Lyles, 1 Hill Ch. 76; Rainsford v. Rainsford, McM. Eq. 16; Nobles v. Hogg, 36 S. C. 322, 15 S. E. 359.

(5460) § 12. Commissions of Trustees.—Trustees shall be allowed the same commissions for the execution of their trusts as are allowed by law to executors and administrators.

Civ. '12, § 3683; Civ. '02, § 2590; G. S. 1970; R. S. 2099; 1745, III, 666.

See ante, § (5430), et seq.

Muckenfuss v. Heath, 1 Hill Ch. 182; Singleton v. Lowndes, 9 S. C. 465; Lanier v. Brunson, 21 S. C. 41; Cobb v. Fant, 36 S. C. 1, 14 S. E. 959; Cunningham v. Cunningham, 81 S. C. 506, 62 S. E. 845; Anderson v. Silcox, 82 S. C. 109, 112, 63 S. E. 128.

(5461) § 13. **Savings Banks, Banks, Trust and Insurance Companies, Judges of Probate, Executors, Administrators, Guardians and Trustees May Invest in Farm Loan Bonds**—Proviso as to Accountability for Interest.—That any savings bank, banking institution, trust company or insurance company, organized under the laws of this State, and any Judge of Probate or person acting as executor, administrator, guardian or trustee, unless it is otherwise provided in the instrument creating the trust, may invest in, or lend money on, the security of Federal Farm Loan Bonds issued by any Federal Land Bank or Joint Land Bank organized pursuant to an Act of Congress entitled “An Act to provide capital for agricultural development, create standard forms of investment, based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositories and financial agents for the United States, and for other purposes,” approved July seventeenth, one thousand nine hundred and sixteen: *Provided*, That any savings bank, banking institution, trust company or insurance company, organized under the laws of this State, or any Judge of Probate or person acting as executor, administrator, guardian or trustee, shall not account for a greater rate of interest than the amount actually received on said investment.

1918, XXX, 763; 1919, XXXI, 133.

(5462) § 14. **Investment of Funds by Guardians, Executors, Administrators and Other Trustees—Interest**.—That any guardian, committee, trustee, executor, administrator or other person or corporation chargeable with interest on funds in hand belonging to either ward or other person or corporation be, and he or it or they are hereby, authorized and empowered to invest same in bonds of the State of South Carolina, or some political division thereof, or in bonds of the United States, or to deposit same in some savings bank, such investment or deposit, however, to be first approved by the Court having jurisdiction of such fund, and in his account he shall not be chargeable at a greater rate of interest than such fund so earns.

1920, XXXI, 899.

TITLE VII.

Of Title to Property by Special Provisions of Law.

CHAPTER LXXIX. Of Sales by Executors, Administrators and Fiduciaries, 1658.

CHAPTER LXXX. Sales under Execution and by Judgment Debtors, 1661.

CHAPTER LXXXI. Of Homesteads, 1666.

CHAPTER LXXXII. Assignments for Benefit of Creditors, 1673.

CHAPTER LXXIX.

Of Sales by Executors, Administrators, and Fiduciaries.

(5463) § 1. **Lawful for Qualified Executors to Sell Land, Etc**—When ever any person has directed or shall direct by his or her last will and

testament, duly executed in the presence of three or more credible witnesses, that his or her land shall be sold for the payment of his or her debts, or for the purpose of distributing the money which may arise from the sale thereof among his or her legatees, or for any other purpose whatsoever, if either such power of sale be expressly given to the executor or executors of said will, or if no person is named in said will to execute the said power, it may and shall be lawful to and for the executors, or a majority of such executors, who shall qualify on the said will, or the survivor or survivors, to sell and convey the said lands agreeably to the intention of the testator.

Civ. '12, § 3684; Civ. '02, § 2600; G. S. 1971; R. S. 2100; 1876, XVI, 61.

Applied. *Herbemont v. Bostick*, 2 Brev. 435; *Drayton v. Grimke*, Bail. Eq. 385 *Chanet v. Villeponteaux*, 3 McC. 29; *Ferguson v. King*, 2 N. & McC. 588; *Ware v. Murph. Rice* 55; *Thompson v. Gaillard*, 3 Rich. 418; *Douglass v. Dickson*, 11 Rich. 417; *Britton v. Lewis*, 8 Rich. Eq. 271; *American Bible Society v. Noble*, 11 Rich. Eq. 156; *Baldwin v. Cooley*, 1 S. C. 256; *DeSaussure v. Lyons*, 9 S. C. 492; *Jennings v. Tague*, 14 S. C. 229; *Smith v. Winn*, 27 S. C. 591, 4 S. E. 240; *Bredenburg v. Bardin*, 36 S. C. 197, 15 S. E. 372. But irrespective of this Act the power survives to one of several executors where it is coupled with a trust. *Bredenburg v. Bardin*, 36 S. C. 197, 15 S. E. 372. But it does not apply if the power be given to the executors jointly as several persons or in personal confidence; then all must act and it will not survive. *Mallet v. Smith*, 6 Rich. Eq. 12; *Smith v. Winn*, 27 S. C. 591, 4 S. E. 240. The Act of 1876 is remedial and retrospective. *Bredenburg v. Bardin*, 36 S. C. 197, 15 S. E. 372.

(5464) § 2. Sales on Executors Dying or Renouncing.—If the executor or executors should die, or renounce according to law, the administrator or administratrix with the will annexed shall be authorized to sell the real estate of the said deceased, as directed in and by the will.

Civ. '12, § 3685; Civ. '02, § 2601; G. S. 1972; R. S. 2101; 1787, V, 15.

Rose v. Thornley, 33 S. C. 313, 12 S. E. 11.

(5465) § 3. Liability for Taking Insufficient Security.—If any executor, or administrator with the will annexed, having power under the will to dispose of the estate or any part thereof, shall take such security as shall be clearly proved to be insufficient at the time, such executors, or administrators, and their sureties, shall be liable to make good any loss or damages that the legatees or creditors may sustain, to be recovered by action against such executors, or by action on the bond of such administrators, wherein such damages shall be assessed by the verdict of a jury.

Civ. '12, § 3686; Civ. '02, § 2602; G. S. 1973; R. S. 2102; 1789, V, 15.

(5466) § 4. Executor, Etc., May Purchase Under Liability to Pay—Actual Value.—It shall be lawful for any executor or executrix, administrator or administratrix, to become a purchaser at the sale of the estate of his or her testator or intestate under whatsoever authority the said sales may be made, and the property so purchased shall be vested in him or her; but he or she shall be liable to the parties interested for the actual value of the property at the time of sale in cases where it shall have been sold at an under price.

Civ. '12, § 3687; Civ. '02, § 2603; G. S. 1974; R. S. 2103; 1839, XI, 89.

Cummings v. Coleman, 7 Rich. Eq. 509; *Huger v. Huger*, 9 Rich. Eq. 217; *Anderson v. Butler*, 31 S. C. 183, 9 S. E. 797. Embraces sales of land. *Huger v. Huger*, 9 Rich. Eq. 217; *Cunningham v. Cauthen*, 37 S. C. 124, 15 S. E. 917.

(5467) § 5. Executor to Give Security to Account for Purchase Money.—If any executor or executrix shall purchase any property at the sales of the estate of his or her testator, he or she shall give bond, with surety, to

the Judge of Probate of the county, conditioned to account for the purchase money of the said property.

Civ. '12, § 3688; Civ. '02, § 2604; G. S. 1975; R. S. 2104; 1839, XI, 89.

Finch v. Finch, 28 S. C. 164, 5 S. E. 348; Huger v. Huger, 9 Rich. Eq. 217.

(5468) § 6. Order of Sale of Personal Property.—On all sales of personal property made by executors and administrators, they shall first obtain an order from the Court of Probate; and no sale made without such order shall be valid, except it be directed by the will.

Civ. '12, § 3689; Civ. '02, § 2605; G. S. 1976; R. S. 2105; 1789, V, 109; 1824, VI, 238.

Under Act of 1789 administrator still had right to sell without such order. *Harth v. Heddestone*, 2 Bay 321. But under Act of 1824 such order became imperative as to personal property. *Rhame v. Lewis*, 13 Rich. Eq. 269. But choses in action are not embraced in personal property. *Ib.*; *Reynolds v. Reeves*, 23 S. C. 436; *Chapman v. City Council*, 30 S. C. 549, 9 S. E. 591. The doctrine of implied warranty applies to such sales. *Duncan v. Bell*, 2 N. & McC. 153. But purchaser cannot recover back his money paid on that ground. *Prescott v. Holmes*, 7 Rich. Eq. 9.

Right of Probate Court to set upset price. *Epperson v. Jackson*, 83 S. C. 158, 65 S. E. 217.

Blackmon et al v. Blackmon, 113 S. C. 478, 101 S. E. 827.

(5469) § 7. Judge of Probate to Grant Order.—It shall be the duty of the Judge of Probate, by whom administration may be granted, upon application made to him, to grant an order for the sale of the whole or any part of the personal estate of the deceased intestate, if, in his opinion, the same is advisable, regulating the time, place, and credit to be given in such manner as to do impartial justice to all persons interested therein.

Civ. '12, § 3690; Civ. '02, § 2606; G. S. 1977; R. S. 2106; 1839, XI, 62.

Terms of sale must be complied with. *Peay v. Fleming*, 2 Hill Ch. 97; *Massey v. Cureton*, Chev. Eq. 181; *Roberts v. Adams*, 2 S. C. 337. Except that the time of sale may be postponed by administrator when advisable. *Lamb v. Lamb*, *Speer Eq.* 239.

(5470) § 8. Power of Judge of Probate Over Personal Estate of Testators.—The Judge of Probate, in whose office a will is recorded, shall have the same power as to the personal estate of a testator, not inconsistent with the provisions of the will, as is given him over the personal estate of an intestate by the preceding Section.

Civ. '12, § 3691; Civ. '02, § 2607; G. S. 1978; R. S. 2107; 1839, XI, 62.

(5471) § 9. Sales of Certain Evidences of Indebtedness.—All administrators, executors, and other fiduciaries, shall be allowed to sell to the highest bidder, as other personal property is sold, all notes, accounts, and other evidences of indebtedness coming into their hands as such, when the same are appraised or have become doubtful or worthless.

Civ. '12, § 3692; Civ. '02, § 2608; G. S. 1979; R. S. 2108; 1870, XIV, 313.

(5472) § 10. Conveyance of Estates Held by Infants in Trust or by Mortgage.—It shall and may be lawful for any person, under the age of twenty-one years, having estates in lands, tenements, or hereditaments, only in trust for others, or by way of mortgage, by the direction of the Court of Common Pleas, signified by an order made upon hearing all parties concerned, on the petition of the person for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor, or guardian of such infant, or persons entitled to the moneys secured by or upon any lands, tenements, or hereditaments, whereof any infant is or shall be seized or possessed by way of mortgage, or of the person entitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such

manner as the said Court shall, by such order so to be obtained, direct, to any other person.

Civ. '12, § 3698; Civ. '02, § 2609; G. S. 1980; R. S. 2109; 7 Ann., c. 19; 1712, II, 546.

(5473) § 11. Confirmation of Conveyance.—Such conveyance or assurance, to be had and made as aforesaid, shall be as effectual in law, to all intents and purposes whatsoever, as if the said infant was, at the time of making such conveyance or assurance, of the full age of twenty-one years.

Civ. '12, § 3694; Civ. '02, § 2610; G. S. 1981; R. S. 2110; 7 Ann., c. 19; 1712, II, 547.

(5474) § 12. Infant Trustee or Mortgagee May Be Compelled to Make Conveyance.—All and every such infant, being only trustee mortgagee as aforesaid, shall and may be compelled by such order, so as aforesaid to be obtained, to make such conveyance, assurance, as aforesaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign the trust estates or mortgages.

Civ. '12, § 3695; Civ. '02, § 2611; G. S. 1982; R. S. 211.

CHAPTER LXXX.

Sales Under Execution and by Judgment Debtors.

ARTICLE 1. Sales Under Execution, 1661.

ARTICLE 2. Sales by Judgment Debtors, 1665.

ARTICLE I.

Sales Under Execution.

(5475) § 1. Real Estate Made Liable for Debts, Duties and Demands.—Houses, lands, and other hereditaments and real estates, situated or being within this State, belonging to any person indebted, shall be liable to and chargeable with all just debts, duties and demands, of what nature or kind soever, owing by any such person, and shall and may be assets for the satisfaction thereof, and shall be subject to the like remedies, proceedings, and process, as personal estates.

Civ. '12, § 3696; Civ. '02, § 2612; G. S. 1983; R. S. 2112; 5 G. 2, c. 7; 1712, II, 571; Code of Procedure, § 351.

Lands are thus made general assets for payments of debts. *Suber v. Allen*, 13 S. C. 317. These terms cover every vested interest a man can have in lands. *Harrison v. Maxwell*, 2 N. & McC. 347. Embrace a vested remainder. *Harrison v. Maxwell*, 2 N. & McC. 347. Sale of lands of ancestor under execution against executor or administrator alone can be made when heirs or devisees are not in possession. *D'Urphay v. Nelson*, 1 Brev. 289; *Smith v. Smith*, 1 McC. Ch. 134; *Galphin v. McKinney*, 1 McC. Ch. 280; *Martin v. Latta*, 4 McC. 128; *Gregory v. Forrester*, 1 McC. Ch. 318; *Rogers v. Huggins*, 6 S. C. 359; *Simons v. Bryce*, 10 S. C. 354; *Smith v. Grant*, 15 S. C. 136; *Small v. Small*, 16 S. C. 64. But not when heirs or devisees are in actual and exclusive possession. *Jones v. Wightman*, 2 Hill 579; *Bird v. House*, Speer Eq. 250; *Huggins v. Oliver*, 21 S. C. 147; *Wheeler v. Floyd*, 24 S. C. 413. Lands in possession of vendee under agreement for conveyance upon payment of purchase money, not liable to be sold under execution against him. *Barton v. Rushton*, 4 DeS. 373; *Richards v. McKie*, Harp. Eq. 183. Nor under subsequent execution against vendor. *Massey v. McIlwaine*, 2 Hill Ch. 421; *Adicks v. Lowry*, 12 S. C. 97. But equity of redemption under Acts 1791-1797 is a legal estate and subject to such sale. *The State v. Laval*, 4 McC. 336; *Norman v. Norman*, 26 S. C. 41, 11 S. E. 1096; *Navassa Co. v. Richardson*, 26 S. C. 401, 2 S. E. 307. Interest of joint tenant subject to levy and sale. *Davant v. Cabbage*, 2 Hill 311; *Galloway v. Galloway*, 76 S. C. 526, 57 S. E. 528.

(5476) § 2. Estates Held in Trust May Be Sold Under Execution Issued Against Beneficiary.—All estate, real or personal, which is held in trust for him against whom execution is sued, may be seized by the Sheriff or

officer to whom the writ is delivered, and sold as the property of him that is entitled to the trust, in the same manner as if such property was held in his own name.

Civ. '12, § 3697; Civ. '02, § 2613; G. S. 1984; R. S. 2113; 29 C. 2, c. 3; 1712, II, 527.

This only applies to simple and clear trusts. *White v. Kavanaugh*, 8 Rich. 377. And not to trusts of debtor jointly with others. *Rice v. Burnett*, Speer Eq. 579; *Bristow v. McCaw*, 16 S. C. 545. Nor to such for married women. *Youmans v. Buckner*, 3 Hill 218. It does not apply to implied or resulting trusts. *Harrison v. Hollis*, 2 N. & McC. 578; *Bauskett v. Halsonback*, 2 Rich. 624; *Thomson v. Peake*, 7 Rich. 353; *White v. Kavanaugh*, 8 Rich. 377.

(5477) § 3. **Sheriff to Keep Memorandum of Levy, Etc.**—The Sheriff shall make a memorandum, in writing, of the date of every levy, and specify the property upon which such levy has been made on the process, or in a schedule thereunto annexed; and if more than one process be levied on such property, reference on each shall be made to such memorandum or schedule.

Civ. '12, § 3698; Civ. '02, § 2614; G. S. 1985; R. S. 2114; 1839; XI, 50.

In levying on land, the Sheriff need not go upon it. *Martin v. Bowie*, 37 S. C. 102, 15 S. E. 736. Failure to enter levy on all the executions, except oldest does not invalidate sale. *Maddox v. Sullivan*, 2 Rich. Eq. 4. Endorsement of acknowledgment of levy by defendant is sufficient. *Weatherby v. Covington*, 3 Strob. 27; *Rhame v. McRoy*, 7 Rich. 37. Sufficient if entry be made on separate paper folded and filed with the execution. *Kennedy v. Rountree*, 59 S. C. 324, 37 S. E. 942. The physical annexing of the memorandum to the execution immaterial. *Tyler v. Williams*, 53 S. C. 367, 31 S. E. 298. Entry there insufficient; essentials stated. *Ib.* Property must be specified, otherwise the levy is void. *Huger v. Osborne*, 1 Bay 319. If in general terms, deed may describe accurately. *Manning v. Dove*, 10 Rich. 395. Levy is good, though made under satisfied execution, if there be unsatisfied ones. *McKnight v. Gordon*, 13 Rich. Eq. 222. Personal property must be taken into possession or be within power of Sheriff. *Collins v. Montgomery*, 2 N. & McC. 392; *Moss v. Moore*, 3 Hill 276; *Brian v. Strait*, Dud. 19; *Weatherby v. Covington*, 3 Strob. 27; *Rhame v. McRoy*, 7 Rich. 37. The title vests in Sheriff for all legal purposes. *McClintock v. Graham*, 3 McC. 243. But for that only. *Bates v. Gest*, 3 McC. 493; *Bates v. Moore*, 2 Bail. 614; *Weatherby v. Covington*, 3 Strob. 27. Levy should not be made at improper hour or in improper manner. *State v. Thackham*, 1 Bay 358; *DeGraffenreid v. Mitchell*, 3 McC. 506. Money in Sheriff's hands is leviable. *Summers v. Caldwell*, 2 N. & McC. 341; *Means v. Vance*, 1 Bail. 39; *Adams v. Crimager*, 1 McM. 309; *Dupong v. Watkins*, 2 Rich. 328. Levy cannot be made after day of execution. *Ross v. McCartan*, 1 Brev. 507. Sheriff cannot levy execution in which he is plaintiff. *Singletary v. Carter*, 1 Bail. 467. Levy is *prima facie* a satisfaction, and a second cannot be made until sale shows contrary. *Davis v. Barkley*, 1 Bail. 142; *Mazyck v. Coll*, 2 Bail. 101; *Lawrence v. Wofford*, 17 S. C. 586; *National Bank v. Kinard*, 28 S. C. 101, 5 S. E. 464. Under levy made by one Sheriff before active energy of execution has expired, he or his successor may sell. *Toomer v. Purkey*, 1 Mill 323; *Gassaway v. Hall*, 3 Hill 239; *Legar v. Doyle*, 11 Rich. 109; *Henderson v. Trimmer*, 32 S. C. 269, 11 S. E. 540. And under sale by one Sheriff successor may convey. *Martin v. Wilbourne*, 2 Hill 395. Where one levy and several entries, Sheriff can only charge for one levy. *Thrower v. Vaughn*, 1 Rich. 18.

(5478) § 4. **Property Taken in Execution to Be Sold, Etc.**—When any Sheriff or other officer shall take the lands, tenements, goods and chattels of any person whatsoever, by virtue of any execution, and the owner of such lands, tenements, goods, and chattels shall not, within five days after such taking, satisfy the party issuing such execution, his debt, damages, and costs, such Sheriff or officer shall and may sell, by auction, the lands, tenements, goods and chattels so taken, or so much thereof as shall be sufficient to satisfy the judgment, for the best price that can be got for the same.

Civ. '12, § 3699; Civ. '02, § 2615; G. S. 1986; R. S. 2115; 1785, VII, 229.

Sale under execution having no lien will be valid if there be at the time one having lien. *Agnew v. Adams*, 17 S. C. 371; *Garvin v. Garvin*, 34 S. C. 388, 13 S. E. 625. Sheriff cannot purchase at his own sale. *Lewis v. Brown*, 4 Strob. 293. But sale is invalid if enough has already been sold to pay the executions. *Zylstra v. Keith*, 2 DeS. 141. Prevention of competition among bidders will vitiate the sale. *Farr v. Sims*, Rich. Eq. Ca. 122; *Barrett v. Bath Paper Co.*, 13 S. C. 158; *Toole v. Johnson*, 61 S. C. 34, 39 S. E. 254.

Real property is sold subject to mortgages upon it. Commissioners *v. Hart*, 1 Brev. 492; *Thayer v. Sheriff*, 2 Bay 171; *Ex parte Sheriff*, 1 McC. 399; *Phillips v. Bond*, 2 McC. 382; *McClure v. Mounce*, 2 McC. 424; *Norman v. Norman*, 26 S. C. 41, 11 S. E. 1096. But personal property mortgaged is not liable to executions against mortgagor. *Reese v. Lyon*, 20 S. C. 20; *McCendon v. Wells*, 20 S. C. 520; *Levi v. Legg*, 23 S. C. 284; *Williams v. Dobson*, 26 S. C. 110; 1 S. E. 421; *Ex parte Knobloch*, 26 S. C. 331, 2 S. E. 612; *Bank v. Kinard*, 28 S. C. 101, 5 S. E. 464; *Lorenz v. Salley*, 32 S. C. 365, 11 S. E. 208; *Akers v. Rowan*, 33 S. C. 451, 12 S. E. 165. There is no implied warranty at Sheriff's sales; the rule of *caveat emptor* applies. *Thayer v. Sheriff*, 2 Bay 169; *Davis v. Murray*, 2 Mill 143; *Herbemont v. Sharp*, 2 McC. 264; *Yates v. Bond*, 2 McC. 382; *Davis v. Hunt*,

2 Bail. 412; *Stoney v. Shultz*, 1 Hill 465; *Murphy v. Higginbottom*, 2 Hill 397; *Moore v. Aiken*, 2 Hill 403; *Perry v. Williams*, Dud. 44; *Kilgore v. Peden*, 1 Strob. 18; *Jones v. Barr*, 5 Strob. 147; *Leger v. Doyle*, 11 Rich. 109; *Wingo v. Brown*, 14 Rich. 103; *Cox v. Edwards*, 8 S. C. 1; *Charleston v. Blahme*, 15 S. C. 135; *Norman v. Norman*, 26 S. C. 41, 11 S. E. 1096; *Long v. McKissick*, 50 S. C. 218, 27 S. E. 636.

A sale under junior judgment divests lien of senior judgment. *Mathews v. Nance*, 49 S. C. 389, 27 S. E. 408; *Trumbo v. Cummings*, 20 S. C. 386; *Agnew v. Adams*, 17 S. C. 364; *Snipes v. Sheriff*, 1 Bay 295; *Greenwood v. Naylor*, 1 McC. 414; *Gist v. McJunkin*, 1 McM. 342; *Vance v. Red*, 2 Speer 90; *McKnight v. Gordon*, 13 Rich. Eq. 222; *In re Voorhies*, 46 S. C. 114, 24 S. E. 170.

(5479) § 5. Sheriff to Advertise Sale of Property.—The Sheriff of every county in this State shall, before he exposes any lands or tenements which he may be directed to sell by virtue of any execution or mortgage, publicly advertise the same three weeks immediately previous to the sale day or days on which he means to expose the same for sale. Personal property shall be advertised for fifteen days.

Civ. '12, § 3700; Civ. '02, § 2616; G. S. 1987; R. S. 2116; 1797, V, 305; 1839, XI, 54; 1879, XVII, 192.

In computing the time, the day the advertisement begins and day of sale may both be counted. *Manning v. Dove*, 10 Rich. 395.

(5480) § 6. Contents of Advertisement of Sale—Publication.—He shall specify in the advertisement the property to be sold, the time and place of sale, the name of the owner of the property, and the party at whose suit the sale is to be made, and shall publish the advertisement at three public places in the county, one whereof shall be at the Court House door: *Provided*, That publication shall also be made in some gazette, as provided in the preceding Section, before the day of sale, in every county where a newspaper may be printed.

Civ. '12, § 3701; Civ. '02, § 2617; G. S. 1988; R. S. 2117; 1791, VII, 263; 1796, VII, 283; 1839, XI, 54; 1849, XI, 598.

The requirements must be essentially complied with or the sale will be void. *Farr v. Sims*, Rich. Eq. Ca. 122. But failure to advertise for twenty-one days not invalidate sale. *Maddox v. Sullivan*, 2 Rich. Eq. 4; *Alexander v. Messervey*, 35 S. C. 409, 14 S. E. 854. In computing the twenty-one days, the day the advertisement begins and the day of sale may both be counted. *Manning v. Dove*, 10 Rich. 395. The advertisement must also contain the terms of sale. *Farr v. Sims*, Rich. Eq. Ca. 122. But an imperfect description of the property does not vitiate. *Ward v. Cohen*, 3 S. C. 338; *Lawrence v. Grambling*, 13 S. C. 120; *Cain v. Maples*, 1 Hill 304. It may be evidence to show that purchaser was not mistaken as to the property sold. *Elfe v. Gadsden*, 2 Rich. 373. As to publication in newspaper. *State v. Becket*, 3 McC. 390. Failure of such does not invalidate sale. *Turner v. McCrea*, 1 N. & McC 11. Sale *en masse* or in parcels. *Hammett v. Farmer*, 26 S. C. 566, 2 S. E. 507.

(5481) § 7. Sale Days.—The regular day of Sheriff's sale shall be the first Monday in each month, except when the first Monday in any month is a legal holiday, in which case the sale day shall be on the Tuesday next succeeding such holiday: *Provided*, If there be not time to dispose of all the property on sale day, the next day following shall also be a regular sale day, if by public outcry on sale day, or if the regular sale day be on a public holiday notice of sale on the next day shall have been given. The Sheriff may sell property at any other time, when so ordered by a Court of competent authority.

Civ. '12, § 3702; Civ. '02, § 2618; G. S. 1988; R. S. 2118; 1791, VII, 263; 1839, XI, 54; XV, 850; 1918, XXX, 776.

Sheriff can only sell on Monday and Tuesday of each month. *Minter v. Dent*, 2 Bail. 291. He must judge of necessity to postpone sale to Tuesday. *Cain v. Maples*, 1 Hill 304. Not liable for attachment for such postponement. *Connor v. Archer*, 1 Speer 89.

(5482) § 8. Place of Sheriff's Sales.—The place of Sheriff's sales, as to real estate, shall be at the Court House of the county: *Provided*, That sales for Georgetown County may be conducted at the market place, and those for Charleston County at the Exchange in Charleston; personalty may be sold

at the place whereon it may be found by the Sheriff, upon levy, or such other more convenient places as may be selected.

Civ. '12, § 3708; Civ. '02, § 2619; G. S. 1990; R. S. 2119; 1839, XI, 54.

(5483) § 9. Master's and Sheriff's Sales at Real Estate Exchange in Charleston County.—It may be lawful for Master's and Sheriff's sales in Charleston County to be conducted at the Charleston Real Estate Exchange, or other place in said county as the Court may direct, any law or custom to the contrary notwithstanding.

Civ. '12, § 3704; 1908, XXV, 1211.

(5484) § 10. Hours of Sale.—The hours of sale shall be between eleven and three o'clock in Charleston County, and eleven and five in each other county; but not at any time after notice given by the Sheriff that the sales for the day have been closed.

Civ. '12, § 3705; Civ. '02, § 2620; G. S. 1991; R. S. 2120; 1791, VII, 263; 1839, XI, 54.

Statute directory. *Lewis v. Brown*, 4 Strob. 293.

(5485) § 11. Sales to Be for Cash—Provisions for Resale.—Every Sheriff's sale made by virtue of the directions of an execution shall be for cash; and if the purchaser shall fail to comply with the terms aforesaid, the Sheriff shall proceed to resell at the risk of the defaulting purchaser, either on the same or some subsequent sale day, as the plaintiff may direct; and in the absence of any direction by the plaintiff, the Sheriff shall so resell on the same day, if practicable, and if not, on the next succeeding sale day, making, in every such case, proclamation that he is reselling at the risk of such defaulting former purchaser.

Civ. '12, § 3706; Civ. '02, § 2621; G. S. 1992; R. S. 2121; 1791, VII, 263; 1839, XI, 54.

Construed. *Fowles v. Turner*, 3 Hill 178. Where purchaser is owner of execution entitled to proceeds of sale, he need not pay cash, except sufficient to pay costs. *Cobb v. Pressly*, 2 McM. 416; *Lemmond v. Short*, 3 Strob. 313; *Lorick v. McCreery*, 20 S. C. 428. Deed of Sheriff, when bid has not been fully paid, is valid. *Woods v. Dean*, 24 S. C. 499. Purchaser's title fails where he does not comply. *Jones v. Cathcart*, 17 S. C. 593. Acceptance cheque for bid. *Brown v. Barnwell Mfg. Co.*, 49 S. C. 415, 24 S. E. 191. Time within which to comply. *Id.* Bidder responsible, when property delivered, for interest on his bid from sale. *Hampton v. Eichelberger*, 2 Bail. 520; *Arnold v. House*, 12 S. C. 600. Bidder may comply after time fixed for resale. *Yates v. Gridly*, 16 S. C. 503. Resale the same day at instance of second purchaser at great sacrifice, invalid. *Pickett v. Pickett*, 2 Hill Ch. 470. Sheriff not bound to resell. *Elfe v. Gadsden*, 1 Strob. 225. Resale is not at risk of former purchaser if Sheriff failed to make proclamation to that effect. *Yongue v. Cathcart*, 2 Strob. 221. Nor if made months afterwards, without direction of plaintiff. *Id.*, 3 Strob. 305; *Young v. Aiken*, 4 Rich. 15. Does not apply where Sheriff delivers the property without the cash. *Fowles v. Turner*, 3 Hill 178; *Cobb v. Pressly*, 2 McM. 416; *Elfe v. Gadsden*, 1 Strob. 225; *Cochran v. Roundtree*, 3 Strob. 217; *Richardson v. Inglesby*, 13 Rich. Eq. 59. Nor does it authorize successor to sue for difference in price between first and second sale. *Underwood v. Jacobs*, 3 McC. 447. Whether resale is made by proper officer can be made by first bidder when sued for difference in bids. *Childe v. Frazee*, 15 S. C. 612. Subsequent judgment creditor cannot complain of Sheriff's neglect to bind bidder by resale within time required. *State v. Yongue*, 6 Rich. 323. Where first bidder is insolvent and Sheriff fails to so bind him, and resells for less than his bid, the execution is not satisfied to extent of bid. *Lewis v. Richardson*, 6 Rich. 382. Where debtor consents to postpone resale, Sheriff is not liable for difference in bids. *State v. Yongue*, 9 Rich. 443. So where judgment creditor consents. *State v. Yongue*, 10 Rich. 448. Generally as to Act 1839. *Connor v. Archer*, 1 Speer 89; *Yongue v. Cathcart*, 2 Strob. 221. Formalities required are intended for benefit of parties interested, and may be waived by their common consent. *O'Bannon v. Kirkland*, 2 Strob. 29; *Lewis v. Brown*, 4 Strob. 293; *Richardson v. Inglesby*, 13 Rich. Eq. 59. But direction of judgment creditor alone to deliver property without payment releases the debtor and bid satisfied execution. *Richardson v. Inglesby*, 13 Rich. Eq. 59. The Statute fixes liability upon highest bidder as a purchaser to extent of difference in bids. *Cox v. Edwards*, 8 S. C. 1. Bid by attorney for undisclosed principal. *Long v. McKissick*, 50 S. C. 218, 27 S. E. 636. *Calder v. Maxwell*, 99 S. C. 115, 82 S. E. 997.

ARTICLE II.

Sales by Judgment Debtors.

(5486) § 1. **Proceeds Paid Over to Sheriff — Confirmation of Sale — Endorsement on Deed.**—The entire proceeds of a sale or sales of property subject to levy and sale, made by the judgment debtors, are to be paid over by said judgment debtors to the Sheriff in whose office such judgments, executions, or decrees are lodged, to be applied by said Sheriff towards the satisfaction of the same; and, provided no objection shall be made in writing by either of the judgment creditors, and filed with said Sheriff, as to price at which the property may have been sold, within three months from and after the time such payment shall have been made, the sale or sales shall thereupon be considered confirmed; and the said Sheriff shall make the following endorsement on the back of the deed or deeds of conveyance, viz.: “No objection having been filed in my office to the within bargain and sale within the time prescribed by law, this bargain and sale is therefore confirmed;” the same to be dated and signed officially by the said Sheriff.

Civ. '12, § 3707; Civ. '02, § 2622; G. S. 687; R. S. 2122; 1871, XIV, 604.

(5487) § 2. **Proceedings if Judgment Creditors Object to Sale.**—Should either of the judgment creditors object to the prices at which any of the said property may have been sold, and file such notice with the Sheriff within the time before mentioned, the Sheriff shall immediately proceed to levy upon and offer for sale said property, proceeding, in all respects, according to the law in regard to levy and sale by the Sheriff; and if the highest bid made for said property shall not be more than the amount of the indebtedness which had been cancelled by the sale made by the debtor, the Sheriff shall withdraw said property from sale; and the creditor or creditors who may have filed their objection shall be required to pay all costs and expenses that accrued in consequence thereof.

Civ. '12, § 3708; Civ. '02, § 2623; G. S. 688; R. S. 2123; 1871, XIV, 605.

(5488) § 3. **Endorsement on Conveyances.**—The Sheriff shall make the following endorsement on the back of the conveyance made by the debtor, viz.: “Objection having been filed in my office by, judgment creditor, I levied upon and exposed for sale the property within named; and failing to receive a higher bid than the amount of indebtedness cancelled by the proceeds of the within bargain and sale, this sale is therefore confirmed;” and signed as directed in Section 1 of this Article.

Civ. '12, § 3709; Civ. '02, § 2624; G. S. 689; R. S. 2124; 1871, XIV, 605.

(5489) § 4. **Proceedings Where Property Sold by Sheriff Brings More Than Sale by Debtor.**—In the event that the property, when so exposed for sale by the Sheriff, as provided for in Section 2, should bring more than the amount of the indebtedness cancelled by the proceeds of the sale made by the debtor, the purchaser from the debtor shall be refunded the amount paid by him, with interest from the time of payment, and the bargain sale made by the debtor rescinded, and titles executed by the Sheriff to the purchaser at his sale; and, after deducting the costs and expenses

by reason of the levy and sale, the remainder to be applied, according to law, towards satisfaction of the judgments or executions in his office.

Civ. '12, § 3710; Civ. '02, § 2625; G. S. 690; R. S. 2125; 1871, XIV, 605.

CHAPTER LXXXI.

Of Homesteads.

(5490) § 1. **Homestead in Lands—What Allowed—How Set Off.**—A homestead in lands, whether held in fee or any lesser estate, to the value of one thousand dollars, or so much thereof as the property is worth if its value is less than one thousand dollars, with the yearly products thereof, shall be exempt to the head of every family residing in this State from attachment, levy or sale, in mesne or final process issued from any Court, upon any judgment obtained upon any right of action arising subsequent to the ratification of the Constitution of the State of South Carolina in 1868. And it shall be the duty of the Sheriff or other officer before selling the real estate of any head of a family resident in this State to cause a homestead as above stated to be set off to said person in the manner following, to wit: He shall cause three appraisers to be appointed, one to be named by the creditor, one by the debtor and one by himself, who shall be discreet and disinterested men, in no wise related to either party, and resident in the county, and who shall be sworn by a Magistrate, or other officer authorized by law to administer oaths, to impartially appraise and set off by metes and bounds a homestead not to exceed in value one thousand dollars. The said appraisers shall make return of their action in the premises under their hands and seals to the Sheriff or other officer within thirty days after they shall have been appointed as aforesaid, for record in the office of the Clerk of Court, giving the metes and bounds as well as the value of the homestead set off, for which purpose they shall be authorized to call in the aid of a surveyor if they, or a majority of them, deem it necessary. If no complaint shall be made by either creditor or debtor within thirty days after the return of the appraisers has been filed, the proceedings in the case shall be final. If exceptions to said return be filed by either creditor or debtor within thirty days after the filing thereof, the same shall be tried *de novo* upon testimony taken in open Court, and the Court out of which the process issued may, upon good cause being shown, order a reappraisement and reassignment of the homestead by other appraisers appointed by the Court. Should the creditor or debtor neglect or refuse, after ten days' notice from the officer in whose hands the process is lodged, to nominate an appraiser, the said officer shall appoint the same.

Civ. '12, § 3711; Civ. '02, § 2626; G. S. 1994; R. S. 2126; 1896, XXII, 190; Const., 1895, Art. 3, § 28.

Character of homestead. It is an absolute exemption, to be perpetuated under certain conditions. *McKeown v. Carroll*, 5 S. C. 75; *Hardin v. Houze*, 18 S. C. 73; *Bradford v. Buchanan*, 39 S. C. 237, 17 S. E. 501; *Ross v. Bradford*, 28 S. C. 71, 5 S. E. 84; *Mellichamp v. Mellichamp*, 28 S. C. 125, 5 S. E. 333; *Parr v. Linder*, 40 S. C. 193, 18 S. E. 636. But under the Constitution of 1868, before the amendment of 1880, it could not be claimed if the conditions did not exist or had ceased. *Hardin v. Houze*, 18 S. C. 73; *Chalmers v. Turnipseed*, 21 S. C. 126; *Yoe v. Hanvey*, 25 S. C. 94. It is not a new estate, nor, prior to the Constitution of 1895, did the right to it destroy the power to alien or encumber the property; but it left the titles intact. *Smith v. Malone*, 10 S. C. 39; *Bull v. Rowe*, 13 S. C. 333; *Elliott v. Mackorell*, 19 S. C. 239; *Ex parte Ray*, 20 S. C. 246; *Youngblood v. Lathen*, 20 S. C. 370; *Chafee v. Rainey*, 21 S. C. 11; *Chalmers v. Turnipseed*, 21 S. C. 126; *Horsford v. Wynn*, 22 S. C. 309; *Cantrell v. Fowler*, 24 S. C. 424; *Yoe v. Hanvey*, 25 S. C. 309; *Ketchen v. McCarley*, 26 S. C. 1, 11 S. E. 1099. It does not affect the Statute of Distribution. *Ex parte*

Ray, 20 S. C. 246. Under Con. 1868, and Acts of 1872 and 1873, it was limited to life of childless widow. *Chalmers v. Turnipseed*, 21 S. C. 126. Where husband's fraudulent conveyance is set aside, he is still entitled to homestead in the land. *Wood v. Timmerman*, 29 S. C. 175, 7 S. E. 74. Where husband fraudulently has land conveyed to his wife, he paying the purchase money, he cannot claim homestead in it. *Bridgers v. Howell*, 27 S. C. 425, 3 S. E. 790.

In what lands. One is entitled to homestead in a tract of land assigned to him in partition. *Riley v. Gaines*, 14 S. C. 454. Leased parcels adjoining residence. *Harrell v. Ken*, 37 S. C. 369, 16 S. E. 42. Also in his share of proceeds of land sold for partition. *Swandale v. Swandale*, 25 S. C. 389; *Ex parte Carraway*, 28 S. C. 233, 5 S. E. 597. But not in his undivided interest in land itself; though Court may restrain sale thereof until partition is made. *Nance v. Hill*, 26 S. C. 227, 1 S. E. 897; *Mellichamp v. Mellichamp*, 28 S. C. 125, 5 S. E. 333; *Ketchin v. Patrick*, 32 S. C. 443, 11 S. E. 301. One holding land under contract to purchase has no homestead therein. *Garaty v. DuBose*, 5 S. C. 493; *Bradley v. Rodlesperger*, 17 S. C. 9; *Agnew v. Adams*, 17 S. C. 364. Unless he has paid the whole purchase money. *Munro v. Jeter*, 24 S. C. 29; *Ex parte Kurz*, 24 S. C. 468. Under amendment to Constitution in 1882, head of family is entitled to homestead in any land he may own, whether he reside on it or not. *Swandale v. Swandale*, 25 S. C. 389; *Nance v. Hill*, 26 S. C. 227, 1 S. E. 897. Husband not entitled to homestead in lands of wife, who died childless. *Harman v. Wagner*, 33 S. C. 487, 12 S. E. 98. Head of family—widow is, though childless. *Bradley v. Rodlesperger*, 3 S. C. 206; *Moore v. Parker*, 13 S. C. 486; *Bradley v. Rodlesperger*, 17 S. C. 9; *Yoe v. Hanvey*, 25 S. C. 94. Bachelor is not. *Garaty v. DuBose*, 5 S. C. 493. Father is, who has child living with him. *Meyers v. Ham*, 20 S. C. 522. Even though child be an adult married son, living separate from his wife. *Rollings v. Evans*, 23 S. C. 316. Debtor who marries after levy on his land, and before sale, is entitled to homestead therein. *Ib.* Distinction as to personality. *Pender v. Lancaster*, 14 S. C. 25. A son is, who devotes his earnings and rents to the support of himself and widowed mother. *Scott v. Mosely*, 54 S. C. 375, 32 S. E. 450. Widower living with adopted daughter. *Wagner v. Parrott*, 51 S. C. 489, 29 S. E. 240. Single woman who has dependent sister living with her, is. *Chamberlain v. Brown*, 33 S. C. 597, 11 S. E. 439. A man is, who continues to support his wife's niece, who lived with them during wife's life and spends part of her time with him since her death. *Fant v. Gist*, 36 S. C. 576, 15 S. E. 721. Against what debts. The cases *In re Kennedy*, 2 S. C. 216; *Adams v. Smith*, *Muller v. Earhart*, *Adams v. Lide*, 2 S. C. 228; *Howze v. Howze*, 2 S. C. 229, allowing the homestead exemption provided by the Constitution of 1868, and the Acts thereunder against antecedent debts, have been overruled. It is now settled that such homestead as to antecedent debts is contrary to the Constitution of the United States, and all proceedings thereunder void. *Cochran v. Darby*, 5 S. C. 125; *Ex parte Hewett*, 5 S. C. 409; *De LaHowe v. Harper*, 5 S. C. 470; *Bull v. Rowe*, 13 S. C. 355; *Dougllass v. Craig*, 13 S. C. 371; *Carriagan v. Bozeman*, 13 S. C. 376; *Charles v. Charles*, 13 S. C. 385; *Withers v. Jenkins*, 21 S. C. 365; *Hosford v. Wynn*, 22 S. C. 309; *Ib.*, 26 S. C. 130, 1 S. E. 497; *Compton v. Patterson*, 28 S. C. 115, 5 S. E. 270; *Fowler v. Smith*, 31 S. C. 398, 10 S. E. 93. The homestead exemption is governed by the law in force at the time of the creation of the debt. *Trimmer v. Winsmith*, 41 S. C. 109, 19 S. E. 285; *McClenghan v. McEachern*, 47 S. C. 446, 25 S. E. 296. Only allowed debtor against his own debts. *Bank v. Senn*, 25 S. C. 572. Not against debts of another. *Wallace v. Johnson*, 17 S. C. 454. Nor against a debt due a joint purchaser of land, on account of his interest therein, and for rents and profits. *Edwards v. Edwards*, 14 S. C. 11. Nor against a distress warrant. *Harley v. Weathersbee*, 21 S. C. 243. Widow's homestead in husband's land cannot be sold under judgment on her individual debt. *Hanford v. Wynn*, 22 S. C. 309. As to debt contracted before amendment of Constitution in 1880, the question of homestead must be determined by the original Constitution of 1868. *Norton v. Bradham*, 21 S. C. 375. Subsequent judgment having no lien on the land cannot compel judgment creditor for purchase money to first exhaust the homestead. *Ex parte Kurz*, 24 S. C. 468. Nor so compel senior judgment when, by consent, it has been paid out of other lands without equities reserved. *Shell v. Young*, 32 S. C. 462, 11 S. E. 299. Costs of junior judgment binding homestead postponed to senior judgment, not binding. *Bank v. Goodman*, 33 S. C. 601, 11 S. E. 785. Not allowed against mortgage. *Shelor v. Mason*, 2 S. C. 233; *Homestead Association v. Enslow*, 7 S. C. 1; *Rosenberg v. Lewis*, 7 S. C. 344; *Smith v. Malone*, 10 S. C. 39; *City Council v. Caulfield*, 19 S. C. 201; *Reid v. McGowan*, 28 S. C. 74, 5 S. E. 215. But in surplus after its satisfaction. *Calmes v. McCracken*, 8 S. C. 87. Though subsequent judgment creditor having lien on the land might, prior to Constitution of 1895, in equity compel mortgagee to first exhaust the homestead. *Bank v. Harbin*, 18 S. C. 425; *Bowen v. Barksdale*, 33 S. C. 142, 11 S. E. 640. But not having such lien, he cannot compel mortgagee to do so. *Ex parte Carraway*, 28 S. C. 233, 5 S. E. 597. Assignment thereof—the right to—may be decided on rule against Sheriff to compel to sell. *Kirby v. Woods*, 5 S. C. 1; *Dougllass v. Craig*, 13 S. C. 371; *Charles v. Charles*, 13 S. C. 385. And rule will be discharged when debtor has only a homestead. *King v. McCarley*, 32 S. C. 264, 10 S. E. 1075. Application for may be made before levy. *Nance v. Hill*, 26 S. C. 227, 1 S. E. 897. Sale thereof made without claim or objection does not estop debtor from homestead in land. *Myers v. Ham*, 20 S. C. 522. It cannot be impeached collaterally. *McKeown v. Carroll*, 5 S. C. 75. When made under existing laws, it is fixed in amount and not affected by subsequent legislation. *Keller v. Myers*, 5 S. C. 11. Legislature can neither extend or restrict the exemption allowed by the Constitution. *Duncan v. Barnett*, 11 S. C. 333. Not to be assigned under executions levied that do not bind where there are executions that do bind it. *Agnew v. Adams*, 17 S. C. 365. But proceeds should be applied to oldest judgment. *Lawrence v. Grambling*, 19 S. C. 461. Return of appraisers. By two is valid. *Bank v. Evans*, 28 S. C. 521, 6 S. E. 321. Exceptions thereto within thirty days after Sheriff filed it with Clerk are within time. *Kerchner v. Singletary*, 15 S. C. 535. Upon hearing thereof the power of the Court to order reassignment may be exercised more than once. *Ib.* And conclusion of Judge as to the good cause shown therefor will not be disturbed on appeal. *Ib.* But Court holding return valid against all creditors but one cannot conditionally vacate it unless that one be paid in a given time. *Ex parte Young*, 29 S. C. 298, 7 S. E. 499. Irregularity in does not invalidate assignment of homestead. *Agnew v. Adams*, 26 S. C. 101, 1 S. E. 414.

As to hearing on exceptions to the return of the commissioners. *Bleckley v. Shirley*, 58 S. C. 52, 36 S. E. 503.

The exceptions must be filed; personal service on adverse party not sufficient. *Ex parte Ransey*, 54 S. C. 517, 32 S. E. 522.

In ascertaining the exemption the value of the debtor's interest in the land is the proper basis. *Bank v. Gibbs*, 54 S. C. 579, 32 S. E. 690.

Equitable interest as homestead. *McNair v. Moore*, 70 S. C. 551, 50 S. E. 197. Homestead cannot be claimed against debt secured by equities. *Hallman v. George*, 70 S. C. 408, 50 S. E. 24. Must be set up. *Hallman v. George*, 70 S. C. 408, 50 S. E. 24. Lien of joint judgment never attached where estate was less than \$1,000.00 in value. *Ex parte Miley*, 73 S. C. 325, 53 S. E. 535. Creditor who has suit pending may except to return by appraisers in proceedings to enforce a prior judgment. *In re Wylie*, 63 S. C. 214, 41 S. E. 320.

Nixon Grocery Co. et al v. Spann et al, 108 S. C. 329, 94 S. E. 531.

(5491) § 2. Return to Be Recorded.—When thirty days shall have elapsed after the filing of the return of said appraisers, setting off a homestead to any debtor, according to the provisions of the preceding Section, and no exceptions have been filed against such return, or if such return be finally heard and approved, such debtor may have such return recorded in the office of the Register of Mesne Conveyances of the county in which the same is located; and upon such return being so recorded in forty days after the proceedings have become final, the title to the homestead so set off and assigned shall be forever discharged from all debts of said debtor then existing or thereafter contracted.

Civ. '12, § 3712; Civ. '02, § 2627; G. S. 1995; R. S. 2127; 1880, XVII, 514.

No exceptions being filed, the return cannot be collaterally attacked. *Culler v. Crim*, 52 S. C. 574, 30 S. E. 635; *Ex parte Ransey*, 54 S. C. 517, 32 S. E. 522. Assignment of homestead not binding upon creditors by junior judgments until recorded. *Choice v. Charles*, 7 S. C. 171. Nor does it exempt the property from sale until returned and recorded. *Ryan v. Pettigrew*, 7 S. C. 146; *Bull v. Rowe*, 13 S. C. 355; *Youngblood v. Lathen*, 20 S. C. 370. A plat annexed to the return need not be recorded; and the Clerk's failure to record it will not invalidate the assignment. *Adams v. Agnew*, 15 S. C. 36. The proceedings merely designate the specific property to which the homestead has attached. *Ketchin v. McCarley*, 26 S. C. 1, 11 S. E. 1099.

Homestead set apart in 1889 against debt contracted in 1877 cannot be sold under execution against administrator of deceased judgment debtor, although father and mother be dead, and children all adults and living off land. *Sloan v. Hunter*, 65 S. C. 235, 43 S. E. 788.

(5492) § 3. When Sheriff Shall Sell Premises.—Whenever, in the assignment of a homestead, as provided in Section 1 of this Chapter, the appraisers shall find that the premises exceed the value of one thousand (\$1,000) dollars, and that the same cannot be divided without injury to the remainder, they shall make and sign, under oath, an appraisal thereof, and deliver the same to the Sheriff, who shall within ten days thereafter deliver a copy thereof to the head of the family claiming the homestead, or to some member of the family of suitable age to understand the nature thereof, with a notice attached that unless the person so claiming the homestead shall pay to said Sheriff the surplus of the appraised value over and above one thousand (\$1,000) dollars within sixty days thereafter, such premises will be sold; and on failure to pay such surplus in the time limited, the Sheriff shall advertise and sell the said premises, and out of the proceeds of such sale shall pay into the office of the Clerk of the Circuit Court one thousand (\$1,000) dollars, which shall be applied, under the order of the Circuit Judge, upon the application of the head of the family, in the purchase of a homestead of that value. The residue in the hands of the Sheriff, if any, after paying all expenses incident to the appraisement and the sale of the property, shall be applied by him to any executions in his hands, according to law: *Provided, further*, That no sale shall be made unless a greater sum than one thousand (\$1,000) dollars shall be bid therefor: *Provided, further*, That if, after notice, the party claiming the homestead pays, or causes to be paid, the surplus over one thousand (\$1,000) dollars, he shall, upon recording the return and receipt of the Sheriff for such surplus, endorsed on said return, as provided in preceding Section of this Chapter, hold the property so appraised and set off, freed and discharged from all debts and demands then existing against such parties, but, as to such surplus, not from debts thereafter contracted,

like proceedings to the foregoing being in any case allowable for the recovery of all after contracted debts.

Civ. '12, § 3713; Civ. '02, § 2628; G. S. 1996; R. S. 2128; 1880, XVII, 514.

This Section is not unconstitutional. *Simonds v. Haithecock*, 24 S. C. 207; *Ib.*, 26 S. C. 595, 2 S. E. 616. Tender by defendant to the Sheriff of the excess over \$1,000.00 within sixty days after the remittitur of judgment on appeal from hearing of return was filed is within the time required. *Simonds v. Haithecock*, 26 S. C. 595, 2 S. E. 616. Upon confirming such return by the appraisers the Court properly ordered the Sheriff to proceed according to law; an order of sale would have been premature. *Bank v. Evans*, 28 S. C. 521, 6 S. E. 321.

(5493) § 4. Homestead to Widow and Children.—If the husband be dead, the widow and children; if the father and mother be dead, the children living on the homestead, whether any or all such children be minors or not, shall be entitled to have the family homestead exempted in like manner as if the husband or parents were living; and the homestead so exempted shall be subject to partition among the children of the head of the family in like manner as if no debts existed: *Provided*, That no partition or sale in that case shall be made until the youngest child becomes of age, unless, upon proof satisfactory to the Court hearing the case, such sale is deemed best for the interest of such minor or minors.

Civ. '12, § 3714; Civ. '02, § 2629; G. S. 1997; R. S. 2129; 1880, XVII, 515.

Sloan v. Hunter, 65 S. C. 235, 43 S. E. 788. The widow cannot obtain homestead exemption for her sole use apart from the children. *Geiger v. Geiger*, 57 S. C. 521, 35 S. E. 1032; *Ex parte Worley*, 49 S. C. 41, 26 S. E. 949. A person acquiring land under devise from her grandfather has no homestead rights in it by reason of an assignment of homestead made during her father's lifetime while he owned a life estate in the land. *Wilson v. Counts*, 52 S. C. 218, 29 S. E. 649. The family of a debtor who died before the Constitution of 1868 is entitled to the homestead. *In re Kennedy*, 2 S. C. 216; *Ex parte Strobel*, 2 S. C. 309. A widow without children is entitled thereto. *Moore v. Parker*, 13 S. C. 436; *Bradley v. Rodesparger*, 17 S. C. 9. The widow with no children of her own having homestead assigned to her in 1879, the stepchildren, being all adults, and none residing with her, could not enforce partition of the land during her life. *Yoe v. Hanvey*, 25 S. C. 94. Only one homestead can be allowed to children of deceased debtor. *Bank v. Senn*, 25 S. C. 572. A widow's claim of homestead cannot be subordinated to mortgage debt contracted by executors of her husband. *Jeffries v. Allen*, 29 S. C. 501, 7 S. E. 828. Nor barred by receipt of rents and profits of the land. *Ib.* A decree by default against widow and children does not deprive them of homestead before sale. *McMaster v. Arthur*, 33 S. C. 512, 12 S. E. 308. Children of age and living apart from their parents are entitled to share in the exemption. *Ex parte Worley*, 49 S. C. 208, 32 S. E. 307; 49 S. C. 41, 26 S. E. 949. The homestead may be partitioned between the children on the death of the widow. *Stewart v. Blalock*, 45 S. C. 61, 22 S. E. 774.

Where there are no minor children the homestead may be partitioned at once. *Saunders v. Strobel*, 64 S. C. 489, 42 S. E. 429. By accepting dower widow is barred from participation in partition of homestead. *Kennedy v. Kennedy*, 74 S. C. 541, 54 S. E. 773.

Does not apply in case child of testator was dead when will was executed. *Suber v. Nash*, 84 S. C. 12, 65 S. E. 947.

(5494) § 5. No Waiver to Defeat Homestead—Proviso as to Property Alienated or Mortgaged.—No waiver of the right of homestead shall defeat the right before assignment except it be by deed of conveyance or by mortgage, and only as against the mortgage debt; and no judgment creditors or other creditor whose lien does not bind the homestead shall have any right or equity to require that a lien which embraces the homestead and other property shall first exhaust a homestead: *Provided*, That after a homestead in lands has been set off and recorded the same shall not be waived by deed of conveyance, mortgage or otherwise unless the same be executed by both husband and wife if both be living.

Civ. '12, § 3715; Civ. '02, § 2630; G. S. 1998; R. S. 2130; 1880, XVII, 515; 1889, XX, 381; 1896, XXII, 191.

Equitable mortgage. *Farmers Ass'n v. Bunch*, 47 S. C. 453, 25 S. E. 211. Homestead in proceeds of sale of land under contract to sell. *Ex parte Allison*, 45 S. C. 338, 23 S. E. 62. Under Constitution of 1868, junior judgment creditors, but not unsecured creditors, could compel mortgagee to exhaust homestead before resorting to other property. *Bank v. Brice*, 47 S. C. 134, 24 S. E. 1038; *Pearson v. Pearson*, 59 S. C. 367, 37 S. E. 917. Prior to the amendment of 1896, homestead was barred by a devise to pay debts. *Beaty v. Richardson*, 56 S. C. 173, 34 S. E. 73. Devise after homestead is set off. *Bostick v. Chovin*, 55 S. C. 427, 33 S. E. 508. See, also, *Hendrix v. Seaborn*, 25 S. C. 481. Sale under foreclosure of mortgages and judgments. *Bradford v. Buchanan*, 39 S. C. 237, 17 S. E. 501. As to conveyance of homestead by the head of the family before the Constitution of 1895. *Watson v. Neal*, 38 S. C. 90, 16 S. E. 833. Failure to demand homestead not a waiver. *Gray v. Putnam*, 51 S. C. 97, 28 S. E. 149.

(5495) § 6. Homestead in Personal Property.—The personal property of the head of any family residing in this State, whether entitled to a homestead exemption or not, to the extent of five hundred dollars, shall be exempt from attachment, levy or sale; and the personal property, consisting of necessary wearing apparel, and tools and implements of trade, not to exceed the value of three hundred dollars, the property of any person not the head of a family, shall be exempt from attachment, levy or sale. In case the right of such exemption be disputed by the creditors, the officer in whose hands the process is lodged shall cause the same to be ascertained and appraised, subject to the right of either creditor or debtor to except to the same, as provided by law; and all exempted property, so ascertained and appraised, by appraisers appointed and sworn for that purpose, and the return of which has been duly made, filed and recorded, as provided in Sections 1 and 2, shall vest absolutely in the party, freed from all debts of the debtor then existing or thereafter contracted, whether such debtor retain or sell the property.

Civ. '12, § 3716; Civ. '02, § 2631; G. S. 1999; R. S. 2131; 1896, XXII, 192; 1904, XXIV, 412.

A judgment debtor entitled to homestead exemption in money. *Gray v. Putnam*, 51 S. C. 97, 28 S. E. 149. The Legislature could exempt as homestead only such articles of personal property as were enumerated in Article II, § 32, of the Constitution of 1868, before it was amended in 1880. *Duncan v. Barnett*, 11 S. C. 333. Before such amendment in 1880 only such articles of personal property as were named in the Constitution could be assigned as homestead. *Duncan v. Barnett*, 11 S. C. 333. This exemption of personal property, whether the party was entitled to homestead in land or not, was Constitutional before the amendment to the Constitution in 1880. *Oliver v. White*, 18 S. C. 240. Prior to amendment of Constitution in 1880, it did not exempt money from seizure. *Bank v. Northrop*, 19 S. C. 473. Brother living with sister in her house is head of a family and is entitled to chattel exemption. *Moyer v. Drummond*, 32 S. C. 165, 10 S. E. 952. A partner is entitled thereto against his individual creditors out of his interest in partnership assets after the partnership debts are paid. *Id.*; *Regenstein v. Pearlstein*, 32 S. C. 437, 11 S. E. 298. Effect of marriage after levy and before sale: real property. *Rollings v. Evans*, 23 S. C. 316. Personalty. *Pender v. Lancaster*, 14 S. C. 25. But if head of family at the time, he is entitled. *Chafee v. Rainey*, 21 S. C. 11.

Automobile not exempt in hands of one not the head of a family. *Eastern Mfg. Co. v. Thomas*, 82 S. C. 509, 64 S. E. 401.

A simple contract creditor, having suit pending, may except to return of commissioners. *In re Wylie*, 63 S. C. 214, 41 S. E. 320.

(5496) § 7. When a Married Woman Has Homestead.—In case any woman, having a separate estate, shall be married to the head of a family who has not his own sufficient property to constitute a homestead, as hereinafter provided, said married woman shall be entitled to a like exemption, to be ascertained and set off in the same way, and with the same effect, as provided for the head of a family: *Provided*, That there shall not be an allowance of more than one thousand (\$1,000) dollars' worth of real estate, and not more than five hundred (\$500) dollars' worth of personal property, to the husband and wife jointly.

Civ. '12, § 3717; Civ. '02, § 2632; G. S. 2000; R. S. 2132; 1880, XVII, 516.

Land of husband and wife taken together to make up homestead. *McClenaghan v. McEachern*, 47 S. C. 446, 25 S. E. 296.

(5497) § 8. When Property Not Exempt from Levy and Sale.—The exemptions contained in the preceding Sections of this Chapter shall not extend to an attachment, levy or sale in any mesne or final process to secure or enforce the payment either of taxes or of obligations contracted for the purchase of said homestead, or the erection or making of improvements or repairs thereon, or for the purchase of said personal property: *Provided*, The Court or authority issuing said process shall certify thereon that the same is issued for some one or more of said purposes and no

other: *Provided, further*, The yearly products of said homestead shall be subject to attachment, levy and sale to secure or enforce the payment of obligations contracted for provisions or other necessary articles purchased, or advances in money or merchandise procured to be used or expended in the production of the same, or of other obligations contracted in the production of the same, and of none other; but the Court issuing the process therefor shall certify thereon that the same is issued for the said purpose and no other.

Civ. '12, § 3718; Civ. '02, § 2633; G. S. 2001; R. S. 2133; 1896, XXII, 192.

Judge may certify that judgment is for purchase money, although not so stated in the complaint and at a subsequent term of the Court. *Green v. Spann*, 25 S. C. 273; *Burnside v. Watkins*, 30 S. C. 459, 9 S. E. 518; *Willingham v. Willingham*, 55 S. C. 441, 33 S. E. 500. Money lent to purchase land is not purchase money. *Amick v. Amick*, 59 S. C. 70, 37 S. E. 41.

No homestead against city taxes. *Oliver v. White*, 18 S. C. 235. Purchaser at tax sale takes free from claim of homestead. *Shell v. Duncan*, 31 S. C. 548, 10 S. E. 330. No homestead against debt for purchase money. *Calhoun v. Calhoun*, 2 S. C. 283. But there is against a process on bond for the purchase money in part only and for other purposes. *Burnside v. Watkins*, 30 S. C. 459, 9 S. E. 518. A note for money borrowed to pay purchase money is not a contract for the purchase of the homestead. *Calmes v. McCracken*, 8 S. C. 87. Nor is a new bond given and accepted for old bond for purchase money. *Adams v. Agnew*, 15 S. C. 36. No homestead against debt for improvements thereon. *Allen v. Harley*, 3 S. C. 412; *All v. Goodson*, 33 C. C. 229, 11 S. E. 703. Such certificate is necessary as to real estate. *Burnside v. Watkins*, 30 S. C. 459, 9 S. E. 518. But it seems not to be as to personality, though not determined. *Lorenz v. Salley*, 32 S. C. 365, 11 S. E. 206. Certificate of endorsement required only simplifies the proof of the fact; but when the fact appears otherwise it is not necessary to protect Sheriff in selling. *Adams v. Agnew*, 15 S. C. 36; *Oliver v. White*, 18 S. C. 35. Certificate not being endorsed on the process for purchase money, homestead allowed. *Adams v. Agnew*, 15 S. C. 36. Such cannot be endorsed on process for purchase money in part only. *Burnside v. Watkins*, 30 S. C. 459, 9 S. E. 518. But not allowed where such certificate was not endorsed in execution for city taxes. *Oliver v. White*, 18 S. C. 235.

Obligation for purchase money. *McNair v. Moore*, 64 S. C. 82, 41 S. E. 829. Action in equity for appointment of receiver of crops, which owner is disposing of to defraud holder of judgment against him for labor in crops, levying of execution under judgment having been enjoined, may be maintained. *Holladay v. Hodge*, 84 S. C. 109, 65 S. E. 1019. *White v. Barbary*, 103 S. C. 223, 88 S. E. 132.

(5498) § 9. When Court May Order Sale of Homestead to Be Reserved in Money.—Whenever in any cause now or hereafter impending in the Court of Common Pleas in any county of this State the question of the right of any parties to a homestead or other like exemption in and to any property involved in said cause shall be made and adjudicated or otherwise brought to the attention of the Court, it shall be competent for the Court in all cases where the real property in respect to which the homestead is claimed shall be found by said Court to exceed the sum of one thousand dollars, and in all cases where the personal property in respect to which an exemption is claimed shall be found by said Court to exceed the sum of five hundred dollars, in its discretion, either direct a sale of the entire property and to provide for the payment of the amount of the exemption out of the proceeds of sale, or it may, where a division in kind shall appear to said Court to be practicable, direct that the homestead and personal property exempted or either be assigned as otherwise provided in this Chapter. In cases where the property shall be so sold as above and a sum of money shall be taken from the proceeds of sale as the exempted property, the Court shall make such order relative to the investment or other disposition thereof as shall secure the rights of all parties interested.

Civ. '12, § 3719; Civ. '02, § 2634; R. S. 2133a; 1896, XXII, 193.

Nixon Grocery Co. et al v. Spann et al, 108 S. C. 329, 94 S. E. 531.

(5499) § 10. How Homestead Set Off When No Process Lodged—How Confirmed.—Whenever the head of any family, married woman, widow, or children, shall be entitled to an estate or right of homestead as herein-

before provided, and no process has been lodged with any officer against such homestead, the party or parties entitled to such homestead may apply at any time by petition to the Master of said county, or if there be no Master therein, then, and in that event, to the Clerk of the Court for said county, to have the same appraised and set off. The Master, or if there be no Master in said county, the Clerk of the Court shall, thereupon, after giving public notice by advertising the intention of such party or parties to have his or their homesteads set off, once a week for four weeks, in paper published in the county where the land lies, and in case no paper is published in the county, then by posting the notice on the door of his office and in three other public places, for a like length of time, appoint three disinterested persons, resident in the county, who, having been duly sworn, shall proceed to appraise in the manner hereinbefore provided, and set off, by metes and bounds, such homestead, and make return to him. If no complaint shall be made by any creditor, or other person interested, against said appraisal and setting off of the homestead within thirty days after the return of the appraisers, the same shall be confirmed by the Circuit Court at the next ensuing term thereof, and shall be recorded as provided in Section 2 of this Chapter: *Provided*, That no appraisement shall be made or return filed until the notice has expired. But if exceptions to such appraisement and return be filed by any person interested therein, within the said period of thirty days after filing the return of said appraisers, the Circuit Court, upon good cause being shown, may order a reappraisement and assignment of the homestead by other appraisers to be appointed by the Court. Personal property, to the extent and of the kind hereinbefore stated, may be exempted and set off in like manner.

Civ. '12, § 3720; Civ. '02, § 2635; G. S. 2002; R. S. 2134; 1880, XVII, 516.

Childless widow entitled to this remedy. *Moore v. Parker*, 13 S. C. 486. The application must be made to the Master or Clerk of Court; the jurisdiction conferred is exclusive. *Ex parte Lewie*, 17 S. C. 153; *Ex parte Ray*, 20 S. C. 246; *Myers v. Ham*, 20 S. C. 322. And the proceeding cannot be originally instituted in the Court of Common Pleas. *Scruggs v. Foot*, 19 S. C. 274; *Myers v. Ham*, 20 S. C. 522; *Brown v. Williamson*, 37 S. C. 181, 15 S. E. 926. Circuit Court may adjudge the right of homestead in action properly pending when necessary to its determination. *Munro v. Jeter*, 24 S. C. 29; *Swandale v. Swandale*, 25 S. C. 389; *Bridgers v. Howell*, 27 S. C. 425, 3 S. E. 790; *Bank v. Kinard*, 28 S. C. 101, 5 S. E. 464. Exceptions to homestead need not be filed before return of appraisers to Master. *Ex parte Kurz*, 24 S. C. 468. Decree for sale of land may be considered such "process" and justify such application to the Master. *McMaster v. Arthur*, 33 S. C. 512, 12 S. E. 308. It is inconsistent to maintain separate proceedings for homestead and partition at the same time. *Williams v. Mallory*, 33 S. C. 601, 11 S. E. 1068. Circuit Court has not original jurisdiction. *Ex parte Brown*, 37 S. C. 181, 15 S. E. 1019.

Ex parte Miley, 73 S. C. 325, 53 S. E. 535.

(5500) § 11. **Penalty for Violation by Officers.**—No Sheriff, Constable or other officer, whose duty it is to enforce executions, shall proceed in any other manner than is prescribed in this Chapter; and should any officer sell any real estate, or sell or remove any personal property, in violation of the provisions of this Chapter, and of Section 28 of Article III of the Constitution of the State of South Carolina, he shall be guilty of a misdemeanor, and, on conviction thereof, shall, for the first offense, be fined in the sum of not less than five hundred (\$500) dollars, nor more than one thousand (\$1,000) dollars, and, upon conviction for the second offense, his office shall be deemed vacant; and, in either case, he shall be liable in

damages, to the parties injured, for all injuries by reason of his wrongful levy or sale.

Civ. '12, § 3721; Civ. '02, § 2636; G. S. 2003; R. S. 2135; 1880, XVII, 517.

Refusal to execute process unless indemnified by plaintiff in execution. *Corry v. Tate*, 48 S. C. 548, 26 S. E. 794.

Demand for homestead was necessary to create liability for damages prior to this Act. *Oliver v. White*, 18 S. C. 235.

(5501) § 12. **Compensation of Appraisers, Surveyor, Magistrate and Master or Clerk.**—Appraisers appointed to set off the homestead under this Chapter, shall receive as compensation for such service two dollars each day, and five cents a mile for every mile of necessary travel. The surveyor shall receive five dollars (\$5) for all services incidental to setting off the homestead, but exclusive of all necessary disbursements. The Magistrate or other officer who qualifies the appraisers shall receive for such service seventy-five cents, and five cents a mile for every mile of necessary travel. The surveyor shall receive for his services a sum not exceeding ten dollars (\$10). The foregoing fees shall be paid by the officer executing the process out of the property of the debtor, or, in case of the homestead set off to the widow or minor children, out of the estate of the deceased, by the executor or administrator thereof: *Provided*, That the officer, before setting off the homestead and exemption, in any case, shall be entitled to demand and receive from the defendant in execution, in advance, a sum of money sufficient to cover the necessary fees and costs herein allowed. Whenever a homestead is set off as provided in Section 10, the Master or Clerk, as the case may be, shall receive as compensation five dollars for all services, including the record of the proceedings, but excluding the advertising, which shall not exceed five dollars, and which fees and costs shall be paid in advance by the party claiming the homestead and exemption.

Civ. '12, § 3722; Civ. '02, § 2637; G. S. 2004; R. S. 2136; 1880, XVII, 517.

CHAPTER LXXXII.

Assignments for Benefit of Creditors.*

(5502) § 1. **Creditors to Appoint Agents to Act With Assignees.**—Whenever any debtor shall assign his or her property, for the benefit of his or her creditors, it shall be lawful for the said creditors to name and appoint an agent or agents, equal in number to the assignees, to act in their behalf, jointly with the assignee or assignees named and appointed by the assignor.†

Civ. '12, § 3723; Civ. '02, § 2638; G. S. 2005; R. S. 2137; 1828, VI, 365.

*This Chapter must be construed as subordinate to the Bankruptcy law, and in so far as it conflicts, suspended while the Bankruptcy Act continues in force. *Ex parte Chase*, 62 S. C. 353, 38 S. E. 718.

†The assignment vests all estate of the debtor in the assignee upon his acceptance. *Cohen v. Gibbs*, 1 Hill 206; *Wallace v. Foster*, 15 S. C. 214; *Miller v. Sligh*, 10 Rich. Eq. 247; *Bryce v. Foot*, 25 S. C. 467. Subject to unrecorded mortgage. *Grube v. Lillenthal*, 51 S. C. 442, 29 S. E. 230; *Summers v. Brice*, 36 S. E. 204, 15 S. E. 374. Without assent of creditors. *Tennant v. Stoney*, Bail. Eq. 222. But upon failure of acceptance the title remains in assignor. *Brooks v. Brooks*, 12 S. C. 422. It is not revokable at will of assignor. *Beall v. Lowndes*, 4 S. C. 258; *Shubar v. Winding*, Chev. 218. Assignee should sue alone for the assets. *Salas v. Clay*, 12 Rich. 558. He may have creditors, who obtained judgment against assignor after assignment, restrained from enforcing it against the assets. *Howard v. Cannon*, 11 Rich. Eq. 23. Payment by debtor to creditor after notice of the assignment is invalid. *Tibbets v. Weaver*, 5 Strob. 144. Creditor of assignor can-

not discount his debt to assignor with debt due him for money paid as surety after assignment. *Nettles v. Huggins*, 8 Rich. 273. Assignee may prosecute suit begun by debtor before assignment. *Cleverly v. McCollough*, 6 Rich. 517. But assignee cannot warrant real estate he sells. *Weisch v. Davis*, 3 S. C. 110. The provisions of this Act as to administration of the assigned estate do not apply to foreign assignments, and do not render them void. *Russell v. Tunno*, 11 Rich. 303. But assignments executed in other states containing provisions in conflict with those of this Chapter are void. *Sheldon v. Blauvelt*, 29 S. C. 453, 7 S. E. 593, 1 L. R. A. 685; *Ayers v. Desportes*, 56 S. C. 544, 35 S. E. 218. The agents so appointed have joint power and responsibility with the assignee. *Mills v. Dickson*, 6 Rich. 487; *Miller v. Sligh*, 10 Rich. Eq. 247. They are both trustees. *Miller v. Sligh*, 10 Rich. Eq. 247; *McIntyre v. McClenaghan*, 12 S. C. 135; *Ex parte Wiggins*, 1 Hill Ch. 354; *Farrar v. Farley*, 3 S. C. 11. But each is only liable for his own acts, and not for the acts of the others, except where he has contributed to them. *Miller v. Sligh*, 10 Rich. Eq. 247. Neither can buy at his own sales. *Ex parte Wiggins*, 1 Hill Ch. 354; *Farrar v. Farley*, 3 S. C. 11. Effect of release, principal and surety. *Ragsdale v. Bank*, 45 S. C. 575, 23 S. E. 947.

(5503) § 2. Creditors to Be Called Together—Sale Before Appointment of Agents Void.—It shall be the duty of the assignee or assignees, within ten days after the execution of the deed of assignment, to call the creditors together, to proceed to the appointment of their agent or agents; and all sales and transfers of property made by the assignee or assignees prior to the appointment of the agent or agents of the creditors, are hereby declared void and of no effect.

Civ. '12, § 3724; Civ. '02, § 2639; G. S. 2006; R. S. 2138; 1828, VI, 365.

(5504) § 3. Neglect or Refusal of Assignees to Call Creditors Together.—In case the assignee or assignees delay, neglect, or refuse to assemble the creditors within the time herein prescribed and limited, it shall be lawful for the creditors to meet and appoint their agent or agents; and the said agent or agents, on application to and by order of the Judge of the Court of Common Pleas, shall take into their hands and possession all the property assigned, and of which the assignee would by law be entitled to the possession, and shall sell and dispose of the same agreeably to the deed of assignment.

Civ. '12, § 3725; Civ. '02, § 2640; G. S. 2007; R. S. 2139; 1828, VI, 365.

(5505) § 4. Majority of Debts Represented Govern—Assignees and Agents of Creditors to Act Jointly.—In the appointment of the agent or agents, the majority in amount of the debts represented by the creditors present at the meeting shall govern; and the agent or agents so appointed shall have equal power and authority with the assignee or assignees to sell and dispose of the property assigned, and distribute and pay the proceeds, according to the intent and provisions of the deed of assignment; and all sales, hypothecations, or other transfers of property, whether real or personal, shall be void and null, unless made with the consent and concurrence of the assignee or assignees and agent or agents, or a majority of them, and should the assignee or assignees and agent or agents be equally divided on any question, the same shall be decided by an umpire appointed as is hereafter provided.

Civ. '12, § 3726; Civ. '02, § 2641; G. S. 2008; R. S. 2140; 1828, VI, 366.

(5506) § 5. Neglect or Refusal of Creditors to Appoint Agents.—Should the creditors, as aforesaid, refuse or neglect to appoint an agent or agents, in ten days after they have been called together by the assignee or assignees, the assignee or assignees may forthwith proceed to sell or otherwise dispose of the assigned effects, without the concurrence of the said creditors.

Civ. '12, § 3727; Civ. '02, § 2642; G. S. 2009; R. S. 2141; 1828, VI, 366.

(5507) § 6. Proceeds of Sales to Be Deposited.—The proceeds arising from the sales of the property assigned shall be deposited for safe-keeping in a national bank within the State, or some banking institution incorporated by the State, in the joint names of the assignee or assignees and agent or agents, and subject to their joint drafts.

Civ. '12, § 3728; Civ. '02, § 2643; G. S. 2010; R. S. 2142; 1828, VI, 366.

(5508) § 7. Umpire to Be Appointed in Case of Disagreement.—In case of disagreement between the assignee or assignees and agent or agents, any of the Judges of the Courts of Common Pleas, at chambers, shall, on application of either of the parties, decide, and if deemed necessary, name and appoint an umpire to act jointly with the assignee or assignees and agent or agents.

Civ. '12, § 3729; Civ. '02, § 2644; G. S. 2011; R. S. 2143; 1828, VI, 366.

(5509) § 8. Statement of Proceedings to Be Made Every Three Months.—It shall be the duty of the assignee or assignees and agent or agents, to lay, every three months, before the creditors, or such committee as they may appoint, an exact statement of their proceedings; the creditors or their committee may, however, call the assignee or assignees and agent or agents oftener to account; they may also direct and prescribe the time and mode of selling, and the terms of sale, order a distribution of the assets on hand, and a final close of the concern; and, in case of need, may revoke and dismiss their agent or agents, and name and appoint another in his stead; and the said assignee or assignees and agent or agents, failing or neglecting to lay the statement of their proceedings before the creditors or their committee, as herein directed, or whenever called on, to obey or abide by their directions, shall be answerable for all damages resulting from their refusal or neglect, and forfeit the commission they might otherwise be entitled to.

Civ. '12, § 3730; Civ. '02, § 2645; G. S. 2012; R. S. 2144; 1828, VI, 366.

(5510) § 9. Commissions Allowed.—The commission due and owing to the assignee or assignees and agent or agents, for their trouble and labor, shall be five per centum on receiving, and two and a half per centum on paying, to be equally divided between them, that is to say, one-half to the assignee or assignees, and the other half to the agent or agents.

Civ. '12, § 3731; Civ. '02, § 2646; G. S. 2013; R. S. 2145; 1828, VI, 367.

Mann v. Poole, 48 S. C. 154, 26 S. E. 229.

(5511) § 10. Assignments by Insolvent Debtors, Giving Priority or Preference, Void.—Any assignment by an insolvent debtor of his or her property for the benefit of his or her creditors, in which any preference or priority is given to any creditor or creditors, of the said debtor by the terms of the said assignment over any other creditor or creditors, other than as to any debts due to the public, or in which any provision or disposition of the property so assigned is made or directed, other than that the same be distributed among all creditors of the said insolvent debtor equally, in proportion to the amount of their several demands, and with-

out preference or priority of any kind whatsoever, save only as to debts due to the public, and save only as to such creditors as may accept the terms of such assignment and execute a release of their claim against the debtor, and except as hereinafter provided, such assignment shall be absolutely null and void, and of no effect whatsoever.

Civ. '12, § 3732; Civ. '02, § 2647; G. S. 2014; R. S. 2146; 1882, XVII, 847.

Ex parte Berger, 81 S. C. 244, 251, 62 S. E. 249, 22 L. R. A., N. S., 445.

Schedule of assets. Adler c. Cloud, 42 S. C. 272, 20 S. E. 393. Who may attack. Meinhard v. Strickland, 29 S. C. 491, 7 S. E. 838.

A transfer of all one's property on valid consideration held not an assignment for creditors. Lananhan v. Bailey, 53 S. C. 269, 36 S. E. 584; Porter v. Stricker, 44 S. C. 183, 21 S. E. 635. Insolvency and incompetency of trustee is ground of attack. Regenstein v. Pearlstein, 30 S. C. 192, 8 S. E. 859. A *bona fide* assignment made, not for partial, but general benefit of all the creditors, and comprehending all the debtor's property, is not fraudulent. Bush v. Waring, 1 Bay 90. Merely placing certain debts at head of schedule gives no preference. Winslow v. Assignees, 1 McC. Ch. 100. An assignment giving no preference to such creditors as may accept and release is valid. Vaughn v. Evans, 1 Hill Ch. 414; Nivon v. Douglass, 2 Hill Ch. 443; Aiken v. Price, Dud. 59; Pfeifer v. Dargan, 14 S. C. 44; Jaffray v. Steedman, 35 S. C. 33, 14 S. E. 632. But it is void if made upon the condition that all creditors accept and release. Jacob v. Corbett, Chev. Eq. 71; LePrince v. Guillemot, 1 Rich. Eq. 219; Stewart v. Kerrison, 3 S. C. 266; Claflin v. Iseman, 23 S. C. 416; Trumbo v. Hamel, 29 S. C. 520, 8 S. E. 83; Clarke v. Baker, 36 S. C. 420, 15 S. E. 614. But such an assignment is void if it gives any advantage to the assignor to the detriment of creditors. Stewart v. Kerrison, 3 S. C. 266. Partnership may assign the partnership property alone, giving such preference to releasing creditors of the firm. Trumbo v. Hamel, 29 S. C. 520, 8 S. E. 83; Armstrong v. Hurst, 39 S. C. 498, 13 S. E. 150. But where partners assign both their individual and partnership assets, and give the individual creditors preference out of the individual assets, the assignment is void. Blair v. Blair, 31 S. C. 346, 9 S. E. 1033. When no time is fixed for acceptance upon the terms prescribed, creditors may accept at any time before the fund is distributed. Tennant v. Stoney, 1 Rich. Eq. 222; Adler v. Cloud, 42 S. C. 272, 20 S. E. 393; Beall v. Lowndes, 4 S. C. 258; Atlantic Co. v. Law, 46 S. C. 606, 23 S. E. 955. Preference given accepting creditors within limited time. McElwee v. McGill, 57 S. C. 6, 35 S. E. 401; Trumbo v. Hamel, 29 S. C. 520, 8 S. E. 83. But if time is fixed they must do so within the time. Pfeifer v. Dargan, 14 S. C. 44; Jaffray v. Steedman, 35 S. C. 33, 14 S. E. 632. Acceptance in terms is not necessary, unless required; it may be presumed from conduct. Tennant v. Stoney, 1 Rich. Eq. 222. But if required to be in writing, it must be so. Bank v. Walker, 12 Rich. 304; Hewitt v. Darlington Phosphate Co., 43 S. Car. 5, 20 S. E. 804; Burgess v. Westmoreland, 38 S. C. 425, 17 S. E. 56. Acceptance and receipt of share of proceeds bind the creditor, and he cannot afterwards question the validity of the assignment. Pierce, Butler & Co. v. Jones & Sons, 3 S. C. 273; Arnold v. Bailey, 24 S. C. 493. But where assignment requires both an acceptance and release in writing within a given time, the creditor must give both, to be entitled to preference; written acceptance alone not sufficient. Jaffray v. Steedman, 35 S. C. 33, 14 S. E. 632. A complaint to set aside a sale and mortgage as void under this Section must state that they were made to creditors of the assignor. Miller v. Hughes, 33 S. C. 530, 12 S. E. 419.

A mortgage made in good faith to secure notes past due, neither party knowing of the insolvency of mortgagor and no general assignment being made, is valid. Weitz v. Potter, 32 Fed. 888.

(5512) § 11. All Transactions Within Ninety Days of Insolvency Void.

—If any person, being insolvent, within ninety days before the making of any assignment by him or her of his or her property for the benefit of his or her creditors, with a view of giving a preference to any creditor or person having a claim against him or her, or who is under any liability for him or her, procures or suffers any part of his or her property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his or her property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance of any part of his or her property, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person to be insolvent, and that such attachment, sequestration, seizure, payment, pledge, assignment or conveyance is made in fraud of the provisions of this Chapter, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited. Nothing, however, in this Section shall be construed to invalidate any loan of actual

value, or the security therefor, made in good faith, upon a security taken in good faith, on the occasion of the making of such loan, or any security *bona fide* made for advances.

Civ. '12, § 3733; Civ. '02, § 2648; G. S. 2015; R. S. 2147; 1882, XVII, 848.

Constructive assignments giving preferences void. *Putney v. Friesleben*, 32 S. C. 492, 11 S. E. 337; *Meinhard v. Youngblood*, 41 S. C. 312, 19 S. E. 675. Mortgages held not to be. *Lamar v. Pool*, 26 S. C. 441, 2 S. E. 322; *McIntire v. Legon*, 38 S. C. 457, 17 S. E. 253; *Monaghan Bay Co. v. Dickson*, 39 S. C. 146, 17 S. E. 696. Where the reservation is covered by the homestead it does not affect the validity of the assignment. *Haynes v. Hoffman*, 46 S. C. 157, 24 S. E. 103. The term insolvent means not having sufficiency of property to pay debts under legal process. *Akers v. Rowan*, 33 S. C. 451, 12 S. E. 165. The manifest object of this Section is to prevent an insolvent debtor from transferring his property for the benefit of one or more creditors to the exclusion of others, whether by deed of assignment or in any other mode. *Wilks v. Walker*, 22 S. C. 108. It applies to foreign assignments as well as domestic. *Sheldon v. Blauvelt*, 29 S. C. 453, 7 S. E. 593. It only applies to an actual assignment or to what is tantamount to an assignment. *Verner v. McGhee*, 26 S. C. 248, 2 S. E. 113; *Lamar v. Pool*, 26 S. C. 441, 2 S. E. 322; *Archer v. Long*, 32 S. C. 171, 11 S. E. 86; *Putney v. Friesleben*, 32 S. C. 492, 11 S. E. 337. It does not forbid the right of securing one creditor over another. *Magovern v. Richard*, 27 S. C. 272, 3 S. E. 340. So where insolvent debtor transfers all of his property to one or more creditors by mortgage, bill of sale or deed, or in any mode intended to be an assignment for the benefit of such creditors to exclusion of all other creditors, the transaction is void. *Wilks v. Walker*, 22 S. C. 108; *Austin v. Morris*, 23 S. C. 393; *Mann v. Poole*, 40 S. C. 1, 18 S. E. 145; *Meinhard v. Strickland*, 29 S. C. 491, 7 S. E. 837; *Mitchell v. Mitchell*, 42 S. C. 475, 20 S. E. 405; *Archer v. Long*, 32 S. C. 171, 11 S. E. 86; *Putney v. Friesleben*, 32 S. C. 492, 11 S. E. 337. But a mortgage not so intended is not void. *Lamar v. Pool*, 26 S. C. 441, 2 S. E. 322; *Magovern v. Richard*, 27 S. C. 272, 3 S. E. 340; *Archer v. Long*, 32 S. C. 171, 11 S. E. 86. But where one purchased stock of goods of insolvent, *bona fide*, and paid in part with a debt due him by vendor, the transaction is not in violation hereof. *Verner v. McGhee*, 26 S. C. 248, 2 S. E. 113. Assignments are not void because they provide preference for liens and for counsel fees for services rendered for assignment. *Bryce v. Foot*, 25 S. C. 467; *Verner v. Davis*, 26 S. C. 609, 2 S. E. 114; *Akers v. Rowan*, 33 S. C. 351, 12 S. E. 165. But are void when they give preference for legal services not so rendered. *Clarke v. Baker*, 36 S. C. 420, 15 S. E. 614. It matters not whether the preference is fraudulent or not. *Lamar v. Pool*, 26 S. C. 441, 2 S. E. 322; *Magovern v. Richard*, 27 S. C. 272, 3 S. E. 340. And preferences in foreign assignments, there valid, are void here. *Sheldon v. Blauvelt*, 29 S. C. 453, 7 S. E. 593. A mortgage not recorded for nineteen months, and then recorded within two days before assignment, is not made within ninety days before such assignment and not avoided by this Section. *South Carolina Co. v. McPherson*, 26 S. C. 431, 2 S. E. 267. A mortgage of insolvent debtor to secure a creditor, if not accepted with knowledge of the insolvency within ninety days before general assignment, is not void. *Magovern v. Richard*, 27 S. C. 272, 3 S. E. 340. The Section is not restricted to conveyances to creditors alone; but a conveyance to his wife, by an insolvent debtor, as a preference, within ninety days before his assignment, is embraced in this Section, and is void. *Wagner v. Boynton*, 29 S. C. 389, 7 S. E. 481. Mortgage of individual property by copartner. *Durham v. Hemphill*, 45 S. C. 621, 24 S. E. 85. Reservation of property by prior fraudulent conveyance renders assignment void. *Younger v. Massey*, 39 S. Car. 115, 17 S. E. 711. Rights of creditors under assignment. *Rytenberg v. Keels*, 39 S. C. 203, 17 S. E. 441; *McCreery v. Garvin*, 39 S. C. 375, 17 S. E. 828. Where assignment is set aside. *Younger v. Massey*, 41 S. C. 50, 19 S. E. 125.

In order to set aside deed as void under this Section it is necessary to show (1) that grantor was insolvent, (2) that it was intended to give an unlawful preference, and (3) that the grantee had cause to believe the first two facts. *Lenhardt v. Ponder*, 64 S. C. 354, 42 S. E. 169.

Chattel mortgage void, when. *Secrest v. Ins Co.*, 68 S. C. 378, 47 S. E. 680.

(5513) § 12. Creditor May Attack Assignment Before Judgment.—

Whenever any debtor shall assign his or her property for the benefit of his or her creditors, it shall and may be lawful for any creditor or creditors of the said debtor, either by simple contract, specialty, or in any other manner, to institute proceedings against the said debtor, or the assignee named in the said assignment, or both, or any other person properly parties thereto, either to attack and set aside the said deed of assignment, or to enforce the provisions thereof, or for any other purpose whatever, without first obtaining and entering up judgment against the said debtor upon the claim or demand so held by the said creditor or creditors.

Civ. '12, § 3734; Civ. '02, § 2649; G. S. 2016; R. S. 2148; 1882, XVII, 848.

Applied. *Austin v. Morris*, 23 S. C. 393; *Meinhard v. Strickland*, 29 S. C. 491, 7 S. E. 838; *Regenstein v. Pearlstein*, 30 S. C. 192, 8 S. E. 850; *Miller v. Hughes*, 33 S. C. 530, 12 S. E. 419. Releases under mistake. *Whitehill v. Dacus*, 49 S. C. 273, 27 S. E. 200.

Receivership on ground of fraudulent assignment. *Whilden v. Chapman*, 80 S. C. 90, 61 S. E. 249.

TITLE VIII.

CHAPTER LXXXIII.

Of the Prevention of Frauds and Perjuries.*

(5514) § 1. **Parol Leases, Etc., Have Force and Effect of Estates at Will Only—Proviso.**—All estates, interests of freehold, or terms of years, or any uncertain interests of, in, to, or out of any lands, tenements, or hereditaments, made or created by livery and seizin only, or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized, by writing, shall have the force and effect of estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect; any consideration for making any such parol leases or estates, or any former law or usage, to the contrary notwithstanding, except leases not exceeding the term of one year from the time of entry, whereupon the rent reserved to the landlord during such term shall amount unto two-thirds parts, at the least, of the full improved value of the thing demised.†

Civ. '12, § 3735; Civ. '02, § 2650; G. S. 2017; R. S. 2149; 29 C. 2, c. 3; 1712, II, 545.

*Who may object to testimony under this Chapter. *Rapley v. Klugh*, 40 S. C. 134, 18 S. E. 680. Objection, how raised. *Groce v. Jenkins*, 28 S. C. 172, 5 S. E. 352.

†Hillhouse v. Jennings, 60 S. C. 392, 38 S. E. 597; *Davis v. Pollock*, 36 S. C. 544, 15 S. E. 718; *Hellams v. Patton*, 44 S. C. 454, 22 S. E. 608; *Matthews v. Hiff*, 66 S. C. 162, 168, 44 S. E. 577.

A written contract of sale of land may be rescinded and a rent contract substituted therefor. *Moselev v. Witt*, 79 S. C. 141, 60 S. E. 520. Circumstances of signing bond may be shown in explanation thereof. *Crawford v. Owens*, 79 S. C. 59, 60 S. E. 236. Parol testimony is admissible to locate boundaries in deed. *Marion County Lumber Co. v. Tilgham Lumber Co.*, 79 S. C. 54, 60 S. E. 33; *Holden v. Alexander*, 82 S. C. 441, 62 S. E. 1108, 64 S. E. 400. Agency to buy land may be shown by parol. *Kean v. Landrum*, 72 S. C. 556, 52 S. E. 421. Parol evidence inadmissible to show additional consideration. *Dixon v. S. A. L. Ry.*, 83 S. C. 394, 65 S. E. 351; *Cline v. Farmers' Oil Mill*, 83 S. C. 204, 65 S. E. 272. Estoppel of holder equitable title. *Pollock v. Pegues*, 51 S. E. 514, 72 S. C. 47.

(5515) § 2. **No Leases, Estates, Etc., Shall Be Assigned, Granted, Etc., by Parcel.**—No leases, estates, or interests, either of freehold or term of years, or any uncertain interests of, in, to or out of any lands, tenements, or hereditaments, shall at any time be assigned, granted, or surrendered, unless it be by deed or note, in writing signed by the party so assigning, granting or surrendering the same, or his agent thereunto lawfully authorized by writing, or by act and operation of law.

Civ. '12, § 3736; Civ. '02, § 2651; G. S. 2018; R. S. 2150; 1712, II, 545.

Charles v. Byrd, 29 S. C. 544, 8 S. E. 1; *Davis v. Pollock*, 36 S. C. 544, 15 S. E. 718; *Sampson v. Camperdom Cotton Mills*, 64 Fed. 939.

Part performance. *Baker v. Hussey*, 63 S. C. 551, 41 S. E. 753.

Statute of Frauds must be pleaded to give right to object to evidence because obnoxious to the Statute. *Coward v. Boyd*, 79 S. C. 134, 60 S. E. 311.

(5516) § 3. **Promises and Agreements by Parol.**—No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements or hereditaments, or any interest in or

concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some person thereunto by him lawfully authorized.

Civ. '12, § 3737; Civ. '02, § 2652; G. S. 2019; R. S. 2151; 1712, II, 545.

As to contract by executor or administrator. *Tarrell v. Witherspoon*, 3 McC. 486. As to promise to answer for debt of another. *Murrell v. Greenland*, 1 DeS. 832; *Stevens v. Winn*, 3 Brev. 17; *Gunnels v. Stewart*, 3 Brev. 52; *Jones v. Ballard*, 2 Mill 113; *Hughes v. Crayon*, 2 Mill 257; *Ayer v. Hay*, 2 Mill 365; *Pigott v. Sian*, 1 N. & McC. 124; *Aiken v. Duren*, 2 N. & McC. 370; *Caldwell v. McKinn*, 1 N. & McC. 355; *Leland v. Crayon*, 1 McC. 100; *McBride v. Watts*, 1 McC. 384; *Mease v. Wagner*, 1 McC. 395; *Madden v. McCray*, 1 McC. 486; *Atkinson v. Barfield*, 1 McC. 575; *Boyce v. Owens*, 2 McC. 208; *Leat v. Taval*, 3 McC. 158; *Barstine v. Eggart*, 3 McC. 162; *Caston v. Moss*, 1 Bail. 14; *Roche v. Chapin*, 1 Bail. 419; *McMorris v. Herndon*, 2 Bail. 56; *Aiken v. Cheesborough*, 1 Hill 172; *Cohen v. Hard*, 2 Hill 304; *Corbett v. Cochran*, 3 Hill 41; *Tyler v. Givens*, 3 Hill 48; *Corbett v. Cochran*, *Riley* 44; *Tyler v. Givens*, *Riley* 56; *Richardson v. Richardson*, 1 McM. 280; *Pope v. Fort*, 2 McM. 60; *Bronson v. Stroud*, 2 McM. 272; *Simpson v. Nance*, 1 Speer 4; *Strohecker v. Cohen*, 1 Speer 349; *Savage v. Kinloch*, *Speer's Eq.* 464; *Kinloch v. Brown*, 2 Speer 284; *Bird v. Muhlinbrink*, 1 Rich. 199; *Dunlap v. Thorne*, 1 Rich. 213; *Kinloch v. Brown*, 1 Rich. 223; *Thomas v. Croft*, 2 Rich. 113; *Antonio v. Clissy*, 3 Rich. 201; *Durham v. Arledge*, 1 Strob. 5; *Tindal v. Touchberry*, 3 Strob. 177; *Hindman v. Langford*, 3 Strob. 207; *Taylor v. Drake*, 4 Strob. 431; *Hill v. Smith*, 12 Rich. 698; *Griffin v. Rembert*, 2 S. C. 410; *Williams v. Caldwell*, 4 S. C. 100; *Black v. White*, 13 S. C. 37; *Duncan v. Heller*, 13 S. C. 95; *Felder v. Walker*, 24 S. C. 596; *Robertson v. Hunter*, 29 S. C. 9; *S. E. 850*; *Oliver v. Duval*, 32 S. C. 273; *10 S. E. 1070*; *Willoughby v. Crosby*, 51 S. C. 462, 29 S. E. 242; *Speer v. Meschine*, 46 S. C. 505, 24 S. E. 329. Part payment does not take promise to pay debt of another out of the statute. *Milwee v. Jay*, 47 S. C. 430, 25 S. E. 298. As to contract or sale of land. *Denton v. McKenzie*, 1 DeS. 289; *Givens v. Calder*, 2 DeS. 171; *Hutchinson v. Hutchinson*, 4 DeS. 77; *Cosack v. Descoudres*, 1 McC. 425; *Howell v. Howell*, *Harp. Eq.* 158; *Cornwell v. Spence*, *Harp. Eq.* 258; *Smith v. Smith*, 1 Rich. *Eq.* 130; *Schmidt v. Gatewood*, 2 Rich. *Eq.* 162; *Poag v. Sandifer*, 5 Rich. *Eq.* 170; *Cox v. Cox*, 5 Rich. *Eq.* 365; *Johnson v. LaMotte*, 6 Rich. *Eq.* 351; *Church v. Farrow*, 7 Rich. *Eq.* 378; *Lee v. Lee*, 11 Rich. *Eq.* 574; *Hyde v. Cooper*, 13 Rich. *Eq.* 250; *Garrett v. Malone*, 8 Rich. 335; *Davis v. Moore*, 9 Rich. 215; *Tramwell v. Tramwell*, 11 Rich. 471; *Jones v. McMichael*, 12 Rich. 176; *Wetmore v. Rhett*, 12 Rich. 565; *Billings v. Clinton*, 6 S. C. 102; *Hill v. Smith*, 12 Rich. 698; *Lyles v. Kirkpatrick*, 9 S. C. 267; *Coleman v. Chester*, 14 S. C. 286; *Harrison v. Butler*, 14 S. C. 334; *Coney v. Timmons*, 16 S. C. 384; *Mims v. Chandler*, 21 S. C. 492; *Nesbitt v. Cavender*, 27 S. C. 1, 2 S. E. 702; *Boozar v. Teague*, 27 S. C. 348, 3 S. E. 551; *Martin v. Patterson*, 27 S. C. 621, 2 S. E. 859; *Hunter v. Mills*, 29 S. C. 72, 6 S. E. 907; *Charles v. Byrd*, 29 S. C. 544, 8 S. E. 1; *Shuford v. Shingler*, 30 S. C. 612, 8 S. E. 799; *Lamar v. Wright*, 31 S. C. 60, 9 S. E. 736; *Rhode v. Tuten*, 34 S. C. 496, 13 S. E. 676; *Dixon v. Hockady*, 36 S. C. 60, 15 S. E. 342; *Davis v. Pollock*, 36 S. C. 544, 15 S. E. 718; *Coleman v. Curtis*, 36 S. C. 607, 15 S. E. 709, 16 S. E. 770. As to contracts not to be performed within a year. *Gee v. Hicks*, *Rich. Eq. Ca.* 5; *Thompson v. Gordon*, 3 Strob. 196; *Compton v. Martin*, 5 Rich. 14; *Gadsden v. Lance*, *McM. Eq.* 92; *Jones v. McMichael*, 12 Rich. 176; *Carter v. Brown*, 3 S. C. 298; *Walker v. R. R. Co.*, 26 S. C. 80, 1 S. E. 366; *Duckett v. Pool*, 33 S. C. 238, 11 S. E. 68; *Wise v. Wise*, 60 S. C. 426, 38 S. E. 794; *Hillhouse v. Jennings*, 60 S. C. 392, 38 S. E. 597; *Turnipseed v. Sirrine*, 57 S. C. 559, 35 S. E. 757; *Alexander v. McDaniel*, 56 S. C. 252, 34 S. E. 405. As to what shall constitute a sufficient writing of the agreement. *Davis v. Robertson*, 1 Mill 71; *Isaac v. McGrath*, 1 N. & McC. 563; *Douglass v. Spears*, 2 N. & McC. 207; *Meadows v. Meadows*, 3 McC. 458; *Anderson v. Chick*, *Bail. Eq.* 118; *McMorris v. Herndon*, 2 Bail. 56; *Rogers v. Collier*, 2 Bail. 581; *Trustees v. Wiley*, 2 Hill. Ch. 584; *Tyler v. Givens*, 3 Hill 48; *Id.*, *Riley* 56; *Woodward v. Pickett*, *Dudley* 30; *Carter v. Bennett*, *Dud.* 142; *Toomer v. Davidson*, *Chev.* 68; *Secrist v. Twitty*, 1 McM. 255; *Entz v. Mills*, 1 McM. 453; *Hatcher v. Hatcher*, *McM. Eq.* 311; *Draper v. Patina*, 2 Speer 292; *Savage v. Kinloch*, *Speer Eq.* 464; *Christie v. Simpson*, 1 Rich. 407; *Elfe v. Gadsden*, 2 Rich. 373; *Brown v. Brown*, 1 Strob. *Eq.* 363; *Sams v. Fripp*, 10 Rich. *Eq.* 447; *Hyde v. Cooper*, 13 Rich. *Eq.* 250; *Griffin v. Rembert*, 2 S. C. 410; *Mims v. Chandler*, 21 S. C. 492; *Humbert v. Brisbane*, 25 S. C. 506, 1 S. E. 5; *Boozar v. Teague*, 27 S. C. 348, 3 S. E. 551; *Groce v. Jenkins*, 28 S. C. 172, 5 S. E. 352; *Kennedy v. Gramling*, 33 S. C. 367, 11 S. E. 1081; *Wills v. Hammond*, 41 S. C. 153, 19 S. E. 310. Part performance. *Watts v. Witt*, 39 S. C. 356, 17 S. E. 822; *Kennemore v. Kennemore*, 26 S. C. 251, 1 S. E. 881; *Boozar v. Teague*, 27 S. C. 348, 3 S. E. 551.

Promise to pay debt of another, where main purpose of promisor is to serve purpose of his own. *Turner v. Lyles*, 68 S. C. 397, 48 S. E. 301. Promise to pay debt of another upon forbearance to enforce immediately an existing lien. *Ellis & Co. v. Carroll*, 68 S. C. 376, 47 S. E. 679, 102 Am. St. Rep. 679. Agreement not void. *Welborn v. Dixon*, 70 S. C. 108, 49 S. E. 232, 3 Am. & Eng. Ann. Cas. 407. See, also, *McGee v. Cunningham*, 69 S. C. 470, 48 S. E. 473. Agreement as to purchase at judicial sale; chilling bids. *Jarrot v. Kuker*, 78 S. C. 510, 59 S. E. 533.

Tenancy after termination of parole lease. *Matthews v. Hipp*, 66 S. C. 162, 44 S. E. 577.

(5517) § 4. Contracts for Sale of Goods for Fifty Dollars or More—When Valid.—No contract for the sale of any goods, wares and merchandise for the price of fifty dollars or upwards shall be allowed to be good except the buyer shall accept part of the goods so sold and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain

be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

Civ. '12, § 3738; Civ. '02, § 2653; G. S. 2020; R. S. 2152.

Jackson v. Watts, 1 McC. 288; Toomer v. Dawson, Cheves 68; Gadsden v. Lance, McM. Eq. 87; Thompson v. Gordon, 3 Strob. 196; Taylor v. Drake, 4 Strob. 431; Winship v. Buzzard, 9 Rich 103; Wolf v. Sharp, 10 Rich. 60; Barbour v. Disher, 11 Rich. 347; Suber v. Pullin, 1 S. C. 273; Bulwinkle v. Cramer, 27 S. C. 376, 3 S. E. 776; Louisville Co. v. Lorick & Lowrance, 29 S. C. 533, 8 S. E. 8; Melchers v. Springs, 33 S. C. 279, 11 S. E. 788; Woods v. Cramer, 34 S. C. 508, 13 S. E. 660; Smith v. Evans, 36 S. C. 69, 15 S. E. 344; Turnipseed v. Sirrine, 57 S. C. 559, 35 S. E. 758. Barr v. Satcher, 72 S. C. 35, 51 S. E. 530.

(5518) § 5. Parol Gifts.—No parol gift of any chattel shall be valid against subsequent creditors or purchasers or mortgagees, except where the donee shall live separate and apart from the donor, and actual possession shall, at the time of the gift, be delivered to and remain and continue in the donee, his or her executors, administrators, or assigns.

Civ. '12, § 3739; Civ. '02, § 2654; G. S. 2021; R. S. 2153; 1833, VI, 483.

Skell v. McKnight, 1 Bay 64; Johnson v. Dillard, 1 Bay 232; Avannut v. Sweet, 2 Bay 528; Reid v. Colcock, 1 N. & McC. 592; Hatton v. Banks, 1 N. & McC. 221; Blake v. Jones, Bail. Eq. 141; Sprouse v. Littlejohn, 22 S. C. 360; Bennett v. Cook, 28 S. C. 353, 6 S. E. 28.

(5519) § 6. Parol and Unrecorded Reservations in Personal Property by Vendors and Bailors—Exceptions.—Every agreement between the vendor and vendee, bailor or bailee of personal property, whereby the vendor or bailor shall reserve to himself any interest in the same, shall be null and void as to subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice, unless the same be reduced to writing and recorded in the manner now provided by law for the recording of mortgages; but nothing herein contained shall apply to livery stable keepers, inn keepers, or any other persons letting or hiring property for temporary use or for agricultural purposes, or depositing such property for the purpose of repairs or work or labor done thereon, or as a pledge or collateral to a loan.

Civ. '12, § 3740; Civ. '02, § 2655; G. S. 2022; R. S. 2154; 1843, XI, 256; 1882, XVIII, 35; 1894, XXI, 814; 1910, XXVI, 747; 1911, XXVII, 137.

As to vendor and vendee—Before Act of 1843. Dupree v. Harrington, Harp. 391; Reeves v. Harris, 1 Bail. 563; Bennett v. Sims, Rice 422. After Act 1843 and before amendment 1882. Cochran v. Roundtree, 3 Strob. 217; Talmage v. Oliver, 14 S. C. 522; Straul v. Screven, 19 S. C. 445; Herring & Co. v. Cannon, 21 S. C. 212. As to bailor and bailee. Ludden & Bates S. Music House v. Dusenberry, 27 S. C. 464, 4 S. E. 60.

Agreement of conditional sale must be recorded. Armour & Co. v. Ross, 75 S. C. 201, 55 S. E. 315, 78 S. C. 294, 58 S. E. 941, 1135. Purchaser for value and subsequent (lien) creditors defined. Armour & Co. v. Ross, 78 S. C. 294, 58 S. E. 941, 1135. Unrecorded lien cannot effect landlord's lien. Simpson v. McDonald, 79 S. C. 277, 60 S. E. 674.

Where machine situate in Georgia is rented by written contract under verbal agreement not to be moved out of that State, and contract not recorded, law of Georgia not requiring such record, but prohibiting removal from that State, owner is entitled to recover machine from one holding it under deed here, to which State the bailee had removed machine, owner having acted as soon as he learned where machine was. Adams v. Fellers, 88 S. C. 212, 35 L. E. A., N. S., 385n.

Has no reference to simple or unsecured creditors. Herring & Co. v. Cannon, 21 S. C. 212, distinguished from this. Armour & Co. v. Ross, 78 S. C. 294, 58 S. E. 941, 1135.

Complaint alleging that plaintiff placed on railroad certain cross ties and lumber to be inspected and paid for by railroad; that it was inspected and used by such road in construction of its road and depot; and that since defendant had purchased road at judicial sale, and is now in possession and use of said cross ties and lumber, states no cause of action against defendant for purchase price. Gunter v. Seivern, etc., R. Co., 66 S. C. 407, 44 S. E. 958.

An agreement whereby goods are delivered on consignment and accounted for as agent is not void as against general creditors. *In re Bailey*, 176 Fed. 628.

Ruff v. Columbia Ry., Gas & Electric Co., 109 S. C. 312, 96 S. E. 183.

(5520) § 7. Actions on Promises as to Contracts Made During Infancy.—No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification after full age of any promise (except upon contracts

for necessities) made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

Civ. '12, § 3741; Civ. '02, § 2656; G. S. 2023; R. S. 2155; 1878, XVI, 514.

Salinas v. Bennett, 33 S. C. 285, 11 S. E. 968.

A simple acknowledgment after coming of age is not sufficient. *Steele v. Poe*, 79 S. C. 407, 60 S. E. 951, cited in *Exchange Bank v. McMillan*, 76 S. C. 561, 57 S. E. 630.

Minor engaged in business in foreign State and executing mortgage there on land in this State, may disaffirm contract here in foreclosure of mortgage. *Exchange Bank v. McMillan*, 76 S. C. 561, 57 S. E. 630.

(5521) § 8. Action on Representations as to Character, Etc.—No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any person, to the intent or purpose that such other person may obtain credit, money, or goods thereon, unless such representation or assurance be made in writing, signed by the party to be charged therewith, or by some person thereunto by him legally authorized.

Civ. '12, § 3742; Civ. '02, § 2657; G. S. 2024; R. S. 2156.

New Home Sewing Machine Co. v. Wray, 23 S. C. 86, 5 S. E. 603.

TITLE IX.

OF THE DOMESTIC RELATIONS.

CHAPTER LXXXIV. Husband and Wife, 1681.

CHAPTER LXXXV. Guardians and Wards; of Minors, 1689.

CHAPTER LXXXVI. Change of Names, 1696.

CHAPTER LXXXVII. Masters, Apprentices and Laborers, 1698.

CHAPTER LXXXIV.

Husband and Wife.

ARTICLE 1. Marriage, 1681.

ARTICLE 2. Certain Rights and Liabilities of Husband and Wife, 1685.

ARTICLE I.

Marriage.

(5522) § 1. Who May Contract Matrimony.—All persons, except idiots and lunatics, not prohibited by this Section, may lawfully contract matrimony. No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister or mother's sister.

No woman shall marry her father, grandfather, son, grandson, stepfather, brother, grandmother's husband, daughter's husband, granddaughter's hus-

band, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother or mother's brother.

Civ. '12, § 3743; Civ. '02, § 2658; G. S. 2026; R. S. 2157; 32 H. 8, c. 38; 1712, II, 476.

The promise of future marriage between parties living in concubinage does not make marriage, although that intercourse continue. *North v. Valk*, Dud. Eq. 212. Nor will any engagements to marry in the future. *Fryer v. Fryer*, Rich. Eq. Ca. 85. Marriage is a civil contract, whereby the parties take each other in *presenti* for man and wife. *Fryer v. Fryer*, Rich. Eq. Ca. 85. Without any particular formality. *Stringfellow v. Scott*, Rich. Eq. Ca. 109; *Bowers v. Bowers*, 10 Rich. Eq. 551; *James v. Mickey*, 25 S. C. 270. But proof that two persons lived together as man and wife is conclusive of their marriage, if not rebutted. *Allen v. Hall*, 2 N. & McC. 114; *State v. Hilton*, 3 Rich. 434. But where party has contracted a valid marriage and then marries a second time, his cohabitation and acknowledgment of the marriage relation between him and the second wife is not evidence of the validity of the second marriage. *State v. Whaley*, 10 S. C. 500. Person *non compos mentis* cannot contract marriage. *Foster v. Means*, Speer Eq. 569. Insanity from *delirium tremens* will avoid a contract of marriage. *Clement v. Mattison*, 3 Rich. 93. Separation; power of Court as to. *Rhame v. Rhame*, 1 McC. Eq. 197; *Converse v. Converse*, 9 Rich. Eq. 535. Domicile of husband is that of the family, and it is the duty of the wife to follow him. *Hair v. Hair*, 10 Rich. Eq. 163; *Wise v. Wise*, 60 S. C. 426, 38 S. E. 794.
Hallums v. Hallums, 74 S. C. 407, 54 S. E. 613.
State v. Smith, 101 S. C. 293, 85 S. E. 958.

(5523) § 2. License Required for Matrimony.—It shall be unlawful for any persons to contract matrimony within this State without first procuring a license as is hereinafter provided; and it shall likewise be unlawful for any one, whosoever, to perform the marriage ceremony for any such persons without said persons first delivering to the party performing said marriage ceremony a license as is hereinafter provided duly authorizing said person to contract matrimony. Any officer or person performing the marriage ceremony without the production of such license shall, on conviction thereof, be punished by a fine of not more than one hundred (\$100) dollars nor less than twenty-five (\$25) dollars, or imprisonment not more than thirty days nor less than ten.

Civ. '12, § 3744; 1911, XXVII, 131.

(5524) § 3. Probate Judge to Issue License—Fee—Qualifications—Issuance by Clerk of Court.—For the purpose of carrying out the foregoing provision the Judge of Probate shall issue a license for the marriage of any persons upon the payment of a fee of one (\$1.00) dollar therefor, and a statement, under oath or affirmation, to the effect that the persons seeking the contract of matrimony are legally capacitated to marry, together with the full names of the persons, their ages and places of residence. Of the fee of one (\$1.00) dollar the Probate Judge shall retain twenty-five (25) cents as his compensation; and the remaining seventy-five (75) cents shall be paid into the County Treasury and go to the school fund of said county: *Provided*, That in the Counties of Abbeville, Cherokee, Greenville, Jasper, Edgefield, Lancaster, Lee, Marlboro, Orangeburg, Williamsburg, and York the Probate Judge shall retain the sum of fifty (50) cents as his compensation: *Provided, further*, In the Counties of Aiken, Allendale, Barnwell, Chester, Chesterfield, Clarendon, Dorchester, Fairfield, Florence, Greenwood, Hampton, Laurens, Marion, McCormick and Union the Probate Judge shall retain the entire fee as his compensation: *And provided, further*, That in the Counties of Colleton, Darlington, Georgetown, Horry, Oconee and Sumter the said license shall be issued by the Clerk of the Court: *And provided, further*, That no such license shall be issued when the woman or child-woman is under the age of fourteen, or when the man or male is under the age of eighteen: *And provided, further*, That when either party to the proposed marriage shall

be under eighteen years of age, and shall reside with father or mother or other relative or guardian, the Probate Judge shall not issue a license for the said marriage until the consent of such relative or guardian, in writing, shall first be delivered to him.

Civ. '12, § 3745; 1911, XXVII, 131; 1912, XXVII, 613; 1913, XXVIII, 76; 1915, XXIX, 216, 220; 1916, XXIX, 751; 1917, XXX, 113, 127, 129; 1918, XXX, 698; 1919, XXXI, 67, 112, 211, 245; 1920, XXXI, 736, 738, 1065; 1921, XXXII, 107, 152.

State v. Rogers, 112 S. C. 466, 100 S. E. 143.

(5525) § 4. Form of License — Certificate. — Upon the back of each license so issued there shall be a blank to be filled out by the party performing the marriage ceremony, and shall be signed by both contracting parties, and the form of the license and certificate shall be as follows:

MARRIAGE LICENSE.

State of South Carolina,

County of.....

Whereas, It has been made to appear to me, ..., Judge of Probate of for County, upon oath, that of and of are legally capacitated to contract matrimony, and that their ages are, respectively, ... years and months, and years and months, and that their race is, and their nationality is These are, therefore, to authorize any person qualified to perform the marriage ceremony for the persons above named, and for the so doing this shall be sufficient warrant.

Given under my hand and seal this day of, A. D.....

.....
Judge of Probate for County.

CERTIFICATE.—This is to certify that I, ..., did this day perform the marriage ceremony for the within named persons at, S. C., ... day of, A. D.....

Civ. '12, § 3746; 1911, XXVII, 131.

(5526) § 5. Probate Judge to Keep Record.—It shall be the duty of the party performing the marriage ceremony to take the marriage license and fill out certificate of marriage and within fifteen days, turn the same over to the Judge of Probate who issued it, and it shall be the duty of the Judge of Probate to record and index same in a book kept for that purpose; and it shall be the duty of the Judge of Probate to issue a certified copy of said license and certificate to any person upon such person paying him the sum of twenty-five cents as a fee therefor.

Civ. '12, § 3747; 1911, XXVII, 131.

State v. Rogers, 112 S. C. 466, 100 S. E. 143.

(5527) § 6. Fines.—All fines imposed and recovered for any violation of this Article shall be paid to the County Treasurer and credited by him to the school fund of the county in which the violation occurs.

Civ. '12, § 3748; 1911, XXVII, 131.

(5528) § 7. Marriage Without License. — Nothing herein contained shall render any marriage illegal without the issuance of a license.

Civ. '12, § 3749; 1911, XXVII, 131.

(5529) § 8. **Certificate of Marriage Sufficient Evidence in Courts.**—The production of such certificate or a copy thereof with the blank on the back thereof properly filled out and signed by the person performing such ceremony, and certified by the Clerk of Court or Judge of Probate, is issued by that officer, shall be received as sufficient evidence in proof of the contract of marriage between the parties therein named in any of the Courts of this State: *Provided*, That nothing in this Article shall prevent proof of marriage in any way now allowed by law in this State.

Civ. '12, § 3750; 1911, XXVII, 131.

State v. Rogers, 112 S. C. 466, 100 S. E. 143.

(5530) § 9. **Who May Perform Marriage Ceremony.**—Only ministers of the gospel or accepted Jewish rabbis and officers authorized to administer oaths in this State are authorized to administer a marriage ceremony in this State.

Civ. '12, § 3751; 1911, XXVII, 131.

(5531) § 10. **Validity of Marriage, if Denied—How Affirmed.**—When the validity of a marriage shall be denied or doubted by either of the parties, the other may institute a suit for affirming the marriage; and, upon due proof of the validity thereof, it shall be decreed to be valid; and such decree shall be conclusive upon all persons concerned.

Civ. '12, § 3752; Civ. '02, § 2659; G. S. 2027; R. S. 2158; 1872, XV, 30.

State v. Smith, 101 S. C. 293, 85 S. E. 958.

(5532) § 11. **Validity of Marriage—How Determined and Declared.**—The Court of Common Pleas shall have authority to hear and determine any issue affecting the validity of contracts of marriage, and to declare said contracts void for want of consent of either of the contracting parties, or for any other cause going to show that, at the time the said supposed contract was made, it was not a contract: *Provided*, That such contract has not been consummated by the cohabitation of the parties thereto.

Civ. '12, § 3753; Civ. '02, § 2660; G. S. 2028; R. S. 2159; 1882, XVII, 681.

Cases before Act. Mattison v. Mattison, 1 Strobb. Eq. 387; Duke v. Fulmer, 5 Rich. Eq. 121; Bowers v. Bowers, 10 Rich. Eq. 551.

State v. Smith, 101 S. C. 293, 85 S. E. 958.

(5533) § 12. **Bigamous Marriages Void—Proviso.**—All marriages contracted while either of the parties has a former wife or husband living shall be void: *Provided*, That this Section shall not extend to a person whose husband or wife shall be absent for the space of seven years, the one not knowing the other to be living during that time; nor to any person who shall be divorced, or whose first marriage shall be declared void by the sentence of a competent Court.

Civ. '12, § 3754; Civ. '02, § 2661; G. S. 2029; R. S. 2160; 1 J. I, c. 11; 1712, II, 203.

As to the effect of husband being *civiliter mortuus* on property rights. Wright v. Wright, 2 DeSaus. 242. A husband being more than seven years absent, and reported to be dead or not heard from, the wife may marry again. Woods v. Woods, 2 Bay 476; Boyce v. Owens, 1 Hill 8. The first wife will be presumed to be alive until seven years after the time she was last heard of, unless shown to have died in the meantime. Proctor v. McCall, 2 Bail. 298. The presumption arising from seven years' absence under this Section is of the fact of death only, and not as to the time thereof; but where the presumption is based upon the common law period of twenty years, it is that the death occurred at the commencement of that period. Chapman v. Cooper, 5 Rich. 452. And where a wife marries within the seven years, the presumption of her innocence, with circumstances, may outweigh the presumption of the husband's living. *Ib.* Where a husband married the second time, about six years after his absent wife was last known to be alive but when he had received information by letter that she was dead, his marriage was held valid; she not having been heard of for forty years. Canady v. George, 6 Rich. Eq. 103. But it seems that this presumption must be confined in its effect to exemption from charges of bigamy or other crime and intentional violations of the marriage vows. If the absent consort return or be proved otherwise to be living at the time of the second marriage, the second marriage is void and the issue spurious. Duke v. Palmer, Rich. Eq. 121.

(5534) § 13. Rights and Privileges Conferred on Certain Marriages.

—All persons in this State who, previous to their actual emancipation, had undertaken and agreed to occupy the relation to each other of husband and wife and are cohabiting as such, or in any way recognizing the relation as still existing at the time of the passage of this Chapter, whether the rites of marriage have been celebrated or not, shall be deemed husband and wife, and be entitled to all the rights and privileges, and be subject to all the duties and obligations of that relation, in like manner as if they had been duly married according to law.

Civ. '12, § 3755; Civ. '02, § 2662; G. S. 2030; R. S. 2161; 1872, XV, 183.

United States v. Brown, 40 Fed. 457.
Robertson v. McCauley, 61 S. C. 411, 39 S. E. 570; Davenport v. Caldwell, 10 S. C. 317; State v. Whaley, 10 S. C. 500; Myers v. Ham, 20 S. C. 522; James v. Mickey, 26 S. C. 270, 2 S. E. 130. This Section applies equally to marriage of a free person of color with a slave, as where both parties were slaves. Dingle v. Mitchell, 20 S. C. 502. Only intended to legalize such marriages as were morally good. Clement v. Riley, 33 S. C. 66, 11 S. E. 699. Does not legalize a marriage of a free negro man with a slave where he afterwards, before emancipation, married a free woman of color. Callahan v. Callahan, 36 S. C. 454, 15 S. E. 727.

Marriage of colored persons in 1868 governed by general law, applicable to white persons. Ex parte Romans, 78 S. C. 210, 58 S. E. 614.

(5535) § 14. Certain Children Legitimized.—The children of such marriages shall be deemed legitimate; and when the parties shall have ceased to cohabit, in consequence of the death of the woman or from other causes, all of the children of the woman, recognized by the man to be his, shall be deemed legitimate: *Provided, however,* That no provisions of Sections 13 and 14 shall be deemed to extend to persons who have agreed to live in concubinage after their emancipation.

Civ. '12, § 3756; Civ. '02, § 2663; G. S. 2031; R. S. 2162; 1872, XV, 183.

Davenport v. Caldwell, 10 S. C. 317; Dingle v. Mitchell, 20 S. C. 202; Myers v. Ham, 20 S. C. 522; Davis v. Milford, 85 S. C. 504, 67 S. E. 744. Only intended to legitimize issue of marriages morally good. Clement v. Riley, 33 S. C. 66, 11 S. E. 699. And to make the issue, when there has been a separation, the legitimate heirs of the mother. *Ib.* When a free man of color marries a slave, and then, before emancipation, marries a free woman of color, at his death both wives surviving, the children of both wives are his legal heirs. Callahan v. Callahan, 36 S. C. 454, 15 S. E. 727.

Robertson v. McCauley, 61 S. C. 419, 39 S. E. 570; Knox v. Moore, 41 S. C. 355, 19 S. E. 683; Watson v. Eleerbe, 77 S. C. 232, 57 S. E. 855.

The Act of 1865 did not legitimize children of a colored woman by white father. Loyd v. Rawl, 63 S. C. 219, 41 S. E. 312.

(5536) § 15. Inter-marriage of Races Prohibited.—It shall be unlawful for any white man to intermarry with any woman of either the Indian or negro races, or any mulatto, mestizo, or half-breed, or for any white woman to intermarry with any person other than a white man, or for any mulatto, half-breed, negro, Indian or mestizo to intermarry with a white woman; and any such marriage, or attempted marriage, shall be utterly null and void and of none effect.

Civ. '12, § 3757; Civ. '02, § 2664; G. S. 2032; R. S. 2163; 1879, XVII, 3.

State v. Paulk, 18 S. C. 514; Flood v. News & Courier, 71 S. C. 112, 50 S. E. 637, 4 Am. & Eng. Ann. Cas. 685.

Colored child, born after emancipation, of free colored woman, married to white man before Act of 1879, prohibiting intermarriage of races, can take property under will as child. Kennington v. Catoe, 68 S. C. 470, 475, 47 S. E. 719.

ARTICLE II.

Certain Rights and Liabilities of Husband and Wife.

(5537) § 1. Married Women May Hold Property Separate from Their Husbands.—The real and personal property of a married woman, whether held by her at the time of her marriage or accrued to her thereafter, either

by gift, grant, inheritance, devise, purchase or otherwise, shall not be subject to levy and sale for her husband's debts, but shall be her separate property.

Civ. '12, § 3758; Civ. '02, § 2665; G. S. 2035; R. S. 2164; 1870, XIV, 325.

As to tenancy by entirety. *Bomar v. Mullins*, 4 Rich. Eq. 80; *McLeod v. Tarrant*, 39 S. C. 271, 17 S. E. 773, 20 L. R. A. 846; *G. C. & N. Ry. Co. v. Scott*, 38 S. C. 34, 16 S. E. 185, 839.

Under this Section, and Const. Art. XVII, § 9, a married woman may maintain an action for damages for an unauthorized levy on her property to satisfy her husband's debt. *Holtzelaw v. Gassaway*, 52 S. C. 551, 30 S. E. 399. Before the Constitution of 1868 a wife could exercise no powers over property settled to her use except those conferred by the instrument creating the trust. *Reid v. Lamar*, 1 Strob. Eq. 27; *Creighton v. Clifford*, 6 S. C. 188; *Witsell v. Charleston*, 7 S. C. 88; *Oliver v. Grimbail*, 14 S. C. 556. This Section not retrospective, and the vested rights of the husband in lands of wife before the Constitution of 1868 not affected thereby. *Bouknight v. Epting*, 11 S. C. 71; *Shuler v. Bull*, 15 S. C. 421. Nor are vested rights of creditors affected thereby. *Clawson v. Hutchinson*, 11 S. C. 323. Such Constitution did not make a settlement upon the wife of her lands acquired before. *Ib.* But her interest in the land acquired before it is her separate property. *Kincaid v. Anderson*, 33 S. C. 260, 11 S. E. 766. So in personality not reduced to possession. *Trustees v. Bryson*, 34 S. C. 401, 13 S. E. 619. Such construction would make it violative of the Constitution of the United States. *Ib.* But in construing the acts of a married woman as to her separate estate prior thereto, the Constitution of 1868 may be looked to as showing the policy of the State as to control of married women over their separate estates. *Oliver v. Grimbail*, 14 S. C. 556. The Constitution of 1868 only intended to protect the property of a married woman and not to confer new powers upon her by a change of her legal status. *Peizer v. Campbell*, 15 S. C. 581; *Townsend v. Brown*, 16 S. C. 92; *Aultman v. Rush*, 26 S. C. 517, 2 S. E. 402; *Bridgers v. Howell*, 27 S. C. 425, 3 S. E. 790; *Gwynn v. Gwynn*, 27 S. C. 525, 4 S. E. 229. It did not empower her to mortgage her separate estate. *Aultman v. Rush*, 26 S. C. 517, 2 S. E. 402. It gave her no general power to contract. *Gwynn v. Gwynn*, 27 S. C. 525, 4 S. E. 229. Since the Constitution of 1868 a married woman may acquire separate property by gift from her husband. *State v. Pitts*, 12 S. C. 180; *Gerald v. Gerald*, 28 S. C. 442, 6 S. E. 290; *Grantham v. Grantham*, 34 S. C. 504, 13 S. E. 675. But mere use and enjoyment of personal property purchased by her husband does not create her separate estate therein. *Ib.* A bequest to a daughter by a father in 1861, to be free from debts and control of husband, could be properly paid to the daughter herself after the Constitution of 1868. *Witte v. Clarke*, 17 S. C. 313. What is her separate property. *DeLoach v. Sarrait*, 55 S. C. 254, 32 S. E. 2. *Kennington v. Catoe*, 68 S. C. 470, 47 S. E. 719.

(5538) § 2. **Earnings of Married Women.**—All the earnings and income of a married woman shall be her own separate estate, and shall be governed by the same provisions of law as apply to her other separate estate.

Civ. '12, § 3759; Civ. '02, § 2666; R. S. 2165; 1887, XIX, 819.

Prior to this Act, see *Boozar v. Addison*, 2 Rich. Eq. 273, 46 Am. Dec. 43; *Bridgers v. Howell*, 27 S. C. 425, 3 S. E. 790; *Grantham v. Grantham*, 34 S. C. 504, 13 S. E. 675; *Hairston v. Hairston*, 35 S. C. 298, 14 S. E. 634.

(5539) § 3. **Right of Married Women to Convey, Bequeath and Devise Property—Descent.**—A married woman shall have power to bequeath, devise, or convey her separate property in the same manner and to the same extent as if she were unmarried; and, dying intestate, her property shall descend in the same manner as the law provides for the descent of the property of husbands; and all deeds, mortgages and legal instruments of whatever kind shall be executed by her in the same manner, and have the same legal force and effect as if she were unmarried.

Civ. '12, § 3760; Civ. '02, § 2667; G. S. 2036; R. S. 2166; 1870, XIV, 325.

Green v. Cannady, 77 S. C. 193, 57 S. E. 832.

This power is absolute. *Phillips v. Oswald*, 42 S. C. 71, 20 S. E. 18; *Carroll v. Thomas*, 54 S. C. 520, 32 S. E. 497. Assignment of mortgage. *Langston v. Smyley*, 38 S. C. 121, 16 S. E. 771. Married woman has power to alienate her equitable estate in stock held in trust simply for her at adoption of the Constitution of 1868. *Witsell v. Charleston*, 7 S. C. 83. But has no such power where the trustee has contrary power. *Rabb v. Flenniken*, 29 S. C. 278, 7 S. E. 597. As to her separate property, there may be dealings between the wife and her husband, as if she were discoverer. *McLure v. Lancaster*, 24 S. C. 273. A gift from her to her husband may be inferred. *Ibid.* This Section does not confer the power to make such legal instruments, but only declares the mode of their execution in pursuance of power elsewhere given. *Aultman v. Rush*, 26 S. C. 517, 2 S. E. 402. And giving a lien by mortgage is neither a bequest, a devise nor an alienation. *Ib.* This power to sell is not limited to "a sale, pure and simple, for valuable consideration," benefiting her separate estate; but allows disposition by gift or otherwise. *Booker v. Wingo*, 29 S. C. 116, 7 S. E. 49.

(5540) § 4. **Powers of Married Women as to Property and Contracts—Liability of Husband.**—A married woman shall have the right to purchase any species of property in her own name, and to take proper legal conveyances therefor, and to bind herself by contract, in the same manner

and to the same extent as though she were unmarried, which contracts shall be legal and obligatory, and may be enforced at law or in equity by or against such married woman in her own name, apart from her husband: *Provided*, That the husband shall not be liable for the debts of the wife contracted prior to or after their marriage, except for necessary support and that of their minor children residing with her.

Civ. '12, § 3761; Civ. '02, § 2668; G. S. 2087; R. S. 2167; 1897, XX, 1121; Const. 1895, Art. XVII, § 9.

The provision relieving the husband of his common law liability for debts of his wife was held not retrospective in *Clawson v. Hutchinson*, 11 S. C. 323. Judgment on such liability must be recovered during the continuance of coverture. *Buckner v. Smyth*, 4 DeSauss. 37; *Wilson v. DuBoe*, 1 Bail. Eq. 166; *Terry v. Hopkins*, 1 Hill Eq. 43. Action against husband for supplies furnished wife and children. *Hantz v. Marjehoff*, 42 S. C. 427, 20 S. E. 278. Liability where separated through husband's fault. *Clement v. Mattison*, 3 Rich. L. 93. Where separated through fault of wife. *Williams v. Prince*, 3 Strob. 490.

Decisions on contracts prior to the Constitution of 1895. The wife could not be bound as copartner with husband on contract not relating to her separate estate. *Collins v. Hall*, 55 S. C. 336, 33 S. E. 466; *Gwynn v. Gwynn*, 27 S. C. 525, 4 S. E. 229; *Vannerson v. Cheatham*, 41 S. C. 329, 19 S. E. 614. The Act of 1887 refers only to declaration of intent to bind separate estate in conveyances, mortgages and like formal instruments. *Martin v. Suber*, 39 S. C. 525, 18 S. E. 125; *Collins v. Hall*, 55 S. C. 336, 33 S. E. 466; *Singluff v. Tindal*, 40 S. C. 504, 19 S. E. 137. Effect of absence of declaration of intent. *Rigby v. Logan*, 45 S. C. 651, 24 S. E. 56. It does not apply to absolute conveyances. *Carroll v. Thomas*, 54 S. C. 520, 32 S. E. 497. The burden of proof was upon the party attempting to show contract was one within the power of a married woman. *Collins v. Hall*, 55 S. C. 336, 33 S. E. 466; *Christensen v. Wells*, 52 S. C. 499, 30 S. E. 611; *Earley v. Law*, 42 S. C. 330, 20 S. E. 136; *Mortgage Co. v. Mixon*, 38 S. C. 432, 17 S. E. 244; *Simon v. Sabb*, 56 S. C. 38, 33 S. E. 799; *Pelzer v. Durham*, 37 S. E. 354, 16 S. E. 46; *Reid v. Stevens*, 38 S. C. 519, 17 S. E. 358; *Bailey v. Seymour*, 42 S. C. 322, 20 S. E. 62; *Kuker v. Carter*, 42 S. C. 84, 20 S. E. 22. She might borrow money and purchase or pay claims against her husband. *Ellis v. Cribb*, 55 S. C. 328, 33 S. E. 484; *Philpot v. Cantey*, 52 S. C. 515, 30 S. E. 595. Moral obligation to pay for goods accepted and used by her was a sufficient consideration for a note. *Ferguson v. Harris*, 39 S. C. 323, 17 S. E. 782. While a married woman had absolute power to convey, where she gave a power of sale in a mortgage as security, the power fell with mortgage. *Dunbar v. Foreman*, 40 S. C. 490, 19 S. E. 136.

This Section, so far as it purports to enlarge the powers of a married woman, beyond the terms of the Constitution of 1868 on that subject, is within the plenary power of the Legislature and not unconstitutional. *Pelzer v. Campbell*, 15 S. C. 581. While it gives the power to purchase, it does not give the power to execute a mortgage to secure the purchase for her husband. *Aultman v. Gibert*, 28 S. C. 303, 5 S. E. 806. Or secure his debt by mortgage of her separate property. *Connor v. Edwards*, 36 S. C. 563, 15 S. E. 706.

Married woman may bind herself by contract. *Ross v. Linder*, 12 S. C. 592. Prior to this Act of 1882, amending Act of 1870, the wife could become surety for her husband. *Wittell v. Charles-ton*, 7 S. E. 88; *Clinkscales v. Hall*, 15 S. C. 602; *Witte v. Wolf*, 16 S. C. 256; *Witte v. Clark*, 17 S. C. 313. And become surety for the firm of which her son was a member. *Pelzer v. Campbell*, 15 S. C. 581. Or for her son. *Witte v. Wolf*, 16 S. C. 256. And she could mortgage lands conveyed before or after the Act of 1870, to her sole and separate use. *Witte v. Wolf*, 16 S. C. 256; *Gleaton v. Gibson*, 29 S. C. 514, 7 S. E. 833; *Chambers v. Bookman*, 32 S. C. 455, 11 S. E. 349. She could bind herself by acceptance of a draft. *Long v. Schmidt*, 18 S. C. 604. A judgment confessed by a married woman in 1867, having been renewed in 1876 and 1883, is valid. *Crenshaw v. Julian*, 26 S. C. 283, 2 S. E. 133. Subsequently to the Act of 1882, and prior to the Act of 1887, a married woman could only make such contracts as actually relate to her separate property, and cannot otherwise bind herself. *Habenicht v. Rawls*, 24 S. C. 461; *Aultman v. Rush*, 26 S. C. 517, 2 S. E. 402; *Brown v. Thomson*, 27 S. C. 500, 4 S. E. 345; *Gwynn v. Gwynn*, 27 S. C. 525, 4 S. E. 229; *Brown v. Prevost*, 28 S. C. 123, 5 S. E. 274; *Aultman v. Gibert*, 28 S. C. 303, 5 S. E. 806; *Booker v. Wingo*, 39 S. C. 116, 7 S. E. 49; *Livingston v. Shingler*, 30 S. C. 159, 9 S. E. 842; *Taylor v. Barker*, 30 S. C. 238, 9 S. E. 115; *McCord v. Blackwell*, 31 S. C. 125, 9 S. E. 777; *Erwin v. Lowry*, 31 S. C. 330, 9 S. E. 961; *Harris v. McCaslan*, 31 S. C. 420, 10 S. E. 104; *Gwynn v. Gwynn*, 31 S. C. 482, 10 S. E. 221; *Salinas v. Turner*, 33 S. C. 231, 11 S. E. 702; *Griffin v. Earle*, 34 S. C. 246, 13 S. E. 473. But she is still liable on contract made for benefit of her separate estate, and can subject such estate to liability for its performance. *Brown v. Thomson*, 27 S. C. 500, 4 S. E. 345; *Dial v. Agnew*, 28 S. C. 454, 6 S. E. 295; *Fant v. Brown*, 29 S. C. 598, 6 S. E. 937; *Tribble v. Poore*, 30 S. C. 97, 8 S. E. 541; *McCord v. Blackwell*, 31 S. C. 125, 9 S. E. 777; *Kincaid v. Anderson*, 33 S. C. 260, 11 S. E. 766; *Brice v. Miller*, 35 S. C. 537, 15 S. E. 272; *Neal v. Blackley*, 36 S. C. 468, 15 S. E. 733. Although made through her husband or other agent. *Greig v. Smith*, 28 S. C. 426, 7 S. E. 610; *Brown v. Thomson*, 31 S. C. 436, 10 S. E. 95; *Scottish Co. v. Deas*, 35 S. C. 42, 14 S. E. 486. A mere declaration of intention to bind her separate estate was not sufficient. *Hibernia Institution v. Luhn*, 34 S. C. 175, 13 S. E. 357. But it is not necessary for party enforcing contract to show that it was so made. *Taylor v. Barker*, 30 S. C. 238, 9 S. E. 115; *Brown v. Thomson*, 31 S. C. 436, 10 S. E. 95; *Chambers v. Bookman*, 32 S. C. 455, 11 S. E. 349; *Hibernia Institution v. Luhn*, 34 S. C. 175, 13 S. E. 357; *Griffin v. Earle*, 34 S. C. 246, 13 S. E. 473. Yet proof of her representation to that effect is sufficient prior to Act of 1887. *Brown v. Thomson*, 31 S. C. 436, 10 S. E. 95; *Wallace v. Carter*, 32 S. C. 314, 11 S. E. 97; *Chambers v. Bookman*, 32 S. C. 455, 11 S. E. 349; *Salinas v. Turner*, 33 S. C. 231, 11 S. E. 702; *Scottish Co. v. Deas*, 35 S. C. 42, 14 S. E. 486; *Nott v. Thomson*, 35 S. C. 461, 14 S. E. 940. Unless other party knew the truth, and was not misled by her representation, then she is not estopped thereby. *Gwynn v. Gwynn*, 31 S. C. 482, 10 S. E. 221; *Schmidt v. Dean*, 31 S. C. 498, 10 S. E. 228, 1104; *Goodjohn v. Vaughn*, 32 S. C. 499, 11 S. E. 351; *Kincaid v. Anderson*, 33 S. C. 260, 11 S. E. 766; *Carrigan v. Drake*, 36 S. C. 354, 15 S. E. 339. But she is estopped when the representation is made in her negotiable note, and she is sued by a *bona fide* endorsee thereof. *Nott v. Thomson*, 35 S. C. 461, 14 S. E. 940. It is not necessary that contract did prove to benefit her separate estate. *Howard v. Kitchens*, 31 S. C. 490, 10 S. E. 224. Where a

married woman borrows money for her own use, it is a contract as to her separate estate and enforceable against it. *Greig v. Smith*, 29 S. C. 426, 7 S. E. 610; *Brown v. Thomson*, 31 S. C. 436, 10 S. E. 95; *Howard v. Kitchens*, 31 S. C. 490, 10 S. E. 224; *Gwynn v. Gwynn*, 31 S. C. 482, 10 S. E. 221; *Reid v. Stevens*, 38 S. C. 519, 17 S. E. 358; *Bratton v. Lowry*, 39 S. C. 383, 17 S. E. 832; *Schmidt v. Dean*, 31 S. C. 498, 10 S. E. 223; *Law v. Lipscomb*, 31 S. C. 504, 10 S. E. 226, 1104; *Building Association v. Jones*, 32 S. C. 308, 10 S. E. 1079; *Hibernia Institution v. Luhn*, 34 S. C. 175, 13 S. E. 357; *Scottish Co. v. Deas*, 35 S. C. 42, 14 S. E. 486; *Ellis v. American Co.*, 36 S. C. 45, 15 S. E. 267. She cannot make a contract of partnership. *Gwynn v. Gwynn*, 27 S. C. 525, 4 S. E. 229; *Hogan v. Hoover*, 33 S. C. 219, 11 S. E. 725. And her separate estate not liable for contracts of pretended partnership with her. *Id.*; *Weisiger v. Wood*, 36 S. C. 424, 15 S. E. 597. Is not bound by mortgage given to secure debt of another. *Sibley v. Parks*, 23 S. C. 607, 5 S. E. 809; *Bates v. American Mortgage Co.*, 37 S. C. 88, 16 S. E. 883. Residing with her husband on the land recovered, she is not liable for damages and costs. *Shuford v. Shingler*, 30 S. C. 612, 8 S. E. 799. After judgment it is too late to claim that mortgage was void because made by a married woman. *Jennings v. Harrison*, 33 S. C. 206, 11 S. E. 695. Agency of husband for wife. *Walker v. Walker*, 17 S. C. 329. Estoppel by conduct, to assert title: renouncing dower on conveyance by husband. *Campbell v. Sloan*, 21 S. C. 301. The Act of 1891 not retrospective. *Collins v. Hall*, 55 S. C. 336, 33 S. E. 466.

Constitutionality of Gen. Stat. 1882, § 2037. *American Mortg. Co. v. Woodward*, 33 S. C. 521, 65 S. E. 739.

Under Gen. Stat. 1882, § 2037, married woman could not pledge her estate by mortgage, for purpose of securing contract of another, which has no reference to her separate property, even though that other be her husband. *American Mortg. Co. v. Owens*, 72 Fed. 219, 221.

It seems that a grant to husband and wife in absence of any expressed intention in deed conveying whole to survivor makes the wife tenant in common with her husband. *Green v. Cannady*, 77 S. C. 193, 200, 57 S. E. 832.

Married woman is liable under Act of 1891, 20 Stat. 1121, on note and mortgage executed by her for money borrowed by her and delivered to her husband and used by him in paying his debt; also on her notes and mortgage given by her in part payment of debt due by her husband and for which husband received credit on his debt. *McGee v. Cunningham*, 69 S. C. 470, 48 S. E. 473.

Where married woman acquired real property in 1881, under Act of 1870, proceeds of a mortgage executed by her thereon is her separate property, and she had right to use it in paying an unsecured debt of her husband for supplies used in farming lands. *American Mortg. Co. v. Woodward*, 33 S. C. 521, 65 S. E. 739.

(5541) § 5. Requisites of Marriage Contracts, Deeds and Settlements.

—All marriage contracts, deeds and settlements shall therein describe, specify and particularize the real and personal estate thereby intended to be included, comprehended, conveyed and passed, or shall have a schedule thereto annexed, containing a description and the particulars and articles of the real and personal estate intended to be conveyed and passed by such marriage contracts, deeds and settlements; which said schedule shall be thereto annexed, and signed, executed and delivered by the parties therein interested, at the time of the signing, executing and delivering the said marriage contracts, deeds and settlements, and be subscribed by the same witness who subscribed the said marriage contracts, deeds or settlements, and shall be recorded therewith; otherwise, and in default of such schedule and recording thereof as aforesaid, the said marriage contracts, deeds and settlements shall be deemed and declared to be fraudulent, null and void with respect to and against creditors and *bona fide* purchasers or mortgagees.

Civ. '12, § 3762; Civ. '02, § 2669; G. S. 2038; R. S. 2168; 1792, V. 203.

As to sufficiency of description. *McCartney v. Ferguson*, 2 Hill Eq. 180; *Ramsey v. Richardson*, Riley Eq. 271; *McDowell v. Chambers*, 1 Strob. 347, 47 Am. Dec. 539; *Rivers v. Thayer*, 7 Rich. Eq. 136. As to recording. *Ward v. Wilson*, 1 DeSaus. 401; *White v. Palmer*, 1 McMul. Eq. 115; *Fowke v. Woodward*, Speer Eq. 233; *LePrince v. Guillemot*, 1 Rich. Eq. 187; *Higgenbottom v. Peyton*, 3 Rich. Eq. 398; *Gibbes v. Cobb*, 7 Rich. Eq. 54; *Rivers v. Thayer*, 7 Rich. Eq. 136; *Barsh v. Riols*, 9 Rich. L. 162; *Garner v. Garner's Ex'ors*, 1 DeSaus. 437; *Forrest v. Warrington*, 2 DeSaus. 254; *Croft v. Arthur*, 3 DeSaus. 223; *Taylor v. Herriot*, 4 DeS. 227; *Boatwright v. Wingate*, 3 Brev. 423; *Alston v. Alston*, 3 Brev. 469; 2 Tread. Const. 604; *Chaney v. Lubbock*, 1 N. & McC. 444; *Givens v. Branford*, 2 McC. 152; *Harrison v. McCall*, 1 Harp. Eq. 170; *Franklin v. Crayton*, Ib. 243; *Miller v. Kershaw*, Bailey Eq. 479; *McCartney v. Ferguson*, 2 Hill Eq. 180; *Perryclear v. Jacobs*, Ib. 504; *Riley Eq. 47*; *Bank of U. S. v. Brown*, 2 Hill Eq. 553; *Riser*, 131; *Baskin v. Giles*, Rice Eq. 315; *Bank v. Mitchell*, Ib. 389; *Smith v. Patterson*, 1 Cheves Eq. 29. Want of schedule or failure to record it does not invalidate the settlement between the parties; only as to creditors and purchasers. *Fripp v. Talbird*, 1 Hill Ch. 142. If property be sufficiently described in the articles of settlements, no schedule is necessary. *Heriot v. Highham*, Bailey Eq. 222; *Rivers v. Heyward*, 7 Rich. Eq. 136. The description must necessarily be according to the character of the property and must give all the information that can reasonably be required. *Rivers v. Heyward*, 7 Rich. Eq. 136. But it must correspond with the particularity intended by the Act. *Allen v. Rumph*, 2 Hill Ch. 1.

(5542) § 6. **Tenancy by Courtesy Abolished.**—Tenancy by courtesy is abolished in this State.

Civ. '12, § 3763; Civ. '02, § 2670; R. S. 2169; 1883, XVIII, 339.

CHAPTER LXXXV.

Guardians and Wards; of Minors.

ARTICLE 1. Guardians in General, 1689.

ARTICLE 2. Public Guardians, 1691.

ARTICLE 3. Testamentary Guardians, 1694.

ARTICLE 4. Miscellaneous Provisions Relating to Minors, 1695.

ARTICLE I.

Guardians in General.

(5543) § 1. **Bond of Guardians—Extent of Penalty—Relief of Sureties.**—The Judge of Probate, on appointing a guardian to any estate, shall require him to enter into bond to himself and his successors in a penalty of double the amount of such estate, and shall have the same power, as to relieving the sureties of a guardian, which is given to him in the case of relieving the sureties of an administrator.

Civ. '12, § 3764; Civ. '02, § 2671; G. S. 2040; R. S. 2170; 1839, XI, 68.

Liability of sureties is to extent of penalty and not merely to value of property stated in petition. *Johnson v. Johnson*, 2 Hill Ch. 277. And is not limited to property owned by ward when the trust is assumed, but to all property subsequently accruing. *Gray v. Brown*, 1 Rich. 351. Where in relieving sureties the guardianship is not revoked, but new bond is required, the old sureties are released from future default. *Field v. Pelot*, McM. Eq. 369. But remains liable for all property then in the hands of the guardian. *Hall v. Hall*, 45 S. C. 166, 22 S. E. 818.

Refers to guardians of estates not of persons. *Ex parte Davidge*, 72 S. C. 16, 51 S. E. 269.

(5544) § 2. **Rendition of Annual Accounts—Penalty.**—All guardians of estates appointed by the Judge of Probate shall render to him an annual account of their actings and doings, as executors or administrators are required by law to do, and upon making default shall forfeit their commissions.

Civ. '12, § 3765; Civ. '02, § 2672; G. S. 2041; R. S. 2171; 1745, III, 667; 1814, VII, 327; 1839, XI, 68.

(5545) § 3. **Guardians and Committees Required to Make Inventory of Property to Probate Judge.**—That all guardians and committees now appointed, or hereafter appointed, by the Probate Judge of any of the counties of this State shall, within ninety days from the date of their appointment, make a full and complete inventory of all personal and real estate belonging to their wards and shall annually thereafter make to said Probate Judge a full and complete return, itemized and verified under their oath, showing disposition made of all such property, real, personal or mixed, coming into their hands, and upon their failure to make such return, the same proceeding shall be had as in the case of executors and administrators.

1915, XXIX, 100.

(5546) § 4. **Proceedings Against Sureties.**—Any Judge of Probate shall have power to pronounce a decree against any guardian by him appointed, upon final account, which shall authorize such proceedings against the sureties of such guardian as may be taken in the like cases against the sureties of an administrator.

Civ. '12, § 3766; Civ. '02, § 2673; G. S. 2042; R. S. 2172; 1839, XI, 67.

No action at law on bond until such decree. *Anderson v. Maddox*, 3 McC. 237; *Harrington v. Cole*, 3 McC. 509; *James v. Wallace*, 4 McC. 121; *Somerall v. Gibbes*, 4 McC. 547; *Pratt v. McJunkin*, 4 Rich. 5. As defense, errors in such decree against principal cannot be proved unless set out in plea of surety. *Davant v. Webb*, 2 Rich. 379. Sureties may reduce the amount of the decree by proper proof thereof. *Pratt v. McJunkin*, 4 Rich. 5.

(5547) § 5. **Account in Case of Death of Guardian—Effect.**—In case of the death of any guardian not represented by an executor or administrator, the Judge of Probate shall take the same measures for an account and decree against him, which shall have the like force and effect against his sureties and estate, as is provided by law respecting an administrator.

Civ. '12, § 3767; Civ. '02, § 2674; G. S. 2043; R. S. 2173; 1839, XI, 68.

(5548) § 6. **Citation of Trustees and Committees Removed from State for Ten Months.**—In case of change of domicile by any trustee, guardian of minors, committee of lunatics and persons *non compos mentis*, to a place beyond the limits of this State, and absence therefrom for ten consecutive months then last past, and such change or absence is made to appear to the satisfaction of the Judge of Probate of the county wherein the appointment was made, it shall be the duty of such Judge of Probate to cite such trustee, guardian of minors, committee of lunatics and persons *non compos mentis*, to account in person before him, on a day named in the citation, which shall not be less than sixty days from the date thereof; and such citation shall be served upon such absent trustee, guardian of minors, committee of lunatics and persons *non compos mentis*, by publication forthwith, once a week for four weeks, in the newspaper in which the said Judge of Probate published his official advertisements, and a copy shall be mailed to such absent trustee, guardian of minors, committee of lunatics and persons *non compos mentis*, at his, her or their place of residence, if it is known, or can with reasonable diligence be ascertained.

Civ. '12, § 3768; Civ. '02, § 2675; G. S. 2044; R. S. 2174; 1878, XVI, 700.

(5549) § 7. **Revocation of Appointment of Absent Trustee or Committee.**—If, upon such citation, such absent trustee, guardian of minors, committee of lunatics and persons *non compos mentis*, fail to appear in person upon the day named, and render a return of his administration up to date, or, appearing by attorney, fails to disprove a change of domicile and continuous absence for ten months next preceding the date of citation, the appointment shall be revoked and annulled.

Civ. '12, § 3769; Civ. '02, § 2676; G. S. 2045; R. S. 2175; 1878, XVI, 701.

(5550) § 8. **Guardians to Apply for Partition, Where Lands Descend in Coparcenary, Etc.**—The guardian or guardians of children under age shall be required and directed to apply to the Court for an order of partition in all cases where any lands shall be given or descend to such children in coparcenary, joint-tenancy or tenancy in common (and no provi-

sion made by will or otherwise how such lands shall be divided), in case any one of the said coparceners, joint-tenants or tenants in common, shall neglect to apply for such partition for twelve months after becoming of age.

Civ. '12, § 3770; Civ. '02, § 2677; G. S. 2046; R. S. 2176; 1748, III, 708.

(5551) § 9. **Commissions.**—All guardians having the care of the estates of minors, idiotic and insane persons, and persons *non compos mentis*, shall have the same commissions for their services as are allowed by law to executors, administrators and other trustees.

Civ. '12, § 3771; Civ. '02, § 2678; G. S. 2049; R. S. 2177; 1745, III, 668; 1789, V, 112.

Booth v. Sineath, 2 Strob. Eq. 31; Ex parte Commissioner, 5 Rich. Eq. 13.

(5552) § 10. **Commissions to Deceased Guardian.**—When any guardian of an infant dies after receiving any of the funds of his or her ward, the estate of such deceased guardian shall be allowed commissions for paying over, as well as for receiving, the funds of such ward remaining in the hands of such guardian at the time of his or her death: *Provided*, The payment over is made to the ward, and not to another guardian.

Civ. '12, § 3772; Civ. '02, § 2679; G. S. 2050; R. S. 2178; 1859, XII, 825.

Such commissions not allowed before this Act. Floyd v. Priester, 8 Rich. Eq. 248. Applied. Adams v. Latham, 14 Rich. Eq. 304.

ARTICLE II.

Public Guardians.

(5553) § 1. **Judge of Probate Appointed Guardian in Certain Cases—When and How—Liability.**—The Judge of Probate for each county in this State shall be required to act as the guardian of the estates of minors, idiots and lunatics in their respective counties where such minors, idiots or lunatics have no general or testamentary guardian or guardians, and where it is made satisfactorily to appear to the Court of Common Pleas, or a Judge of said Court at chambers, on a petition filed for that purpose, and on proof that the notice of the object of the said petition, together with a statement of the nature, condition and value of the estate of said minor, idiot or lunatic has been inserted once a week for two weeks previously in some public newspaper published in said county, or, if there be none, in some adjoining county, and also at the door of the Court House, that no fit, competent and responsible person can be found who is willing to assume such guardianship; and the Judge of Probate appointed as such guardian and his sureties shall be held responsible upon his official bond for all estates of such minors, idiots and lunatics received by him.

Civ. '12, § 3773; Civ. '02, § 2680; G. S. 2051; R. S. 2179; 1880, XVII, 463; 1891, XX, 1121.

This does not create a separate office, but merely imposes new duties on the Probate Judge. State v. Green, 52 S. C. 520, 30 S. E. 683.

(5554) § 2. **Application for Appointment.**—The application for the appointment of the Judge of Probate as such guardian shall be made by the father, mother, husband, brother, executor, administrator or other person interested in said minor, idiot or lunatic, and shall state the name and age of the minor, idiot or lunatic, the character and value of the estates

of such minor, idiot or lunatic, and that such minor, idiot or lunatic has no general or testamentary guardian, and that no fit, competent or responsible person can be found who is willing to assume said trust, and shall be subscribed and sworn to by the party making the application.

Civ. '12, § 3774; Civ. '02, § 2681; G. S. 2052; R. S. 2180; 1880, XVII, 463.

(5555) § 3. Order of Appointment.—The Court or Judge hearing such application, if satisfied that the interest of the minor, idiot or lunatic would be best subserved by such appointment, shall endorse on such application an order appointing the Judge of Probate such guardian and authorizing him to receive the estates of such minor, idiot or lunatic, and to sign and seal all necessary and proper releases and discharges relating thereto.

Civ. '12, § 3775; Civ. '02, § 2682; R. S. 2181; 1880, XVII, 463.

(5556) § 4. Powers and Liabilities of Guardian—Compensation.—The Judge of Probate so appointed shall have all the powers and be subject to all the liabilities of guardians appointed by the Court of Probate, and shall be entitled to like compensation.

Civ. '12, § 3776; Civ. '02, § 2683; R. S. 2182; 1880, XVII, 463.

(5557) § 5. Report of Investments, Etc.—The Judge of Probate for each county in this State shall annually, at the first term of the Court of Common Pleas in and for his county, and oftener if required by the presiding Judge of the Circuit, submit in open Court a report, under oath, of all his actings and doing as such public guardian, which report, if satisfactory, shall be approved by the presiding Judge by endorsement thereon, and shall be filed in the office of the Clerk of Court of Common Pleas of said county.

The annual report of the Judge of Probate, as public guardian, required by this Section, shall state the name of each minor, idiot or lunatic, the date when appointed guardian of such minor, idiot or lunatic; the value of the estates of such minor, idiot or lunatic; of what the same consists; the amount and character of the investments, if any, and when and by whom made, and what amount, if any, remains uninvested, and the amounts received and paid out since last report, properly vouched, and such recommendations as he may deem most to the advantage of his wards respectively.

Civ. '12, § 3777; Civ. '02, § 2684; G. S. 2053; R. S. 2183; 1880, XVII, 464.

(5558) § 6. Investments to Be Approved—Record.—All investments made by the Judge of Probate as public guardian shall be made under the direction and with the approval of the presiding Judge, or the Judge of the Circuit in which said Judge of Probate resides, upon a petition and proof that said proposed investment is a safe and proper one; that the public guardian shall have due notice of the petition and of the time and place of taking testimony thereunder, with the right to cross-examine petitioners' witnesses, and to offer testimony; and the said petition, testimony or decree made thereupon by said Court or Judge shall be duly recorded as provided in Section 8.

Civ. '12, § 3778; Civ. '02, § 2685; R. S. 2184; G. S. 2054; 1891, XX, 1122.

(5559) § 7. **Discharge of Guardian.**—All orders of discharge of the Judge of Probate, as public guardian, shall be granted by the presiding Judge or the Judge of the Circuit in which said Judge of Probate resides, it being made satisfactorily to appear that a full and fair accounting has been had with the parties entitled to the estates received by him as such guardian.

Civ. '12, § 3779; Civ. '02, § 2686; G. S. 2055; R. S. 2185; 1880, XVII, 464.

(5560) § 8. **Duty of Clerk of Court.**—The Clerk of the Court of Common Pleas shall keep a separate journal of all proceedings and orders relating to matters of the Judge of Probate as public guardian, and shall keep all books, papers and records relating to the same in a separate apartment in his office, neatly put up in packages and endorsed, and the said Clerk shall be entitled to charge and receive for the services so rendered the same costs and fees which would be charged for similar services rendered in the Court of Probate.

Civ. '12, § 3780; Civ. '02, § 2687; G. S. 2056; R. S. 2186; 1880, XVII, 464.

(5561) § 9. **On Retirement or Death of Judge, Moneys, Etc., Turned Over to Successor.**—The Judge of Probate retiring from office, or in case of the death of the Judge of Probate, his executor or administrator, shall turn over all moneys, bonds, mortgages, notes and other choses in action, and all books, paper and other writings in his hands, custody and control, as such public guardian, to his successor in office, who thereupon shall assume all the duties of such public guardian, and be invested with all the powers and be subject to all the liabilities of such guardian.

The costs for all proceedings under this Article shall be the same, and none other, than for similar proceedings in the Court of Probate.

Civ. '12, § 3781; Civ. '02, § 2688; G. S. 2057; R. S. 2187; 1880, XVII, 464.

(5562) § 10. **Estates of Minors Turned Over to Probate Judge on Formation of New Counties.**—In all cases where a new county has been formed or created out of portions of an old county or counties, the Probate Judge for said new county shall act as guardian of the estates of minors, idiots and lunatics formerly residing in that portion of the said old county or counties formed and created unto the said new county; or where the said minors, idiots and lunatics now reside in said new county, and the Probate Judge of the said old county or counties is acting as guardian of the said minors, idiots or lunatics, he shall, upon application of any one in their behalf, turn over and deliver to the Probate Judge of the said new county the estates of said minors, idiots or lunatics, and the Probate Judge of the said new county shall receive the same as guardian, and be, and hereby is, constituted guardian of said estates in lieu and in place of the Probate Judge of the old county or counties, and his official bond shall be liable as such, as now provided by law in such cases. In case the Probate Judge of the said old county or counties refuses or fails, within ten days after being requested so to do, to turn over and deliver the said estates of said minors, idiots or lunatics formerly in his county but formed into a new county, or of such who have removed into said new county, the party making said application may apply to any Circuit Judge in this State, at chambers, upon four days'

notice, for an order requiring said Probate Judge to comply with the provisions of this Section; and the said Probate Judge so failing or refusing to turn over and deliver said estates shall be liable to pay all cost of the proceeding, including reasonable counsel fees, to be fixed by the Court in said order. That no commissions shall be charged or collected by either Probate Judge for delivering the said estates or for removing the same.

Civ. '12, § 3782; 1906, XXV, 9.

ARTICLE III.

Testamentary Guardians.

(5563) § 1. How Custody of Minors May Be Disposed of—Proviso.—

The father of any child, or children, under the age of twenty-one years, and not married, if the mother be dead, or the mother of any such child, or children, the father being dead, whether such father or mother be under the age of twenty-one years, or of full age, may, by his or her deed, executed and recorded according to law, or by his or her last will and testament, made and probated according to law, dispose of the custody and tuition of such child, or children, for and during such time as he, she, or they, respectively, remain under the age of twenty-one years, to any person, or persons, in possession or remainder. But no such deed shall be valid unless signed by both father and mother, if both be living: *Provided*, That nothing herein shall be construed to abrogate, lessen or interfere with the right and duty of a Court of competent jurisdiction at any time, as heretofore, to transfer and assign the custody of a child for its best interest.

Civ. '12, § 3783; Civ. '02, § 2689; G. S. 2058; R. S. 2189; 1748, III, 708; 1887, XIX, 791; 1910, XXVI, 705.

Father's right to custody of person. *Ex parte Davidge*, 72 S. C. 16, 51 S. E. 269; *Ex parte Reynolds*, 73 S. C. 296, 53 S. E. 490, 114 Am. St. Rep. 36, 6 Am. & Eng. Ann. Cas. 936; *Ex parte Tillman*, 84 S. C. 552, 66 S. E. 1049, 26 L. R. A., N. S. 781. See note *Habeas Corpus*, Criminal Code.

This Section enables the father to extend whatever power of disposition statute confers on him during his life. *Ex parte Tillman*, 84 S. C. 552, 66 S. E. 1049, 26 L. R. A., N. S. 781.

(5564) § 2. **Disposition of Custody Valid.**—Such disposition of the custody of such child or children shall be good and effectual against all and every person or persons claiming the custody of such child or children, as guardian in socage or otherwise.

Civ. '12, § 3784; Civ. '02, § 2690; G. S. 2059; R. S. 2190; 1748, III, 708; 1887, XIX, 791.

Ex parte Tillman, 84 S. C. 552, 558, 66 S. E. 1049, 26 L. R. A., N. S. 781.

(5565) § 3. **Custodian May Maintain Action for Recovery of Children, Etc.**—Any person or persons, to whom the custody of any child or children has been or shall be disposed or devised, as provided by the two preceding Sections of this Article, shall and may maintain an action against any person or persons who shall wrongfully take away or detain such child or children, for the recovery of such child or children, and shall and may recover damages for the same in the said action, for the use and benefit of such child or children.

Civ. '12, § 3785; Civ. '02, § 2691; G. S. 2060; R. S. 2191; 1748, III, 708; 1887, XIX, 791.

(5566) § 4. **Custodian to Have Rights of Guardian.**—Any person or persons to whom the custody of any child or children has been or shall be

disposed or devised as provided by Sections 1 and 2, may take into his, her or their possession to and for the use, support and education of such child or children, all property, real and personal, which by such deed or will shall have been conveyed or devised, or bequeathed to such child or children, till their respective age of twenty-one years, or for such lesser time as may be fixed by such deed or will aforesaid; and may receive and receipt for the proceeds of any life insurance taken out by the parent for the benefit of such child or children, and may do all acts in relation thereto which a guardian appointed according to law might do.

Civ. '12, § 3786; Civ. '02, § 2692; G. S. 2061; R. S. 2192; 1887, XIX, 791; 1912, XXVII, 34.

(5567) § 5. Returns to Be Made to Probate Judge.—The custodian so appointed by deed or will shall make a return to the Judge of Probate of all the property which shall come into his or her possession, and account annually for the rents, profits and income thereof, and be liable therefor, in the same manner and to the same extent as guardians appointed by law.

Civ. '12, § 3787; Civ. '02, § 2693; G. S. 2061; R. S. 2192; 1887, XIX, 791.

ARTICLE IV.

Miscellaneous Provisions Relating to Minors.

(5568) § 1. Employers of Minors Liable to Parents or Guardians.—If any person shall hire or employ any minor, or person under the age of twenty-one years, without the knowledge and consent of the parents or guardian of such minor, such person shall pay to said parents or guardian the full value of the labor of said minor from and after notice from the parents or guardian that payment of such service shall be made to him or them, as the case may be: *Provided*, This Section shall not apply to cases where the parents or guardian fails or refuses to furnish the minor, a home and support, in which cases the minor shall have the right to make contract in regard to his own labor and enforce same in his own name and for his own benefit, and the employer shall be responsible to the minor only in such cases.

Civ. '12, § 3788; Civ. '02, § 2694; G. S. 2062; R. S. 2194; 1871, XIV, 545; 1908, XXV, 1029.

Disaffirmance of deed made by infant remainderman. *Steele v. Poe*. 79 S. C. 407, 60 S. E. 951.

(5569) § 2. Certain Contracts by Certain Minors Null and Void.—Any contract or agreement whatsoever, express or implied, by any undergraduate of any of the colleges or institutions of education in this State, who shall be a minor, with any shopkeeper, upon the sale of any wines, ardent spirits, goods, wares, or merchandise, or any article of trade, or with any keeper of a hotel, tavern, house of entertainment, or livery stable, shall be held and deemed utterly null and void, insomuch that no confirmation of the same by such student, after he may have attained the age of twenty-one years, shall render such contract or agreement of legal obligation.

Civ. '12, § 3789; Civ. '02, § 2695; G. S. 2063; R. S. 2195; 1853, XII, 296.

(5570) § 3. **Unlawful to Issue Process, Etc., Against Minor Students on Certain Contracts.**—It shall not be lawful to issue any process, either from a Magistrate or from any Court of record in this State, against any such student, upon any such contract or agreement, as aforesaid, at any time; shall any confession of judgment upon the same be lawful or binding, or be allowed to be entered up.

Civ. '12, § 3790; Civ. '02, § 2696; G. S. 2064; R. S. 2196; 1853, XII, 296.

(5571) § 4. **Unlawful Judgments to Be Vacated.**—In case any judgment shall be confessed, or obtained contrary to the prohibition hereinbefore expressed, the same shall be ordered to be vacated and annulled by any Judge of the Common Pleas, at chambers or in open Court, upon any information that may satisfy him that the said judgment is in contravention of the intent of the two preceding Sections.

Civ. '12, § 3791; Civ. '02, § 2697; G. S. 2065; R. S. 2197; 1853, XII, 296.

(5572) § 5. **Provisions Not Applicable to Apothecaries as to Sale of Medicines.**—The provisions of the three preceding Sections of this Article shall not apply to any apothecary, so far as his dealings may concern the sale of his drugs and medicines.

Civ. '12, § 3792; Civ. '02, § 2698; G. S. 2066; R. S. 2198; 1853, XII, 296.

CHAPTER LXXXVI.

Change of Names.

(5573) § 1. **Persons Desiring to Change Their Names to Apply in Open Court.**—Any person who may be desirous of changing his or her name may exhibit his or her petition, in writing, to any of the Judges of the Circuit Court of this State, in open Court, setting forth in said petition the reasons why he or she is desirous of changing his or her name, together with his or her age, place of residence and nativity, and the name by which he or she wishes thereafter to be called and known.

Civ. '12, § 3793; Civ. '02, § 2699; G. S. 2067; R. S. 2199; 1814, V, 718.

Effect of change of name. *Brayton v. Beall*, 73 S. C. 308, 53 S. E. 641.

(5574) § 2. **Court to Exercise Discretion.**—Upon said petition, and the reasons therein contained, it shall be the duty of the Judge to determine, and grant or refuse the prayer thereof, as to him shall appear proper, having a due regard to the true interest of the petitioner.

Civ. '12, § 3794; Civ. '02, § 2700; G. S. 2068; R. S. 2200; 1814, V, 718.

(5575) § 3. **Duty of Clerk—Proceedings to Be Recorded When Name Is Changed.**—Whenever the prayer of such petition shall be granted, it shall be the duty of the Clerk of said Court to enter the same on the minutes of the Court, and to file the original petition, with the *fiat* of the Judge, among the papers of his office; and to deliver to the petitioner a true copy of said petition, together with a copy of the Judge's order thereon, properly certified, and under the seal of said Court; for which the said Clerk

shall be entitled to and receive from the petitioner the sum of five dollars and no more.

Civ. '12, § 3795; Civ. '02, § 2701; G. S. 2069; R. S. 2201; 1814, V, 718.

(5576) § 4. To Sue, Etc., by New Name—Old Suits.—In all cases the person so changing his or her name may sue and be sued, plead and be impleaded, by his or her new name, and no other. In all cases where an action or actions shall be pending at the time of such alteration of names, the same shall not abate by the party's name being changed, but the record on motion shall be amended by expunging the old name, and inserting the new name of the party.

Civ. '12, § 3796; Civ. '02, § 2702; G. S. 2070; R. S. 2202; 1814, V, 719.

(5577) § 5. Effect on Old Obligations.—In all cases, where the party changing his or her name is bound by obligation or otherwise, the effect of which obligation would extend to and impose any obligations on the heirs, executors, or administrators, of the person so having changed his name, the said heirs shall be and remain bound, to all intents and purposes, in the same manner and to the same extent as if the party had not changed his or her name.

Civ. '12, § 3797; Civ. '02, § 2703; G. S. 2071; R. S. 2203; 1814, V, 719.

(5578) § 6. Adoption of Children—Change of Name—How Affected.—Any person or persons who may desire to adopt any child or children in this State, and confer upon such child or children so adopted the right to inherit as the lawful child of the said person or persons, whether it be desired to change the name of such child or children or not, shall be authorized to file his or their petition in the Court of Common Pleas for the county in which he, she or they may reside; and thereupon, the Court, upon an examination into the merits of the said petition, either in open Court or upon reference, shall be authorized to grant the prayer thereof, upon such terms as may to the Court seem proper; and, thereupon, the name of the said child or children shall be changed, if so provided in the decree of said Court, and such child or children shall be entitled to inherit from the said petitioner or petitioners as his, her or their lawful child or children: *Provided*, That before any hearing shall be had on said petition, the child or children so sought to be adopted, and whose name or names are sought to be changed, shall be served with a copy of said petition, and guardian *ad litem* for such child or children shall be appointed as in other civil actions: *Provided, further*, That whenever the child or children, whose adoption may be desired by any person or persons in accordance with the foregoing provisions of this Section, is or are an inmate or inmates of any orphan house within this State, then the petition for the adoption of such child or children hereinbefore required may be filed, and all other proceedings in reference thereto had in the Court of Common Pleas for the county in which such orphan house is situated, with like force and effect in every respect as if such petition had been filed and such proceedings had in the Court of Common Pleas for the county in which the petitioner or petitioners may reside: *Provided*, That no person in this State shall adopt an illegitimate child unless the father and mother of such child, if both were

unmarried at the time of its birth, could have lawfully contracted matrimony under the Constitution and laws of this State, nor when the person seeking to adopt an illegitimate child has, at the time of filing the petition, either a lawful wife or child, unless the wife is the mother of such illegitimate child, and unless the wife file her written consent to said adoption in the office of the Clerk of Court of the county wherein said petition is filed: *Provided, further*, That no person who adopts any illegitimate child shall give to such child, by deed, will or otherwise, any greater portion of his estate than is now allowed by law, unless such person has no lawful wife or issue living at the time of his death; nor shall such illegitimate child inherit, in case of intestacy, from the adopted parent any greater portion of his estate than may be given to such child by deed or will when such intestate leaves a widow or lawful issue surviving him: *Provided, further*, That where the custody of any child is given to any person or persons by any orphan or foundling home, and said person or persons desire to adopt said child, they may file their petition in accordance with the provisions of this Chapter in the county where said petitioner or petitioners reside, and it shall not be necessary to prove who is the father or mother of said child.

Civ. '12, § 3798; Civ. '02, § 2704; R. S. 2204; 1882, XXI, 79; 1896, XXII, 199; 1900, XXIII, 429; 1907, XXV, 581; 1911, XXVII, 144.

CHAPTER LXXXVII.

Masters, Apprentices and Laborers.

ARTICLE 1. Master and Apprentice, 1698.

ARTICLE 2. Protection of Laborers, 1701.

ARTICLE I.

Master and Apprentice.

(5579) § 1. Persons May Take and Teach One or More Apprentices.—

It shall and may be lawful to and for any person or persons within this State to take one or more apprentice or apprentices, indented according to the directions of this Chapter, and to teach such apprentice or apprentices the lawful business, art, trade, and mystery specified in the indenture or indentures of such apprentice or apprentices, during the time therein limited, and to retain and keep in his or their service such apprentice or apprentices until the expiration of the said time, or until such apprentice or apprentices shall be lawfully discharged.

Civ. '12, § 3799; Civ. '02, § 2705; G. S. 2072; R. S. 2205; 1740, III, 544.

(5580) § 2. Proceedings Before Magistrate in Indenture of Apprentices.

—It shall be the duty of any Magistrate to whom application is made by a person desiring to become the master or mistress of any infant to be bound to service by indenture according to law, to certify under his hand and seal upon such indenture, the presence and approbation of the father, mother, or guardian of such infant, at the time it was executed; and in case such infant so to be apprenticed shall have neither father, mother,

nor guardian to approve such indenture, then the presence and approbation of the grandfather, grandmother, or brother, sister, uncle, or aunt, of mature age, or of his own approval of such indenture, to be certified thereon, each in the order herein established and enumerated, and in like manner shall certify the approval of such persons as above designated, which indenture or indentures, so executed and certified as aforesaid, shall be good and effectual, to all intents and purposes, as if such apprentice had been of full age, and by indenture of covenant had bound him or herself; or otherwise shall be void and of none effect.

Civ. '12, § 3800; Civ. '02, § 2706; G. S. 2073; R. S. 2206; 1740, III, 544; 1839, XI, 32.

Welborn v. Little, 1 N. & McC. 263; Austin v. McClany, 5 Strob. 104; Anderson v. Young, 54 S. C. 388, 32 S. E. 448.

(5581) § 3. Assignment of Indentures to Be Certified by Magistrates.

—In the same manner, any Magistrate shall certify the assent of the same parties, in like order, to the assignment and transfer of such indenture for sufficient cause, by the master or mistress, to any person exercising the employment specified therein, which said indenture so assigned shall be valid and effectual to the assignee, as to the time remaining unexpired, as if the said apprentice had been originally indented to such assignee; and the said assignee, on accepting such assignment, shall be equally bound to the said apprentice, according to the tenor of the said indenture, as the original master or mistress was.

Civ. '12, § 3801; Civ. '02, § 2707; G. S. 2074; R. S. 2207; 1740, III, 544; 1839, XI, 32.

(5582) § 4. Executor or Administrator May Retain or Assign Indentures.

—The time of service of any apprentices who are, or shall be, indented to serve their masters, mistresses, their executors, or assigns, in this State, remaining unexpired at the time of the death of any of the masters or mistresses of such apprentices, and not before assigned in manner aforesaid shall be deemed and taken as assets in the hands of the executors or administrators of any such masters or mistresses, and it shall and may be lawful to and for such executors or administrators to retain any such apprentices in their own service during the remainder of such time: *Provided*, The executor or administrator so retaining such apprentice does, at the time of such retainer, carry on and exercise (by himself or some other person in his employ), within the same county where the testator lived, the same employment, calling, art, mystery, or trade, to which the said apprentice was bound by his indenture; or otherwise, if the executors or administrators of such deceased person think fit, it shall be lawful for them to assign and transfer such indenture and the time therein unexpired, with the consent of the same persons, in like order, and in the same manner, certified by a Magistrate, to any other person carrying on and exercising within this State the same employment, calling, and mystery, or trade specified in the said indenture.

Civ. '12, § 3802; Civ. '02, § 2708; G. S. 2075; R. S. 2208; 1740, III, 544; 1839, XI, 32.

(5583) § 5. Indentures Valid to Executor Retaining or to Assignee.—

Such indenture, so retained or assigned, shall be valid and effectual to the executor or administrator so retaining, and to such assignee as to the time remaining unexpired, as if the said apprentice had been originally

indented to such executor, administrator, or assignee; and the said executor, administrator, and assignee, on retaining such apprentice, or accepting such assignment, shall be equally bound to the said apprentice, according to the tenor of the indenture, as the original master or mistress was.

Civ. '12, § 3803; Civ. '02, § 2709; G. S. 2076; R. S. 2208; 1839, XI, 32.

(5584) § 6. Board of Commissioners of Charleston Orphan House—Vested With Powers of Magistrates.—The Clerk of the Board of Commissioners of the Charleston Orphan House for the time being be, and he hereby is, vested with all the powers conferred upon Magistrates by the three Sections, of these Statutes immediately preceding in relation to the execution, certifying, transfer and assignment of indenture of minors when received into or bound out from the Charleston Orphan House; and all indentures or renewals of indentures heretofore made or hereafter to be made before the Clerk of the said Board of Commissioners in relation to any minor received or bound out from the Charleston Orphan House shall be, to all intents, as valid, effectual and binding as if the same had been made before a Magistrate: *Provided*, That the said Clerk of the Board of Commissioners aforesaid shall have been regularly appointed a Notary Public by the Governor of the State and duly commissioned as such.

Civ. '12, § 3804; Civ. '02, § 2710; G. S. 2075a; R. S. 2210; 1882, XVIII, 145.

(5585) § 7. Indentures or Assignments Under Commissioners of Charleston Orphan House Valid Without Magistrate's Certificate.—Any indenture or apprenticeship or any assignment of any indenture of apprenticeship made or hereafter to be made under the authority of the Board of Commissioners of the Charleston Orphan House of any child inmate of said institution shall be effectual and valid to all intents and purposes, as if the same were made by the parent of such child; and such indentures and assignment of indentures do not and shall not require the certificate of any Magistrate.

Civ. '12, § 3805; Civ. '02, § 2711; R. S. 2211; 1882, XVIII, 145.

(5586) § 8. Apprentices to Serve Period Mentioned.—Any person that shall be bound by indenture to serve as an apprentice within this State, in any lawful employment, calling, art, mystery, or trade, although such apprentice shall have been within the age of twenty-one years at the time of making such indenture, shall be bound to serve for the number of years in such indenture contained, as fully and effectually, to every intent, as if the said apprentice had been of full age at the time of making such indenture, and shall be bound, accepted, and taken as an apprentice accordingly: *Provided, always*, That such apprentice shall be indented in the manner and according to the directions of this Chapter.

Civ. '12, § 3806; Civ. '02, § 2712; G. S. 2077; R. S. 2212; 1740, III, 544.

(5587) § 9. Males Not to Serve After Twenty-One—Females After Eighteen.—Nothing in this Article contained shall extend to oblige any male apprentice to serve after he shall have attained the age of one and

twenty years, or a female after she shall have attained the age of eighteen years.

Civ. '12, § 3807; Civ. '02, § 2713; G. S. 2078; R. S. 2213; 1740, III, 544.

(5588) § 10. Two Magistrates to Have Jurisdiction in Complaints.—On complaint made by an apprentice, charging his or her master or mistress with misuse, or by the master or mistress against such apprentice, before any two Magistrates of the county, setting forth the cause of such complaint, it shall be the duty of such Magistrates to make such order between the parties as the equity and justice of the case may require, subject, nevertheless, to the right of either party to appeal from such order to the Court of Common Pleas for the county at the next ensuing term.

Civ. '12, § 3808; Civ. '02, § 2714; G. S. 2079; R. S. 2214; 1740, III, 545; 1839, XI, 32.

This Section is not unconstitutional in that it denies right of trial by jury. *Belcher v. Commissioners*, 2 McC. 23. Appeal lies, it seems from the judgment of the Court of Common Pleas on such appeal. *Carmand v. Wall*, 1 Bail. 209.

ARTICLE II.

Protection of Laborers.

(5589) § 1. Requisites of Contracts Between Owners of Land and Laborers.—All contracts made between owners of land, their agents, administrators, or executors, and laborers, shall be witnessed by one or more disinterested persons, and, at the request of either party, be duly executed before a Magistrate whose duty it shall be to read and explain the same to the parties. Such contracts shall clearly set forth the conditions upon which the laborer or laborers engaged to work, embracing the length of time, the amount of money to be paid, and when; if it be on shares of crops, what portion of the crop or crops.

Civ. '12, § 3809; Civ. '02, § 2715; G. S. 2081; R. S. 2215; 1869, XIV, 227.

Johnson v. Spartan Mills, 68 S. C. 339, 359, 47 S. E. 695, 1 Am. & Eng. Ann. Cas. 409. Does not prevent common law contract. *Huff v. Watkins*, 18 S. C. 512; *State v. Williams*, 32 S. C. 123, 10 S. E. 376.

The landlord is entitled to the possession of crops raised on shares. *Loveless v. Gilliam*, 70 S. C. 391, 50 S. E. 9. What is a sufficient contract. *State v. Leak*, 62 S. C. 405, 40 S. E. 774; *State v. Lanier*, 79 S. C. 103, 60 S. E. 225; *Huff v. Watkins*, 18 S. C. 510.

(5590) § 2. Crops to Be Divided by Disinterested Persons.—Whenever labor is performed under contract on shares of crop or crops, such crop or crops shall be gathered and divided off before it is removed from the place where it was planted, harvested, or gathered. Such division to be made by a disinterested person, when desired by either party to the contract. And such disinterested party shall be chosen by and with the consent of the contracting parties; whenever the parties fail to agree upon any disinterested party, or, if complaint is made that the division has been unfairly made, within ten days after such division, it shall be the duty of the Magistrate residing nearest the place where such crop or crops are planted, harvested, or gathered, to cause, under his immediate supervision, such equitable division as may be stipulated in the contract. Such disinterested party or Magistrate shall receive reasonable compensation for such service, to be paid by both of the contracting parties, according to their several interests, except in cases of an attempt to wilfully defraud

the other by one of the contracting parties; and then such compensation shall be paid by the parties so attempting to defraud the other. When such division has been made, each party shall be free to dispose of their several portions as to him or her or them may seem fitting: *Provided*, That if either party be in debt to the other for any obligation incurred under contract, the amount of said indebtedness may be then and there settled and paid by such portion of the share or shares of the party so indebted as may be agreed upon by the parties themselves, or set apart by the Magistrate, or any party chosen to divide said crop or crops.

Civ. '12, § 3810; Civ. '02, § 2716; G. S. 2082; R. S. 2216; 1869, XIV, 228.

Laborers not entitled to such lien, unless contract is in writing. *Hair v. Blease*, 8 S. C. 63. Laborer cannot bind share by lien for advances. *Carpenter v. Strickland*, 20 S. C. 1; *Richey v. Du-Pre*, 20 S. C. 6.

Magistrate has no jurisdiction of proceeding to divide share crops where amount in controversy is beyond jurisdictional amount of magistrate and proceeding is equitable in its nature. *Mayfield v. Bessinger*, 87 S. C. 369, 69 S. E. 673.

Where summons is issued to divide crop, agreement that proceeding be treated as action to recover amount of laborer's wages measured by value of one-half of crop less laborer's debt to landlord, and appearance of parties give magistrate jurisdiction of whole matter. *Wilkie v. Murphy*, 88 S. C. 415.

(5591) § 3. Laborers to Be Paid in Lawful Money, Unless Otherwise Stipulated.—Unless otherwise provided by special contract, all persons who employ laborers upon plantations or elsewhere, by the day, week, month or year shall pay such laborers or employees in lawful money.

Civ. '12, § 3811; Civ. '02, § 2717; G. S. 2086; R. S. 2218; 1872, XV, 216; 1875, XV, 899; 1879, XVII, 7.

Johnson v. Spartan Mills, 68 S. C. 339, 47 S. E. 695, 1 Am. & Eng. Ann. Cas. 409.

(5592) § 4. Discharged Laborers to Be Paid up to Time of Discharge by Corporations.—When any corporation carrying on any business in this State in which laborers are employed, whose wages, under the business rule or custom of such corporation, are paid monthly or weekly on a fixed day beyond the end of the month or week in which the labor is performed, shall discharge any such laborer, the wages which have been earned by such discharged laborer shall become immediately due and payable. And if not so paid within twenty-four hours after written demand therefor, then such laborer shall recover in addition thereto a penalty of as much per day for the time said wages shall remain unpaid, not exceeding thirty days, as he was receiving at the time of his discharge.

Civ. '12, § 3812; 1911, XXVII, 39; 1915, XXIX, 153; 1919, XXXI, 35.

Wynne v. Seaboard Air Line Ry., 96 S. C. 1, 79 S. E. 521; *Champion v. Hermitage Cotton Mills*, 98 S. C. 418, 82 S. E. 672; *Trammell v. Victor Mfg. Co.*, 102 S. C. 483, 86 S. E. 1057; *Burden v. Woodside Cotton Mills*, 104 S. C. 435, 89 S. E. 474.

(5593) § 5. Certificates for Wages Due — Negotiable — Redemption — Employers With Regular Pay Days — Exceptions.—It shall not be lawful for any corporation, person or firm in this State engaged in the manufacture of cotton goods, to issue or pay out, or circulate for payment of wages of laborers any order, check, memorandum, token or evidence of indebtedness, payable in whole or in part otherwise than in lawful money of the United States, unless the same is negotiable and redeemable at its par value, without discount in cash or in goods, wares or merchandise, or supplies at the option of the holder at the store or other place of business of such firm, person or corporation, or at the store of another person on whom such paper may be drawn where goods, wares or merchandise

are kept for sale or sold or exchanged, and the person who, or the corporation, firm or company, which may issue any such order, check, memorandum, token or other evidence of indebtedness, shall, upon presentation and demand, at the expiration of one week from date of delivery thereof, redeem the same in goods, wares, merchandise or supplies at the current cash market price of like goods, wares, merchandise or supplies, or in lawful money of the United States as may be demanded by the holder of any such order, memorandum, token or other evidence of indebtedness: *Provided*, That if said corporation, person or firm engaged as specified in this Section, have a regular pay day once in every week, then said corporation, person or firm shall not be required to redeem such token or evidence of indebtedness in cash until the first pay day after the same becomes payable as herein provided, and such token or evidence of indebtedness shall be presented for payment in cash only on such pay days: *Provided*, That the provisions of this Section shall not apply to agricultural contracts or advances made for agricultural purposes.

Civ. '12, § 3813; Civ. '02, § 2719; 1901, XXIII, 746; 1914, XXVIII, 563; 1915, XXIX, 55.

Pearson v. Mills Mfg. Co., 82 S. C. 506, 64 S. E. 407.

Code, §§ (5593), (5594), are not violative of Constitutional provisions as to equality of laws. *Johnson v. Spartan Mills*, 68 S. C. 339, 47 S. E. 695, 1 Am. & Eng. Ann. Cas. 409.

(5594) § 6. Penalty for Violation of Provisions.—Any officer or agent of any corporation or any person, firm or company engaged in the business of manufacturing or mining in this State, who by themselves or agent shall issue or circulate in payment for wages of labor any order, check, memorandum, token or evidence of indebtedness, payable in whole or in part otherwise than in lawful money of the United States, without being negotiable and payable at the option of the holder in goods, wares, merchandise, supplies or lawful money of the United States, as required by Section 3813 or who shall fail to redeem the same when presented for payment within thirty days from date of delivery thereof, by the said company or its agent, at his or their office or place of business, in lawful money of the United States, or who shall compel or attempt to coerce any employee of any such corporation, shall forfeit to the employee or legal owner and holder of such order, check, memorandum, token or evidence of indebtedness fifty dollars to be recovered in any Court of competent jurisdiction: *Provided*, That in establishments for manufacturing lumber or brick, such checks shall not be redeemable in cash except on regular pay days.

Civ. '12, § 3814; Civ. '02, § 2720; 1901, XXIII, 746; 1904, XXIV, 441.

Johnson v. Spartan Mills, 68 S. C. 339, 47 S. E. 695, 1 Am. & Eng. Ann. Cas. 409.

Checks issued as credits, redeemable in merchandise. *Johnson v. Spartan Mills*, 68 S. C. 339, 47 S. E. 695, 1 Am. & Eng. Ann. Cas. 409. Proviso not repealed by amendment to § 3814. *Pearson v. Mills Mfg. Co.*, 82 S. C. 506, 64 S. E. 407.

Amendment does not appeal proviso of § (5593). *Pearson v. Mills Mfg Co.*, 82 S. C. 506, 64 S. E. 407.

PART III.

Miscellaneous Rights and Remedies.

TITLE I.

CHAPTER LXXXVIII.

Certain Rights and Remedies.

(5595) § 1. **Imputing Want of Chastity—Damages.**—If any person shall utter and publish, either by writing or verbally, any words of and concerning any female, imputing to her a want of chastity, the said person so uttering and publishing said words, shall and may be liable for damages in a civil action brought by the said female of whom said words may be uttered and published, without proving any special damage; subject, nevertheless, to the rules of evidence at common law.

Civ. '12, § 3941; Civ. '02, § 2838; G. S. 2179; R. S. 2308; 1824, VI, 236.

(5596) § 2. **Payment by Surety Not to Discharge Judgment Against Principal.**—The payment by a surety of a debt secured by judgment or decree shall not operate as a satisfaction of such judgment or decree against the principal debtor, but by such payment the said surety shall be entitled to all the rights and privileges of the plaintiff in such judgment or decree.

Civ. '12, § 3942; Civ. '02, § 2839; G. S. 2180; R. S. 2309; XVI, 137.

McIntosh v. Wright, Rich. Eq. Ca. 385; *Thomson v. Palmer*, 2 Rich. Eq. 32; *King v. Aughtry*, 3 Strob. Eq. 149; *Thomson v. Palmer*, 3 Rich. Eq. 139; *Garvin v. Garvin*, 31 S. C. 581, 10 S. E. 507. Surety embraces endorser. *Wilson v. Wright*, 7 Rich. 399; *Patterson v. Baxley*, 33 S. C. 354, 11 S. E. 1065. Applies where there is judgment against principal and none against surety. *Kinard v. Baird*, 20 S. C. 377. And if satisfaction has been entered, the surety may have it set aside. *Perkins v. Kershaw*, 1 Hill Ch. 344.

Equitable Surety Co. v. Illinois Surety Co. et al, 108 S. C. 364, 94 S. E. 882.

(5597) § 3. **Payment by One Surety Not to Discharge Judgment as to Cosurety.**—In case any surety in such judgment or decree shall pay the same, such payment shall not operate as a satisfaction of such judgment or decree as against the cosurety or sureties thereto, but such surety shall have the right to enforce the execution on such judgment or decree against his cosurety or sureties or for contribution.

Civ. '12, § 3943; Civ. '02, § 2840; G. S. 2181; R. S. 2310; XVI, 137.

(5598) § 4. **How Joint Debtor May Make a Separate Composition of Indebtedness.**—Any joint debtor may make a separate composition with his creditor as prescribed in this Section. Such composition shall discharge the debtor making it, and him only. The creditor must execute to the compounding debtor a release of the indebtedness or other instrument exonerating him therefrom. A member of a partnership cannot thus compound for a partnership debt until the partnership has been dissolved

by mutual consent or otherwise. In that case the instrument must release or exonerate him from all liability incurred by reason of his connection with the partnership. An instrument specified in this Section shall not impair the creditor's right of action against any other joint debtor or his right to take any other proceeding against the latter unless an intent to release or exonerate him appears affirmatively upon the face thereof.

Civ. '12, § 3944; Civ. '02, § 2841; R. S. 2311; 1883, XVIII, 431.

Joint debtors. *Symmes v. Cauble*, 72 S. C. 330, 51 S. E. 862.
Meyer v. Bouchier et al, 107 S. C. 254, 92 S. E. 471.

(5599) § 5. **How Judgments Recovered May Be Satisfied.**—An instrument specified in the last Section shall be deemed a satisfaction piece for the purpose of satisfying any judgment recovered upon an indebtedness released or discharged thereby as far as the judgment affects the compounding debtor. When a judgment is satisfied thereby a special entry must be made upon the judgment roll to the effect that the judgment is satisfied as to the compounding debtor only.

Civ. '12, § 3945; Civ. '02, § 2842; R. S. 2312; 1883, XVIII, 431.

(5600) § 6. **Rights of Joint Debtor Who Has Not Compounded.**—When a joint debtor has thus compounded, a joint debtor who has not compounded may make any defense or counterclaim or have any other relief as against the creditor to which he would have been entitled if the composition had not been made. He may require the compounding debtor to contribute his ratable proportion of the joint debt or of the partnership debts, as the case may be, as if the latter had not been discharged. And the debtor who has not compounded with his creditor may set up by way of discount against such creditor the amount compounded by his joint debtor.

Civ. '12, § 3946; Civ. '02, § 2843; R. S. 2313; 1883, XVIII, 431.

Meyer v. Bouchier et al, 107 S. C. 254, 92 S. E. 471.

(5601) § 7. **When County Liable for Damages for Lynching—May Recover from Guilty Parties.**—In all cases of lynching when death ensues the county where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than two thousand dollars, to be recovered by action instituted in any Court of competent jurisdiction by the legal representatives of the person lynched, and they are hereby authorized to institute such action for the recovery of such exemplary damages. A county against which a judgment has been obtained for damages in any case of lynching shall have the right to recover the amount of said judgment from the parties engaged in said lynching in any Court of competent jurisdiction, and is hereby authorized to institute such action.

Civ. '12, § 3947; Civ. '02, § 2844; 1896, XXII, 214.

Liability exists whether party lynched was a prisoner or not. *Brown v. Orangeburg Co.*, 55 S. C. 45, 32 S. E. 764.

Best v. Barnwell County, 114 S. C. 123, 103 S. E. 479.

(5602) § 8. **Arbitrations—Proceedings—Appeals—Effect of Award—Powers of Arbitrators.**—It shall be lawful for any and all persons, in case of disagreement or difference of opinion, as to the proper settlement of any contention that may hereafter arise to, and either party to the contention

may, propose to leave their differences to arbitration, each party to enter into bond in double the amount involved to faithfully abide the result of arbitration. The arbitrators shall be selected in the following manner: One discreet person to be selected by each party to the contention, and the two to select a third party who shall not be connected with either of the principals by blood or otherwise; the three shall proceed to organize by electing a chairman from their number, and take the following oath, to wit: I do solemnly swear that I will duly consider all the evidence adduced by the several parties to this contention, and I will render a true verdict or findings according to law and the evidence. The findings of said Board of Arbitration shall be final: *Provided*, That either party to the contentions shall have the right of appeal to the Circuit Court by serving written notice upon the opposite party within five days after the finding of said arbitration, setting forth the grounds of said appeal. And on such appeal the Circuit Judge presiding in said Court shall hear said appeal as to all questions of law and fact without the intervention of a jury. If no such notice be given within five days after said finding, then the award of arbitration shall be final. The award of the arbitration shall be filed with the Clerk of Common Pleas within five days after such finding and when so filed shall become a judgment of the Code of Common Pleas for such county. The said arbitrators appointed as aforesaid shall have power to subpoena witnesses and send for papers with the same powers and penalties as now apply to Magistrates' Courts.

Civ. '12, § 3953; Civ. '02, § 2849; 1896, XXII, 193.

Where award will be set aside. *Greenville v. Spartanburg*, 62 S. C. 105, 40 S. E. 147. The decision of the arbiter when reached in the exercise of his honest judgment is conclusive. *Brooke v. Laurens Mill Co.*, 78 S. C. 200, 58 S. E. 806, 125 Am. St. Rep. 786. Stipulation effect of notice that only common law arbitration is intended. *Bishop v. Valley Falls Mfg. Co.*, 78 S. C. 312, 58 S. E. 939.

TITLE II.

Remedies Relating to Real Property.

CHAPTER LXXXIX.

Escheats.

(5603) § 1. **Secretary of State as Escheator—To Act Under Direction of Sinking Fund Commission — Duties.** — The duties of Escheator are devolved hereafter upon the Secretary of State as agent of the Board of Commissioners of the Sinking Fund, and as Escheator the Secretary of State shall act under the direction and control of the Board of Commissioners of the Sinking Fund, and under the direction of said Board may use such of the funds and the services of such of the subagents of the said Board as in their discretion may be necessary to efficiency in discovering, renting, litigating and realizing money from escheated lands under existing law, and shall turn over to the State Treasurer the net proceeds of escheats after deducting and retaining therefrom for the benefit of the sinking fund so much money as in their opinion will reimburse the sink-

ing fund for moneys and agents' services used and advanced as aforesaid, and also any other expense necessarily incurred in executing the law and protecting the interest of the State in matter of escheats: *Provided*, That costs and expenses incurred as aforesaid (on account of agents' services, money advanced or otherwise) in one case may be deducted and retained from the proceeds of any other case of escheatment in the discretion of the Commissioners of the Sinking Fund. In cases where the process of escheatment is now in progress the Secretary of State, as agent as aforesaid, is authorized to call upon Escheators heretofore having case in charge for a full and detailed report and account of the case, with authority, under direction of the Board of Commissioners of the Sinking Fund, either to require said former Escheator, under direction of the Secretary of State, as agent as aforesaid, to continue and conclude the process at commissions heretofore allowed said former Escheator, or in the discretion of the said Board to require said former Escheator to forthwith turn over the case and all funds in his hands (whether derived from said incomplete case or from any former or other case of escheatment) to the Secretary of State, as agent aforesaid; and when such incomplete case is finally settled, the Secretary of State, as agent as aforesaid, shall allow and pay to the said former Escheator, out of the funds derived therefrom, such a proportion of the commissions heretofore allowed by law to Escheators as, in the judgment of the Board of Commissioners of the Sinking Fund, said Escheator is entitled to under the circumstances of the case.

Civ. '12, § 4076; Civ. '02, § 2975; 1896, XXII, 188.

Escheat proceedings being converted into proceedings to marshal assets. *In re Bugg*, 71 S. C. 439, 51 S. E. 263.

(5604) § 2. When Escheator May Buy for Sinking Fund Commissions.—

At any sale of escheated property, if, in his judgment, the property is being sold at a sacrifice, the Secretary of State shall be authorized to buy the land in for the Commissioners of the Sinking Fund (or to cause the same to be bid in), and upon payment of the costs accrued thereon to cause the title deed to be made therefor as escheated property to the Commissioners of the Sinking Fund, who shall rent or sell the said property in such manner, at such time and upon such terms as, in their judgment, shall be for the best interests of the State, and apply the proceeds thereof as above directed.

Civ. '12, § 4077; Civ. '02, § 2976; 1896, XXII, 188.

(5605) § 3. Annual Reports.—A report shall be made annually by the Secretary of State, to be included in his annual report, showing the receipts and payments under the provisions of this Chapter in each case of escheat, with the items thereof; and in case any escheated property be purchased by said Commissioners, their annual report shall show all resales of such property, and all income, rents and profits derived from such property while held by said Commissioners.

Civ. '12, § 4078; Civ. '02, § 2977; 1896, XXII, 188.

(5606) § 4. Escheated Property Not Affected.—Nothing in the three preceding Sections contained shall apply to any property escheated prior

to the ninth day of March, 1896, which by law was escheated for the benefit of any special purpose or object.

Civ. '12, § 4079; Civ. '02, § 2978; 1896, XXII, 188.

As to disposition of proceeds of escheated property, see Const. Art XI, § 11; Art. XVII, § 11.

(5607) § 5. Each Escheator to Notify Judge of Circuit Court of Any Supposed Escheated Lands.—The Escheator, as hereinbefore provided for, in every case where, on his knowledge or belief, or on the information of another, that certain lands in his respective counties have been escheated to the State by the death of the person last seized in fee simple, either in law or in fact without leaving any person who can lawfully claim such lands, either by purchase or descent, from such former proprietor, shall, on such knowledge or information, or the order of any Court of record, issue his notification of such supposed escheated lands to one of the Judges of the Circuit Court, at least two months previous to the next session of the said Court to be held in the county where such lands lie.

Civ. '12, § 4080; Civ. '02, § 2979; G. S. 2300; R. S. 2438; 1787, V, 47.

Lands shall not escheat where there is one capable of inheriting. *Scott v. Cohen*, 2 N. & McC. 293. Citizens, appointees of an alien, holding under deed with power of appointment, made before office found, take the property. *Escheator v. Smith*, 4 McC. 452. The Act of 1787 construed. *McCaw v. Galbraith*, 7 Rich. 74. As to service of notice. *In re Malone*, 21 S. C. 435.

(5608) § 6. Proceedings as to Supposed Escheated Lands.—The Judge presiding at such Court shall cause the jury (being first duly sworn) to proceed and make a true inquest of all such supposed escheated lands, which by the Escheator shall be subjected to their investigation, and a true verdict made thereon; whereupon the Judge of the Court aforesaid shall certify the same, under his hand and the seal of the Court, to the Escheator, who is hereby ordered and directed to record the same in a book to be kept by him for that purpose, and shall return the original within two months after the date thereof into the office of the Clerk of the said Court, to be there filed and kept as a record thereof.

Civ. '12, § 4081; Civ. '02, § 2980; G. S. 2301; R. S. 2439; 1787, V, 47.

(5609) § 7. Advertisement of Lands on Return of Inquest.—On the return of any inquest of supposed escheated lands by the Escheator into the office of the Clerk of the county where the lands lie, he shall thereupon cause to be advertised, in a newspaper of the county, or other nearest gazette, the first week in every month, for six months, a notice containing a particular description of the lands, the name of the person last seized, and the supposed time of his or her death, together with the part of the world in which he or she was supposed to have been born, and requiring his or her heirs, or others claiming under him or her, to appear and make claim.

Civ. '12, § 4082; Civ. '02, § 2981; G. S. 2302; R. S. 2440; 1787, V, 47; 1839, XI, 110.

(5610) § 8. Lands Not Claimed for Twelve Months After Advertising to Be Escheated and Sold.—If no person shall appear and claim the same within twelve months after the expiration of the time prescribed for advertising, the said Clerk shall issue process, to be signed by the Judge of the Circuit Court of the said county, to the Escheator, pronouncing the

said lands escheated and vested according to law, and directing him forthwith to sell and convey the same, upon the usual notice.

Civ. '12, § 4083; Civ. '02, § 2982; G. S. 2303; R. S. 2441; 1787, V, 47.

Title vests in the State at death of owner; it is vested by this judgment of the Court. *City Council v. Large*, 1 Mill 454; *Harlock v. Jackson*, 3 Brev. 254.

(5611) § 9. **Sales to Be Advertised for Six Weeks.**—As soon as the Escheator shall receive the process in the preceding Section mentioned, he shall advertise the sale of said lands in a newspaper of the county, or other nearest gazette, and, also, in the most public places of the county in which the lands lie (giving six weeks' public notice), on a credit of twelve months, payable in lawful money; and shall, moreover, take good and sufficient surety, and a mortgage of the premises, before the title shall be altered or changed.

Civ. '12, § 4084; Civ. '02, § 2983; G. S. 2304; R. S. 2442; 1787, V, 47.

Bodden v. Speigner, 2 Brev. 321; *Ex parte Malone*, 21 S. C. 435.

(5612) § 10. **Division of Lands Into Smaller Tracts—Proceeds of Sale Paid Into Treasury.**—Where the lands shall exceed six hundred acres, and can be divided into smaller tracts with advantage to the State in the sale thereof, the Escheator shall cause the same to be divided in such manner as shall be most beneficial to the State; and the proceeds arising from such sale shall be forthwith paid into the public treasury whenever the same shall become due and recovered.

Civ. '12, § 4085; Civ. '02, § 2984; G. S. 2305; R. S. 2443; 1787, V, 47.

(5613) § 11. **Persons Making Good Title Within Five Years to Have Compensation.**—If any person shall appear, within five years, and make good title to such lands, in the Court of Common Pleas, on an issue tried, he shall forthwith receive adequate compensation.

Civ. '12, § 4086; Civ. '02, § 2985; G. S. 2306; R. S. 2444; 1787, V, 47.

Ex parte Williams, 13 Rich. 77.

(5614) § 12. **Lands to Be Committed to Claimant on His Giving Security, Etc.**—Any person, without delay, shall be heard on a traverse, in the Court of Common Pleas, on a petition setting forth his rights, and the said lands shall be committed to him, if he shall show good evidence of his title, to hold until the right shall be found and discussed for the State and the claimant; such claimant finding sufficient security to prosecute his suit to effect, and without delay, and to render to the State the yearly value of such lands, if the right be found for the State.

Civ. '12, § 4087; Civ. '02, § 2986; G. S. 2306; R. S. 2445; 1787, V, 47.

This Section does not give traverses of escheat precedence on docket. *Lance v. Dobson*, Riley 301. Each traverse is a separate case and should be tried separately. *McCaw v. Galbraith*, 7 Rich. 74; *In re Malone*, 21 S. C. 435.

(5615) § 13. **Rent of Lands Before Sale on Nonappearance of Claimant—Damages for Prosecutions.**—Where no claimant shall appear to make title aforesaid, the Escheators shall rent out the escheated lands, if the same can be done with advantage to the State, until the process of escheat shall be concluded and the lands sold: *Provided, nevertheless*, That if any suit for property supposed to be escheated shall be prosecuted by any Escheator, and the jury before whom such trial shall be had shall think

there is no probable case, such jury are authorized and required to assess and award to the party grieved such damages as they shall think proper.

Civ. '12, § 4088; Civ. '02, § 2987; G. S. 2308; R. S. 2446; 1787, V, 47.

(5616) § 14. State Not Precluded by Grants, Etc.—Proviso.—The State shall not be precluded by possession, grant, conveyance, or any other cause or title, from making inquest and sale of all such lands as have heretofore escheated to the State by the death of the person last seized thereof; any law, custom or usage to the contrary notwithstanding: *Provided*, That no lands claimed under grant, or under an actual possession for five years, prior to the fourth of July, one thousand seven hundred and seventy-six, shall be affected by this Section.

Civ. '12, § 4089; Civ. '02, § 2988; G. S. 2309; R. S. 2447; 1787, V, 48.

Statute of Limitations cannot bar an escheat. *Harlock v. Jackson*, 3 Brev. 254. But escheat cannot operate against one who has acquired title by possession before death of person in whose name the property is escheated. *Wilkins v. Tart*, 3 McC. 518. A grant of five years' previous possession before 4th July, 1776, exempts from escheat. *Warwick v. Wightman*, 1 Brev. 331; *Wilkins v. Tart*, 3 McC. 518.

(5617) § 15. Personal Estate, to Which There is no Heir, Shall Revert to State.—Where any moneys or other personal estate shall be found in the hands of an executor or administrator, being the property of any person heretofore deceased, or hereafter dying, and leaving no person entitled to claim, and without making disposition of the same, the Escheator of the county where such chattels shall be found, or the Attorney General, on behalf of the State, shall and may sue for, recover, and pay the same into the Treasury of the State.

Civ. '12, § 4090; Civ. '02, § 2989; G. S. 2310; R. S. 2448; 1787, V, 48.

The term escheat applies to personalty as well as realty. *Howard v. Schmidt*, Rich. Eq. Ca. 452. The escheator stands in place of distributees, and can only bring such action against the legal representative of the person whose property is escheated, and not against the administrator of his administrator. *Gill v. Douglass*, 2 Bail. 387. Such administrator is liable for interest on fund during litigation. *Howard v. Schmidt*, Rich. Eq. Ca. 452.

(5618) § 16. State Treasurer to Advertise Personalty Six Months—Vests in State in Two Years.—The State Treasurer, for the time being, shall advertise such chattels in some newspaper, once in every month, for six months, in like manner as lands are hereinbefore directed to be advertised; and if no person shall appear and make good title to such personal estate within two years thereafter, other than as executor or administrator, or their legal representatives, then such personal estate shall become vested in and applied to the use of the State.

Civ. '12, § 4091; Civ. '02, § 2990; G. S. 2311; R. S. 2449; 1787, V, 48.

(5619) § 17. Rights of Persons Under Disabilities Reserved for Three Years After Their Removal.—Nothing herein contained shall prejudice the rights of individuals having legal title, and who may be under the disabilities of infancy, coverture, lunacy, or beyond the limits of the United States, until three years after such disabilities shall be removed.

Civ. '12, § 4092; Civ. '02, § 2991; G. S. 2312; R. S. 2450; 1787, V, 48.

Applied. *Ex parte Williams*, 13 Rich. 77. This Section saves only the right to traverse an inquisition of escheat; it cannot divest a title acquired by possession under § (5616), or under Act 1712. *Warnock v. Wightman*, 1 Brev. 331.

(5620) § 18. This Chapter to Be Observed Where Persons Die Without Heirs.—Every part of this Chapter, and the mode therein prescribed for

recovering and appropriating real and personal property escheated to the State, shall be pursued and observed when any person shall hereafter die without heir, or become divested thereof by operation of law, without leaving any legal representative.

Civ. '12, § 4093; Civ. '02, § 2992; G. S. 2313; R. S. 2451; 1787, V, 48.

Bodden v. Speigner, 2 Brev. 321; *In re Malone*, 21 S. C. 435.

(5621) § 19. Estates of Felons to Descend to Their Representatives.—No property shall be vested in the State, or any inquisition had by the Escheator, where any person or persons shall have committed or may commit any felony against the State; but the said property shall descend to, and be vested in, the representatives of such person or persons.

Civ. '12, § 4094; Civ. '02, § 2993; G. S. 2314; R. S. 2452; 1787, V, 48.

(5622) § 20. Not to Contravene Any Treaty, Etc., Between United States and Foreign Powers.—Nothing in this Chapter contained shall be construed to extend to or contravene any treaty or agreement that is or may be entered into between the United States of America and any foreign prince, estate, or potentate, on the subject of descents and inheritances.

Civ. '12, § 4095; Civ. '02, § 2994; G. S. 2315; R. S. 2453; 1787, V, 48.

(5623) § 21. Commissions of Escheators.—Every Escheator shall, as a compensation for his trouble, cost, and charges in the discharge of his duty, be entitled to receive the commission of two and a half per cent. out of all moneys which, in virtue of this Chapter, shall be paid by him into the treasury; and where any person or persons shall appear and make title to lands or personal estate, after office found by the jury, the Court shall have power to assess such reasonable costs and charges as the Escheator has sustained in promoting the claim of the State, except in cases where he has already received his commissions.

Civ. '12, § 4096; Civ. '02, § 2995; G. S. 2320; R. S. 2454; 1787, V, 48.

(5624) § 22. Escheators Not to purchase Escheated Estates—Penalty.—No Escheator, or person acting as such, shall, directly or indirectly, either by himself or any person whomsoever, purchase, or be concerned with any person or persons in purchasing any escheated lands, without being subject and liable to the payment of five thousand dollars, to be sued for and recovered in any Court of record, one-half for the benefit of the informer, who shall sue for and recover the same, and the other half to be applied to the use of the State; and the said Escheator shall also be rendered incapable of holding or exercising any office of trust or emolument therein.

Civ. '12, § 4097; Civ. '02, § 2996; G. S. 2319; R. S. 2455; 1787, V, 49.

(5625) § 23. Penalty for Neglect.—If any Escheator shall fail to do his duty, as herein directed, on behalf of the State, and any loss or damage shall accrue to the State by his misconduct and fraudulent practices, he shall be responsible for all such loss or damage, and the Court of Common Pleas shall have power and authority to order a prosecution in the name of the State; and the jury shall try the fact, and assess the damage; and,

upon conviction, such Escheator or Escheators shall be incapable forever thereafter from holding any place of trust or profit within this State.

Civ. '12, § 4098; Civ. '02, § 2997; G. S. 2321; R. S. 2456; 1787, V, 49.

TITLE III.

CHAPTER XC.

Chattel Mortgages and Liens.

ARTICLE 1. Chattel Mortgages, 1712.

ARTICLE 2. Liens on Lands and Buildings for Labor and Materials, 1716

ARTICLE 3. Liens on Ships and Vessels for Labor and Materials, 1724.

ARTICLE 4. Liens on Railroads for Work or Materials, 1726.

ARTICLE 5. Agricultural Liens, 1726.

ARTICLE 6. Liens of Owners of Stock Animals, 1731.

ARTICLE 7. Liens of Employees in Factories, Etc., 1731.

ARTICLE I.

Chattel Mortgages.

(5626) § 1. **Descriptions in Chattel Mortgages.**—No chattel mortgage, except mortgages or deeds of trust covering the whole or any part of the real or personal property of a railroad company or manufacturing company, shall be valid or good to convey any interest or right whatever to the mortgagee unless the property mortgaged shall be described in writing, or typewriting, but not printing, on the face of the mortgage, nor shall any prosecution lie for selling any property under the lien of such mortgage, unless the property mortgaged shall be described in writing or typewriting, but not printing, on the face of such mortgage.

Civ. '12, § 4103; Civ. '02, § 3002; 1901, XXIII, 735; 1903, XXIV, 99.

Bill of sale as security, a mortgage. *Quattlebaum v. Taylor*, 45 S. C. 512, 23 S. E. 617. An instrument held a lease and not mortgage. *Ludden & Bates v. Hornsby*, 45 S. C. 111, 22 S. E. 781. What constitutes an equitable chattel mortgage, rights under. *Davis v. Childers*, 45 S. C. 133, 22 S. E. 784. Provision for retention of possession by mortgagor. *Wescoat v. Crawford*, 45 S. C. 189, 22 S. E. 792.

Verbal agreement to give a mortgage on chattels may create an equitable mortgage. *Creech v. Long*, 72 S. C. 25, 51 S. E. 614. Manner of taking possession after breach of condition in chattel mortgage is within scope of agency of party taking possession as agent of the mortgagee, and the latter is liable for misconduct of agent, though acting contrary to his directions. *Williams v. Tolbert*, 76 S. C. 211, 56 S. E. 908. Estoppel to deny validity. *Rose v. Harlee*, 69 S. C. 523, 48 S. E. 541. Chattel mortgage to secure advances. *McNeil v. Conyers*, 18 S. C. 571.

This Section is constitutional. *Rose v. Harlee*, 69 S. C. 523, 48 S. E. 541.

It is not necessary to introduce extraneous evidence to show that portions of a paper are not written or typewritten, when paper itself is put in evidence, as that is evidence upon inspection. *Rose v. Harlee*, 69 S. C. 523, 48 S. E. 541.

(5627) § 2. **Time for Redemption of Goods or Chattels Sold by Way of Mortgage.**—In all bills of sale of any plate, gold and silver, or goods and chattels whatsoever, by way of mortgage, with right of redemption upon performance of the proviso in the said bill of sale, where the plate, gold and silver, or goods and chattels, are actually delivered unto the person to whom such bill of sale is made, and are in his actual possession (and not a delivery or seizin in form of law only), and shall continue in the

same for the space of two years after the breach of the proviso in the said bill of sale, without redemption thereof, the said goods or chattels so sold and delivered and possessed as aforesaid, though with right or equity of redemption, are hereby declared to be vested in the said person or persons to whom such bill of sale was made, and their executors, administrators, and assigns, to have and to hold to them, their executors, administrators, and assigns, as their own proper goods and chattels forever; excepting such person or persons having such right or equity or redemption beyond the seas, or otherwise out of the limits of this State, all which persons shall have saved to them their equity of redemption, so as they prosecute the same within three years after the breach of the proviso of the bill of sale, and at no time thereafter.

Civ. '12, § 4104; Civ. '02, § 3003; G. S. 2347; R. S. 2461; 1712, II, 587.

Hogan v. Hall, 1 Strob. Eq. 323; Moseley v. Crockett, 9 Rich. Eq. 339.

(5628) § 3. As to Sale of Personal Property Mortgaged.—When any personal property under pledge, mortgage or hypothecation is to be sold for the purpose of satisfying the loan or debt secured by such pledge, mortgage or hypothecation, the pledgee, mortgagee or person holding the instrument showing the hypothecation shall advertise the time and place of said sale by posting a notice thereof, in writing, at least fifteen (15) days before such sale in three (3) public places in the county in which such personal property may be found, one of which shall be the Court House door, or shall publish the same at least two weeks in a newspaper published in his county, unless the person making such pledge, mortgage or hypothecation, or his legal representative, shall consent, or shall have consented, to a sale in some other mode or at some other notice, such consent to be expressed in writing.

Civ. '12, § 4105; Civ. '02, § 3004; R. S. 2462; 1882, XVIII, 124.

Battey v. Knight, 66 S. C. 107, 44 S. E. 589. If mortgagee take part of crop without sale, mortgagor is entitled to credit on mortgagee's debt in proportion that value of property taken bears to entire property mortgaged. Green v. Scruggs, 73 S. C. 403, 53 S. E. 612. Sale to mortgagee at agreed price. Working Men's Bldg. & Loan Assn. v. Epstein, 73 S. C. 575, 53 S. E. 952. Place of sale. Waiver of provision of Statute as to. Fretwell v. Carter, 78 S. C. 531, 59 S. E. 639.

(5629) § 4. Mortgage of Crops Valid Only for Year—Planting Place to Be Described.—No mortgage of any crop or crops shall be good and effective to convey to the mortgagee any interest in any crop or crops other than the crop or crops to be raised during the year in which said mortgage is given, and unless the land whereon said crop or crops are to be raised shall be described or mentioned in said mortgage, which said mortgage, when so taken, when indexed or recorded as required by law, shall constitute a lien on the crops therein described in preference to all subsequent mortgages on said crop or crops.

Civ. '12, § 4106; Civ. '02, § 3005; R. S. 2463; 1891, XX, 1053; 1911, XXVII, 153.

Livingston et al v. Seaboard Air Line R. Co. et al, 100 S. C. 13, 84 S. E. 303; E. W. Kimbrell Co. v. Mills & Young Co., 100 S. E. 443, 84 S. E. 996; Owings et al v. Shaw et al, 107 S. C. 258, 92 S. E. 474.

(5630) § 5. Right of Redemption — Amount of Tender — Discharge of Mortgage.—The mortgagor of any chattel shall have the right to redeem the property mortgaged by him at any time before sale by the mortgagee by paying the mortgage debt and any costs incurred in attempting to

enforce its payment, and a tender made by the mortgagor of an amount sufficient to pay said debt and costs, if not accepted, shall render the mortgage null and void.

Civ. '12, § 4107; Civ. '02, § 3006; R. S. 2464; 1892, XXI, 7.

Applied to bill of sale to secure advances. *Lowery v. Gregory*, 60 S. C. 149, 38 S. E. 257. Injunction to stay sale upon tender of payment. *Seabrook v. Mostowitz*, 51 S. C. 433, 29 S. E. 202. Tender, opportunity to produce mortgage. *Spears v. Fields*, 72 S. C. 395, 52 S. E. 44.

(5631) § 6. Postponement or Partial Payment Not to Defeat Lien.—Indulgence Without Prejudice.—No voluntary postponement by the mortgagee to seize the personal property covered by any chattel mortgage or bill of sale used as a chattel mortgage after condition broken, and no acceptance of a part of the debt secured by the mortgage or such bill of sale after condition broken, shall be construed to operate as discharging the mortgage or bill of sale, or as reverting the title to the chattel or chattels in the mortgagor; but indulgence may be granted by such mortgagee to such mortgagor after condition broken, as on other past due securities, without prejudice or danger to any rights or remedies of the mortgagee in the premises to collect his debt or to seize the chattels at any time at his option.

Civ. '12, § 4108; Civ. '02, § 3007; 1894, XXI, 800.

After breach of condition title vests in mortgagee. *Reese v. Lyon*, 20 S. C. 20; *McClendon v. Wells*, 20 S. C. 514; *Williams v. Dobson*, 26 S. C. 110, 1 S. E. 421; *Ex parte Knobloch*, 26 S. C. 331, 2 S. C. 612; *Lorenz v. Salley*, 32 S. C. 368, 11 S. E. 296; *Wylie v. R. E. Co.*, 48 S. C. 405, 26 S. E. 676. And the mortgagee has the right to sell the property and give good title. *Flenikn v. Scruggs*, 15 S. C. 91. Against a second mortgage. *Martin v. Jenkins*, 51 S. C. 42, 27 S. E. 947. Demand for payment after breach of condition does not revert title in mortgagor. *Hale v. Utsey*, 44 S. C. 393, 22 S. E. 371; *Wallingford v. Aiken*, 44 S. C. 396, 22 S. E. 372.

Right to enter and take property, power coupled with an interest. *Willis v. Whittle*, 82 S. C. 500, 64 S. E. 410. Not stopped to enforce mortgage, by knowledge that third party had possession of horse without notice. *Grafton v. Patrick*, 77 S. C. 420, 58 S. E. 1, 122 Am. St. Rep. 586.

(5632) § 7. Unlawful to Make Certain Charges on Loans Under Twenty-Five Dollars.—It shall be unlawful for the lender of money on a mortgage or bill of sale of chattels as security for a loan, his agents, employees, or any person in his behalf, where the sum loaned is under twenty-five dollars, to charge the borrower with any sum or sums of money for the drawing of the mortgage, bill of sale or any papers connected with said loan, unless the said papers be drawn up and prepared by a duly licensed and practicing attorney at law, Magistrate or Notary Public not connected in business with the lender, which said officers so drawing said papers shall receive the whole amount so paid by the borrower for the services so rendered, and no part of said fee shall be given by the said attorney at law, Magistrate or Notary Public to the lender, his agents, employees or any person in his behalf.

Civ. '12, § 4109; 1904, XXIV, 501.

(5633) § 8. No Charge for Examination of Property, Etc.—It shall be unlawful for any lender, his agents, employees, or any person in his behalf, as set forth in Section 7, to charge any sum or sums for the examination of any property proposed to be given as security for said loan, or for any services whatsoever rendered in the negotiating, making or effecting of said loan, under whatsoever name the same may be denominated.

Civ. '12, § 4110; 1904, XXIV, 501.

(5634) § 9. **Unlawful to Take Mortgage for Greater Amount Than Actually Lent.**—It shall be unlawful for the lender of money as aforesaid, his agents, employees or any person in his behalf, to have inserted in his mortgage or bill of sale, as representing the indebtedness of the mortgagor or vendor, an amount in excess of the actual amount of money received by the borrower, except as hereinbefore provided for and recording fees.

Civ. '12, § 4111; 1904, XXIV, 501.

(5635) § 10. **Contracts Violating This Article Void.**—All mortgages or bills of sale hereafter given as security for loans in or on which charges have been made, or which on its face shall show an indebtedness greater than the amount actually received by the borrower, in violation of the preceding Sections, shall be, and are hereby, declared null, void and of no effect.

Civ. '12, § 4112; 1904, XXIV, 501.

(5636) § 11. **Chattel Mortgages to Be Satisfied of Record in Oconee County—What Sufficient.**—That mortgagees and assignees of mortgages of personal property of record in the County of Oconee be required to satisfy such mortgages or record within ten days after their payment. Such satisfaction may be made by the mortgagee or the assignee of the mortgagee writing across the face of the record of such mortgage where the paper is recorded in full the words "paid in full" and signing his or her name thereto. Where the mortgage is under one hundred (\$100.00) dollars and therefore only filed, then in that event across the description of the property on the book containing the filing. When the payment is made, the mortgagee or assignee of the mortgagee may satisfy by signing a satisfaction in the following words, to wit: "Clerk of Court, S. C. Satisfy chattel mortgage from to, for dollars, recorded in Chattel Mortgage Book, page Witness: (Signed)," and delivering the same to the mortgagor or sending by mail to the Clerk of Court or in any other way delivering the same to him. Upon receiving it, the Clerk shall copy the same on the face of the record of the mortgage where it shall be over one hundred (\$100.00) dollars and recorded in full and over the description of the property on the record where the mortgage shall be under one hundred (\$100.00) dollars and only filed.

1918, XXX, 700.

(5637) § 12. **Fee of Clerk.**—That for entering satisfaction of such mortgages the Clerk shall be entitled to a fee of five cents.

1918, XXX, 700.

(5638) § 13. **Penalty.**—That in all cases of wilful or intentional failure to satisfy a chattel mortgage as above set forth when the same shall have been paid, the mortgagee shall be liable to a penalty of one-half of the value of the mortgage to be recovered in any Court of competent jurisdiction by any party who may be interested in the same.

1918, XXX, 700.

ARTICLE II.

Liens on Lands and Buildings for Labor and Materials.

(5639) § 1. Party Furnishing Labor and Materials to Have Lien on Buildings, Etc.—Any person to whom a debt is due for labor performed or furnished, or for materials furnished and actually used in the erection, alteration, or repair of any building or structure upon any real estate, by virtue of an agreement with, or by consent of, the owner of such building or structure, or any person having authority from, or rightfully acting for, such owner, in procuring or furnishing such labor or materials, shall have a lien upon such building or structure, and upon the interest of the owner thereof in the lot of land upon which the same is situated, to secure the payment of the debt so due to him, and the costs which may arise in enforcing such lien under this Chapter, except as is provided in the following Sections.

Civ. '12, § 4113; Civ. '02, § 3008; G. S. 2350; R. S. 2456; 1816, VI, 32; 1869, XIV, 220.

This Section does not give a lien to sub-contractors. *Kelly v. Bank*, McM. Eq. 431; *Murray v. Earle*, 13 S. C. 87; *Gray v. Walker*, 16 S. C. 143; *Geddes v. Bowden*, 19 S. C. 1. A contract with one who then owned all the stock of an incorporated bridge company for repairs of the bridge gives such lien on it. *Watson v. Columbia Bridge Co.*, 13 S. C. 433. Consent here means an agreement of legal force. *Gray v. Walker*, 16 S. C. 143; *Geddes v. Bowden*, 19 S. C. 1. Mere knowledge by the agent of the owner of such labor does not amount to such consent. *Gray v. Walker*, 16 S. C. 143. Such lien upon a building and upon "the interest of the owner thereof in the lot of land upon which the same is situated" includes several adjoining lots, enclosed by a common fence and used for the same purpose. *Ex parte Davis*, 9 S. C. 204. Such lien may be waived by mechanic. *Murray v. Earle*, 13 S. C. 87.

Accepting benefits of contract with knowledge shows consent thereto. *Builders' Supply Co. v. North Augusta Elect. & Imp. Co.*, 71 S. C. 361, 51 S. E. 231. No counterclaim, only set off, can be interposed to proceedings to enforce lien. *Tenny v. Power Co.*, 67 S. C. 11, 45 S. E. 111; *Gwynn v. Citizens' Tel. Co.*, 69 S. C. 434, 48 S. E. 460, 104 Am. St. Rep. 819, 67 L. R. A. 111.

Unliquidated damages for failure to complete the work in proper time may set up as a defense to action. *Spears v. DuRant*, 76 S. C. 19, 56 S. E. 652; *Tenny v. Power Co.*, 69 S. C. 430, 48 S. E. 457. Definition of "owner." *Metz v. Critcher*, 83 S. C. 396, 65 S. E. 394. "Consent" defined. *Metz v. Critcher*, 86 S. C. 348, 68 S. E. 627.

Contractor who is engaged in building railroad is not entitled to mechanic's lien. *Greenwood, etc., Railway v. Strang*, 77 Fed. 498, 499.

Williamson et al v. Hotel Melrose et al, 110 S. C. 1, 96 S. E. 407.

(5640) § 2. Laborer, Mechanic, Subcontractor or Materialman Furnishing Material for the Improvement of Real Estate to Have Lien Thereon.—Every laborer, mechanic, subcontractor or person furnishing material for the improvement of real estate where such improvement has been authorized by the owner shall have a lien thereon subject to existing liens of which he has actual or constructive notice to the value of the labor or material so furnished which may be enforced as hereinafter provided.

Civ. '12, § 4114; Civ. '02, § 3009; 1896, XXII, 197; R. S. 2466; 1916, XXIX, 686.

Metz v. Critcher, 83 S. C. 396, 403, 65 S. E. 394.

Notice need not be given where the purchaser of the material is the owner of the property. *Mathews v. Monts*, 61 S. C. 385, 39 S. E. 575.

(5641) § 3. Must Notify Owner of Supply of Material and Value Thereof.—Limitation.—Whenever work is done or material is furnished for the improvement of real estate upon the employment of a contractor or some other person than the owner and such laborer or mechanic, contractor or material man shall in writing notify the owner of the furnishing of such labor or material and the amount or value thereof, then and in that event the lien given by the foregoing Section shall attach upon the real estate improved as against the true owner for the amount of the work done or material furnished: *Provided*, That in no event shall the aggregate amount of liens set up hereby exceed the amount due by the owner on contract price of the improvement made.

Civ. '12, § 4114; Civ. '02, § 3009; R. S. 2466; 1896, XXII, 197; 1916, XXIX, 686.

(5642) § 4. Liencee Hereunder Entitled to Preference in Payment Over Contractor.—Any person claiming a lien under the provisions of this Article who shall have given the notice provided for herein shall be entitled to be paid in preference to the contractor at whose instance the labor was performed or material furnished and no payment by the owner to the contractor thereafter shall operate to lessen the amount recoverable by the person so giving the notice.

1916, XXIX, 686.

(5643) § 5. Payments to Be Prorated When Amount Due Insufficient to Pay Liens.—In the event the amount due the contractor by the owner vided it shall be the duty of the owner to prorate among all just claims the amount due such contractor.

1916, XXIX, 686.

(5644) § 6. Liencee May Foreclose.—Any person acquiring a lien as above provided may foreclose the same in the manner now provided by law for foreclosing mechanics' and material men's liens.

1916, XXIX, 686.

(5645) § 7. Not of Force Against Existing Mortgage.—Such lien shall not avail or be of force against any mortgage actually existing and duly recorded prior to the date of the contract under which the lien is claimed.

Civ. '12, § 4115; Civ. '02, § 3010; G. S. 2352; R. S. 2467; 1869, XIV, 220.

Devereaux v. Taft, 20 S. C. 558.

(5646) § 8. Not to Attach if Owner of Building, Etc., Gives Notice.—The owner of any such building or structure in process of erection, or being altered or repaired, other than the party by whom or in whose behalf a contract for labor or materials has been made, may prevent the attaching of any lien for labor thereon not at the time performed, or materials not then furnished, by giving notice, in writing, to the person performing or furnishing such labor, or furnishing such materials, that he will not be responsible therefor.

Civ. '12, § 4116; Civ. '02, § 3011; G. S. 2356; R. S. 2468; 1869, XIV, 220.

Owner here is subsequent owner who has acquired the right of the owner alluded to in § 4113. Metz v. Critcher, 83 S. C. 396, 65 S. E. 394.

It is not necessary for owner to give notice that he will not be responsible for material furnished and used in order to prevent lien attaching unless he has agreed or consented thereto as provided in § 4113. Metz v. Critcher, 86 S. C. 348, 68 S. E. 627.

(5647) § 9. Lien Dissolved Unless Statement Be Recorded—When, Where and What to Contain.—Such lien shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, files in the office of the Register of Mesne Conveyances or Clerk of Court of the county in which the same is situated a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien, sufficiently accurate for identification, with the name of the owner or owners of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and shall be recorded in a book kept for the purpose by the Register or Clerk who

shall be entitled to the same fees therefor as for recording mortgages of equal length. The delivery to the Register or Clerk for filing, as hereinbefore provided, shall be and constitute the delivery contemplated with regard to such liens in Title II of Part II of this Code.

Civ. '12, § 4117; Civ. '02, § 3012; G. S. 2354; R. S. 2469; 1869, XIV, 220; 1873, XV, 350; 1884, XVIII, 822.

Drewery v. Columbia Amusement Co., 87 S. C. 445, 448, 69 S. E. 879, 1094.

Kelly v. Bank, McC. Eq. 431; *Oliver v. Fowler*, 22 S. C. 534; *Waring v. Miller Batting Co.*, 36 S. C. 310, 15 S. E. 132.

Williamson et al v. Hotel Melrose et al, 110 S. C. 1, 96 S. E. 407.

(5648) § 10. Not Invalidated by Inaccuracy of Statement, Etc.—No inaccuracy in such statement, relating to the property to be covered by the lien, if the property can be reasonably recognized, or in stating the amount due for labor or materials, shall invalidate the proceedings, unless it appear that the person filing the certificate has wilfully and knowingly claimed more than is his due.

Civ. '12, § 4118; Civ. '02, § 3013; G. S. 2355; R. S. 2470; 1869, XIV, 220.

(5649) § 11. Lien Dissolved if Suit Not Begun in Six Months.—Unless a suit for enforcing the lien is commenced within six months after person desiring to avail himself thereof ceases to labor on or furnish labor or material for such building or structures, the lien shall be dissolved.

Civ. '12, § 4119; Civ. '02, § 3014; G. S. 2356; R. S. 2471; 1869, XIV, 220; 1873, XV, 350.

Tenney v. Anderson Water, etc., Co., 67 S. C. 11, 13, 45 S. E. 111.

When commenced. *Oliver v. Fowler*, 22 S. C. 534.

(5650) § 12. How Enforced.—The lien may be enforced by petition to the Court of Common Pleas for the county where the building or structure is situated. The petition may be filed in term, or in the Clerk's office in vacation, and the date of the filing shall be deemed the commencement of the suit.

Civ. '12, § 4120; Civ. '02, § 3015; G. S. 2357; R. S. 2472; 1869, XIV, 220.

Assignee of such lien may thus enforce it. *Oliver v. Fowler*, 22 S. C. 534. This and the following Section create no right, but simply relate to enforcement of such right. *Geddes v. Bowden*, 19 S. C. 1.

Metz v. Critcher, 83 S. C. 396, 65 S. E. 394; *Tenney v. Anderson Water, etc., Co.*, ante.

(5651) § 13. Enforced Before Magistrate's Court, if Less Than One Hundred Dollars.—When the amount of the claim does not exceed one hundred dollars, the lien may be enforced by a petition to a Magistrate; and such Magistrate shall have like power and authority within his jurisdiction as herein conferred upon the Court of Common Pleas, with like rights of appeal to the parties as exist in other civil cases.

Civ. '12, § 4121; Civ. '02, § 3016; G. S. 2358; R. S. 2473; 1869, XIV, 221.

(5652) § 14. Petition Served With Summons, Etc.—The petition may be served with the summons, or filed with the Clerk, and shall be returned and entered as other civil cases.

Civ. '12, § 4122; Civ. '02, § 3017; G. S. 2359; R. S. 2474; 1869, XIV, 221.

Tenney v. Anderson Water, etc., Co., ante.

Summons not necessary. *Johnson v. Frazee*, 20 S. C. 500. But may be used. *Oliver v. Fowler*, 22 S. C. 534.

(5653) § 15. Petition to Contain Brief Statement of Contract, Etc.—The petition shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises

subject to the lien, and all other material facts and circumstances; and shall pray that the premises may be sold, and the proceeds of the sale be applied to the discharge of the demand.

Civ. '12, § 4123; Civ. '02, § 3018; G. S. 2360; R. S. 2475; 1869, XIV, 220.

Tenney v. Anderson Water, etc., Co., 67 S. C. 11, 14, 45 S. E. 111.

(5654) § 16. Amendments of Pleading.—The Court may at any time allow either party to amend his pleadings as in other civil actions.

Civ. '12, § 4124; Civ. '02, § 3019; G. S. 2361; R. S. 2476; 1869, XIV, 220.

Tenney v. Anderson Water, etc., Co., 67 S. C. 11, 14, 45 S. E. 111.

McGee v. Piedmont Manufacturing Co., 7 S. C. 263; *Geddes v. Bowden*, 19 S. C. 1; *Waring v. Miller Batting Co.*, 36 S. C. 310, 15 S. E. 132.

(5655) § 17. Any Number Who Have Labored on Same Building May Join in Petition.—Any number of persons who have actually performed labor or furnished labor or materials on one or more buildings or structures upon different lots of land, where the labor was performed for the same owner, contractor, or other person, may join in the same petition for their respective liens, and the same proceedings shall be had in regard to the rights of each petitioner, and the respondent may defend as to each petitioner, in the same manner as if he had severally petitioned for his individual lien.

Civ. '12, § 4125; Civ. '02, § 3020; G. S. 2362; R. S. 2477; 1869, XIV, 220.

(5656) § 18. Notice to Owner and Other Creditors.—The Court in which the petition is entered shall order notice to be given to the owner of the building or structure, that he may appear and answer thereto at a certain day in the same term, or at the next term, by serving him with an attested copy of the petition, with the order of the Court thereon, fourteen days at least before the time assigned for the hearing; and the Court shall also order notice of the filing of the petition to be given to all other creditors who have a lien of the same kind upon the same estate, by serving them with a copy of the last mentioned order in like manner.

Civ. '12, § 4126; Civ. '02, § 3021; G. S. 2363; R. S. 2478; 1869, XIV, 220.

Tenney v. Anderson Water, etc., Co., 67 S. C. 11, 14, 45 S. E. 111.

This applies as well where the owner is defendant with the contractor as where he is sole defendant. *Johnson v. Frazee*, 20 S. C. 500. Either the proceeding here or that in § 4122 may be properly used. *Oliver v. Fowler*, 22 S. C. 534.

(5657) § 19. Notice to Absent Parties.—If it appears to the Court that any of the parties entitled to notice are absent, or that they cannot probably be found to be served with the notice, the Court may, instead of the personal notice before mentioned, or in addition thereto, order notice to all persons interested, by publishing in some newspaper the substance of the petition, with the order of the Court thereon, assigning the time and place for a hearing, or may order such other notice to be given as may, under the circumstances of the case, be considered most proper and effectual.

Civ. '12, § 4127; Civ. '02, § 3022; G. S. 2364; R. S. 2479; 1869, XIV, 220.

(5658) § 20. Further Notice.—If, at the time assigned for the hearing, it appears to the Court that any of the persons interested had not had a sufficient notice of the suit, the Court may order further notice to them, in such manner as may be considered most proper and effectual.

Civ. '12, § 4128; Civ. '02, § 3023; G. S. 2365; R. S. 2480; 1869, XIV, 220.

(5659) § 21. Claims May Be Proved and Contested.—At the time assigned for the hearing, or within such further time as the Court allows for that purpose, every creditor having a lien of the kind before mentioned upon the same property, may appear and prove his claim; and the owner and each of the creditors may contest the several claims of every other creditor, and the Court shall hear and determine them in a summary manner, either with or without jury, as the case may require.

Civ. '12, § 4129; Civ. '02, § 3024; G. S. 2366; R. S. 2481; 1869, XIV, 220.

Tenney v. Anderson Water, etc., Co., 67 S. C. 11, 14, 45 S. E. 111.

(5660) § 22. Jury to Try Facts.—Every material question of fact arising in the case shall be submitted to a jury, if required by either party, or deemed proper by the Court; and the trial shall be had upon a question stated, or an issue framed, or otherwise, as the Court may order. A jury shall be had before a Magistrate only as in other civil cases.

Civ. '12, § 4130; Civ. '02, § 3025; G. S. 2367; R. S. 2482; 1869, XIV, 220.

Jury trial matter of right under the Statute. *Metz v. Critcher*, 83 S. C. 396, 65 S. E. 394.

(5661) § 23. Claims Not Payable Allowed With Rebate of Interest.—The Court shall ascertain and determine the amount due to each creditor who has a lien of the kind before mentioned upon the property in question; and every such claim due, absolutely and without any condition, although not then payable, shall be allowed, with a rebate of interest to the time when it would become payable.

Civ. '12, § 4131; Civ. '02, § 3026; G. S. 2368; R. S. 2483; 1869, XIV, 222.

Tenney v. Anderson Water, etc., Co., 67 S. C. 11, 14, 45 S. E. 111.

Interest not allowed. *Devereaux v. Taft*, 20 S. C. 555.

(5662) § 24. Claims for Part Performance Allowed in Certain Cases.—When the owner fails to perform his part of the contract, and by reason thereof the other party, without his own default, is prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much as he has performed, in proportion to the price stipulated for the whole, and the Court shall adjust his claim accordingly.

Civ. '12, § 4132; Civ. '02, § 3027; G. S. 2369; R. S. 2484; 1869, XIV, 222.

No personal judgment can be given in this proceeding for any deficiency that may be after such sale. *Johnson v. Frazee*, 20 S. C. 500.

(5663) § 25. Sale of Premises if Lien Be Established.—If the lien is established in favor of any of the creditors whose claims are presented, the Court shall order a sale of the property to be made by such officer as may be authorized by law to make sales of property.

Civ. '12, § 4133; Civ. '02, § 3028; G. S. 2370; R. S. 2485; 1869, XIV, 222.

Tenney v. Anderson Water, etc., Co., 67 S. C. 11, 15, 45 S. E. 111.

Judgment in *personam* not authorized. *Metz v. Critcher*, 83 S. C. 396, 65 S. E. 394.

(5664) § 26. Part of Property May Be Sold if Sufficient.—If part of the property can be separated from the residue, and sold, without damage to the whole, and if the value thereof is sufficient to satisfy all debts proved in the case, the Court may order a sale of that part, if it appears to be most for the interest of all parties concerned.

Civ. '12, § 4134; Civ. '02, § 3029; G. S. 2371; R. S. 2486; 1869, XIV, 222.

(5665) § 27. Notice of Sale.—The officer who makes the sale shall give notice of the time and place in the manner prescribed in relation to the

sale of mortgaged lands under foreclosure, unless the Court orders a different notice to be given.

Civ. '12, § 4135; Civ. '02, § 3030; G. S. 2372; R. S. 2487; 1869, XIV, 222.

(5666) § 28. **Distribution of Proceeds of Sale.**—If all the claims against the property covered by the lien are ascertained at the time of ordering the sale, the Court may order the officer to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the several creditors, to the amount of their respective debts, if there is sufficient therefor; and if there is not sufficient, then to divide and distribute the same among the creditors, in proportion to the amount due to each of them.

Civ. '12, § 4136; Civ. '02, § 3031; G. S. 2373; R. S. 2488; 1869, XIV, 222.

(5667) § 29. **Proceeds May Be Brought into Court, and Successive Distributions Made.**—If all the claims are not ascertained when the sale is ordered, or if for any other reason the Court finds it necessary or proper to postpone the order of distribution, it may direct the officer to bring the proceeds of the sale into Court, there to be disposed of according to the decree of the Court, and if, by reason of the claims of attaching creditors, or for any other cause, the whole cannot be conveniently distributed at once, the Court may make two or more successive orders of distribution, as the circumstances may require.

Civ. '12, § 4137; Civ. '02, § 3032; G. S. 2374; R. S. 2489; 1869, XIV, 222.

(5668) § 30. **Distribution of Surplus.**—If there remain any surplus of the proceeds of the sale, after making all the payments before mentioned, it shall be forthwith paid over to the owner of the property; but such surplus, before it is so paid over, shall be liable to be attached or taken on execution, in like manner as if it proceeded from a sale made by the officer on an execution.

Civ. '12, § 4138; Civ. '02, § 3033; G. S. 2375; R. S. 2490; 1869, XIV, 222.

(5669) § 31. **Prior Attaching Creditor Preferred—Proportion of Proceeds to Be Held.**—If the interest of the owner in the building, structure, or land, is under attachment at the time of filing and recording the statement of the account, the attaching creditor shall be preferred to the extent of the value of the buildings and land as they were when the statement was recorded; and the Court shall ascertain, by a jury or otherwise, as the case may require, what proportion of the proceeds of the sale shall be held subject to the attachment, as derived from the value of the property when the statement was recorded.

Civ. '12, § 4139; Civ. '02, § 3034; G. S. 2376; R. S. 2491; 1869, XIV, 223.

(5670) § 32. **Proportion of Proceeds of Attaching Creditors Applied to Satisfy Execution.**—If the attaching creditor recovers judgment, he shall be entitled to receive on his execution the proportion of the proceeds held subject to his attachment, or so much thereof as may be necessary to satisfy his execution, and the residue of the proceeds shall be applied in the same manner as if there had been no such attachment.

Civ. '12, § 4140; Civ. '02, § 3035; G. S. 2377; R. S. 2492; 1869, XIV, 223.

(5671) § 33. Subsequent Attachment to Be Satisfied After Lien.—If the interest of the owner of the property is attached after the recording of the statement, the proceeds, after discharging all prior liens and claims, shall be applied to satisfy the execution of such attaching creditor.

Civ. '12, § 4141; Civ. '02, § 3036; G. S. 2378; R. S. 2493; 1869, XIV, 223.

(5672) § 34. Attachments Intervening Between Two Liens.—If an attachment is made after the recording of such statement, and if, after the attachment, another like statement is recorded, the creditor in the latter statement shall be entitled to be paid only out of the residue of the proceeds remaining, after paying all that is due on the demands a statement of which is recorded before the attachment, and satisfying the attaching creditor.

Civ. '12, § 4142; Civ. '02, § 3037; G. S. 2379; R. S. 2494; 1869, XIV, 223.

(5673) § 35. Rights of Attaching Creditors, Etc., Between Themselves.—When there are several attaching creditors, they shall, as between themselves, be entitled to be paid according to the order of their attachments: but when several creditors, who are entitled to the lien provided for in this Chapter, have equal rights as between themselves, and the fund is insufficient to pay the whole, they shall share it equally, in proportion to their respective debts.

Civ. '12, § 4143; Civ. '02, § 3038; G. S. 2380; R. S. 2495; 1869, XIV, 223.

(5674) § 36. If Debtor's Estate Be Less Than Fee Simple, Etc., Lien to Bind His Interest.—If the person for whom the work is done or materials are furnished, has an estate for life, or any other estate less than a fee simple in the land, or if the property, at the time of recording the statement, is mortgaged, or under any other incumbrance, the lien before provided for shall bind his whole estate and interest therein in like manner as a mortgage would have done, and the creditor may cause the right of redemption, or whatever other right or estate the owner had in the property, to be sold and applied to the discharge of his debt, according to the provisions of this Chapter.

Civ. '12, § 4144; Civ. '02, § 3039; G. S. 2381; R. S. 2496; 1869, XIV, 223.

(5675) § 37. Lien May Be Enforced Against Heirs, Executors or Administrators.—If the person indebted dies or conveys away his estate or interest before the commencement of a suit on the contract, the suit may be commenced and prosecuted against his heirs or whoever holds the estate or interest which he had in the premises at the time the labor or materials were performed or furnished; or, if a suit is commenced in his lifetime, it may be prosecuted against his executors, administrators, heirs, or assigns, in like manner as if the estate or interest had been mortgaged to secure the debt.

Civ. '12, § 4145; Civ. '02, § 3040; G. S. 2382; R. S. 2497; 1869, XIV, 223.

(5676) § 38. Executor, Etc., May Enforce Creditor's Lien.—If the creditor dies before the commencement of the suit, the suit may be commenced and prosecuted by his executor and administrators; or, if commenced in

his lifetime, it may be prosecuted by them as it might have been by the deceased, if living.

Civ. '12, § 4146; Civ. '02, § 3041; G. S. 2383; R. S. 2498; 1869, XIV, 223.

(5677) § 39. Suits Begun by One Creditor May Be Prosecuted by Another.—If it appears, in any stage of the proceedings, that the suit was commenced by the petitioning creditor before his right of action accrued, or after it was barred, or if he become nonsuit, or fail to establish his claims, suit may be prosecuted by any other creditor having such lien, in the same manner as if it had been originally commenced by him, if the circumstances of the case are such that he might then, or at any time after the commencement of the original suit, have commenced a like suit on his own claim.

Civ. '12, § 4147; Civ. '02, § 3042; G. S. 2384; R. S. 2499; 1869, XIV, 223.

(5678) § 40. Suit Begun Before Right of Action Accrues, Another Creditor May Prosecute—Costs.—If the suit is commenced by the petitioning creditor before his right of action accrues, his claim may nevertheless be allowed, if the suit is carried on by any other creditor, as provided in the preceding Section; but he shall not, in such case, be entitled to costs; and he may be required to pay the costs incurred by the debtor, or such part thereof as the Court may deem reasonable.

Civ. '12, § 4148; Civ. '02, § 3043; G. S. 2385; R. S. 2500; 1869, XIV, 224.

(5679) § 41. Costs in Other Cases.—The costs, in all other respects, shall be subject to the discretion of the Court, and shall be paid from the proceeds of the sale, or by any of the parties to the suit, as justice and equity require.

Civ. '12, § 4149; Civ. '02, § 3044; G. S. 2386; R. S. 2501; 1869, XIV, 224.

(5680) § 42. Civil Action Not Barred.—Nothing contained in this Article shall be construed to prevent a creditor in such contract from maintaining an action thereon in like manner as if he had no such lien for the security of his debt.

Civ. '12, § 4150; Civ. '02, § 3045; G. S. 2387; R. S. 2502; 1869, XIV, 224.

Tenney v. Anderson Water, etc., Co., 67 S. O. 11, 15, 45 S. E. 111.

(5681) § 43. Discharge of Lien—How Executed.—When a debt secured by such a lien is fully paid, the creditor, at the expense of the debtor, shall enter on the margin of the registry, where the statement is recorded, a discharge of his lien, or shall execute a release thereof, which may be recorded where the statement is recorded.

Civ. '12, § 4151; Civ. '02, § 3046; G. S. 2388; R. S. 2503; 1869, XIV, 224.

(5682) § 44. Contractors to Pay All Laborers Employed—Lien of Laborers.—It shall be the duty of any contractor or contractors in the erection, alteration or repairing of buildings in the State of South Carolina to pay all laborers, subcontractors and material men for their lawful services and material furnished out of the money received for the erection, alterations or repairs of buildings upon which said laborers, subcontractors and material men are employed or interested, and said laborers, as

well as all subcontractors and persons who shall furnish material for said building, shall have a first lien on the money received by said contractor or contractors for the erection, alteration or repair of said buildings in proportion to the amount of their respective claims. Nothing herein contained shall make the owner of the building responsible in any way: *Provided, further*, That nothing contained in this Section shall be construed to prevent any contractor or contractors or subcontractors from borrowing money on such contract.

Civ. '12, § 4152; Civ. '02, § 3047; 1896, XXII, 198.

Lien does not attach until the contractor has received the money. *Morgan v. Alderman*, 70 S. C. 462, 50 S. E. 26.

ARTICLE III.

Liens on Ships and Vessels for Labor and Materials.

(5683) § 1. **Liens on Ships and Vessels for Labor Performed and Materials Furnished.**—When by virtue of a contract, expressed or implied, with the owners of a ship or vessel, or with the agents, contractors, or subcontractors of such owners, or any of them, or with any person having been employed to construct, repair, or launch such ship or vessel, or to assist them, money is due to any person for labor performed, materials used, or labor and materials furnished in the construction, launching, repairs of, or for constructing the launchingways for, or for provisions, stores, or other articles furnished for or on account of such ship or vessel in this State, such person shall have a lien upon the ship or vessel, her tackle and furniture, to secure the payment of such debt; which lien shall be preferred to all others thereon, except mariners' wages, and shall continue until the debt is satisfied.

Civ. '12, § 4153; Civ. '02, § 3048; G. S. 2389; R. S. 2504; 1858, XII, 741; 1869, XIV, 224.

Such contract with the mortgagor, who has the exclusive control and use of the ship, does not charge the mortgagee for repairs. *Cordray v. Mordecai*, 2 Rich. 518.

Lien for repairs where written contract waived. *The Sappho*, 94 Fed. 545, 551.

Different liens hereunder have equal rank and are not affected by the order in which suits were brought. *The Julia*, 57 Fed. 233, 235.

(5684) § 2. **Requisites to Retain Lien—To Be Recorded—Fee.**—Such lien shall be dissolved unless the person claiming the same shall file, within ninety days after he ceases to labor on or furnish labor or materials for such ship or vessel, in the office of the Register of Mesne Conveyance or Clerk of Court of the county within which the ship or vessel was at the time the debt was contracted, a statement, subscribed and sworn to by himself or by some person in his behalf, giving a just and true account of the demands claimed to be due to him, with all just credits; and also the name of the person with whom the contract was made, the name of the owner of the ship or vessel, if known, and the name of the ship or vessel, or a description thereof, sufficient for identification; which statement shall be recorded by said Register of Mesne Conveyance, or Clerk, in a book kept by him for that purpose; for which he shall receive the same fees as for recording other papers of equal length.

Civ. '12, § 4154; Civ. '02, § 3049; G. S. 2390; R. S. 2505; 1869, XIV, 224; 1884, XVIII, 735.

(5685) § 3. **Ship Built in Two Places, Etc.—Accuracy of Description.**—If the ship or vessel is partly constructed in one place and partly in another, either place shall be deemed the port at which she was when the debt was contracted, within the meaning of this Chapter; and no inaccuracy in the description of the ship or vessel, if she can be recognized thereby, or in stating the amount due for labor or materials, shall invalidate the proceedings, unless it appears that the person filing the certificate has knowingly and wilfully claimed more than his due.

Civ. '12, § 4155; Civ. '02, § 3050; G. S. 2391; R. S. 2506; 1869, XIV, 224.

(5686) § 4. **Lien—How Enforced—Filing of Petition, Etc.**—Such lien may be enforced by petition to the Court of Common Pleas for the county where the vessel was at the time the debt was contracted, or in which she is at the time of instituting proceedings. The petition may be entered in Court or filed in the Clerk's office in vacation, or may be served with the summons, with an order of attachment, and returned, and entered, as other civil actions, and the subsequent proceedings for enforcing the lien shall, except as hereinafter provided, be as prescribed for enforcing liens on buildings and lands, so far as the same are applicable. At the time of entering or filing the petition, a process of attachment against such ship or vessel, her tackle, apparel and furniture, shall issue and continue in force, or may be dissolved like attachments in civil cases, but such dissolution shall not dissolve the lien.

Civ. '12, § 4156; Civ. '02, § 3051; G. S. 2392; R. S. 2507; 1869, XIV, 225.

It seems that when Court has taken possession of vessel after advertisement, further advertisement is unnecessary in case of libels filed after arrest. *The Julia*, 57 Fed. 233, 236.

(5687) § 5. **Petition to Contain What.**—The petition shall contain a brief statement of the labor, materials, or work done or furnished, or the stores, provisions, or other articles furnished, and the amount due therefor, with a description of the ship or vessel subject to the lien, and all other material facts and circumstances, and shall pray that the ship or vessel may be sold and the proceeds of the sale applied to the discharge of the demand.

Civ. '12, § 4157; Civ. '02, § 3052; G. S. 2393; R. S. 2508; 1869, XIV, 225.

(5688) § 6. **Amendments of Pleadings.**—The Court may at any time allow either party to amend his pleadings, as in other civil actions.

Civ. '12, § 4158; Civ. '02, § 3053; G. S. 2394; R. S. 2509; 1869, XIV, 224.

(5689) § 7. **Several Claimants May Join in Same Petition.**—Any number of persons having such liens upon the same ship or vessel may join in the same petition to enforce the same; and the same proceedings shall be had in regard to the respective rights of each petitioner, and the respondent may defend as to each petitioner, in the same manner as if they had severally petitioned for their individual liens.

Civ. '12, § 4159; Civ. '02, § 3054; G. S. 2395; R. S. 2510; 1869, XIV, 224.

(5690) § 8. **Claims Marshalled and Proceeds Distributed—If Proceeds Be Insufficient, Liens Satisfied Ratably.**—When there is money due to more than one person holding a lien upon a ship or vessel under the provisions

of this Article, all parties interested having been cited to appear and answer, the claims of all shall be marshalled, and the Court shall make such order or decree as may be necessary to prevent the enforcement of a double lien for the same labor, materials, stores, provisions, or other articles, and to secure the just rights of all. And the proceeds arising from the sale of such ship or vessel, after deducting all proper costs and expenses, shall be distributed among the several claimants, to the amount of their respective debts: *Provided*, That when such proceeds are insufficient to satisfy the liens of all those having liens for labor, they shall receive a percentage on their respective claims one-third greater, as near as may be, than those having liens for materials, stores, or other articles.

Civ. '12, § 4160; Civ. '02, § 3055; G. S. 2396; R. S. 2511; 1869, XIV, 225.

It seems that contractor furnishing labor and materials is not entitled to increase percentage for sums paid for labor in putting in materials. *The Julia*, 57 Fed. 233, 236.

ARTICLE IV.

Liens on Railroads for Work or Material.

(5691) § 1. **Persons to Have Liens on Railroads for Work or Materials.**—Any person to whom a debt is due for labor performed or furnished, or for materials furnished and actually used in the construction, alteration or repair of any railroad by virtue of an agreement with or by consent of the owner or corporation or person controlling and operating the same or any person having authority from or rightfully acting for such owner, corporation or person in procuring or furnishing such labor or materials, or any person rendering services for such railroad company, shall have a lien upon such railroad and upon all the interests of such owner, corporation or person as aforesaid in said railroad, to secure the payment of the debt so due him and the costs which may arise in enforcing such lien under the provisions of Article II of this Chapter.

LIENS SUBJECT TO ARTICLE II, CHAPTER XC.—Said lien shall be subject to all the provisions and be enforced in the same manner as provided for in Article II of this Chapter, relating to liens on lands or buildings for the labor and materials.

Civ. '12, § 4161; Civ. '02, § 3056; 1898, XXII, 779.

McDonald v. R. R. Co., 24 S. W. 252, 93 Tenn. 281. Prior to this Act there was no such lien in this State. *Greenwood A. & W. Ry. v. Strang*, 77 Fed. 498.

ARTICLE V.

Agricultural Liens.

(5692) § 1. **Lien of Landlord for Rent and Advances on Crops Raised on Leased Premises.**—Every landlord leasing land for agricultural purposes shall have a prior and preferred lien for his rent to the extent of all crops raised on the lands leased by him, whether the same be raised by the tenant or other person. No writing or recording shall be necessary to create such lien, but it shall exist from the date of the contract, whether the same be in writing or verbal, and the landlord and his assigns shall

have the right to enforce such lien in the same manner, upon the same conditions, and subject to the same restrictions, as are provided in this Article for persons making advances for agricultural purposes. And subject to the liens hereinafter provided for and enforceable in the same way, the landlord and his assigns shall have a lien on all the crops raised by the tenant for all advances made by the landlord to such tenant during the year.

Civ. '12, § 4162; Civ. '02, § 3057; G. S. 2399; R. S. 2512; 1878, XVI, 411, 743; 1880, XVII, 413; 1884, XVIII, 752; 1885, XIX, 146; 1906, XXV, 83.

The contract carries with it a lien without an express agreement for it. *Carter v. DuPre*, 18 S. C. 179. The lien is not defeated by taking a writing under seal for the rent. *Sullivan v. Ellison*, 20 S. C. 481. Rent payable in cotton is secured by such lien. *State v. Reeder*, 36 S. C. 497, 15 S. E. 544. It seems that such rent, although payable monthly, has such preferred lien over liens given for supplies. *Brewster v. McNab*, 36 S. C. 274, 15 S. E. 233. Magistrate has jurisdiction where amount claimed does not exceed \$100. *Southern Ry. Co. v. Sarratt*, 58 S. C. 98, 36 S. E. 505.

An agreement to give an agricultural lien does not create an equitable mortgage. *Creech v. Long*, 72 S. C. 25, 51 S. E. 614. Lease of agricultural purposes. Manure belongs to landlord. *Roberts v. Jones*, 71 S. C. 404, 51 S. E. 240. Assignment of lien for advances sustained. *State v. Elmore*, 68 S. C. 140, 46 S. E. 939. Proceeds of crops under lien must be applied to lien. *Barfield v. Coker*, 73 S. C. 181, 53 S. E. 170.

Constitutional. *State v. Elmore*, 68 S. C. 140, 46 S. E. 939.

Hamilton v. Blanton, 107 S. C. 142, 92 S. E. 275; *Faust v. Bonnett*, 110 S. C. 435, 96 S. E. 489.

(5693) § 2. Laborer's Lien on Crops—Grade—How Enforced.—Laborers who assist in making any crop on shares, or for wages in money or other valuable consideration, shall have a lien thereon to the extent of the amount due them for such labor, next in priority to the lien of the landlord for rent; and as between such laborers there shall be no preference. Such portion of the crop to them belonging, or such amount of money or other valuable consideration as may be due them, shall be recoverable by an action in any Court of competent jurisdiction.

Civ. '12, § 4163; Civ. '02, § 3058; G. S. 2083; R. S. 2217; 1884, XVIII, 752; 1885, XIX, 146.

State v. Lanier, 79 S. C. 103, 106, 60 S. E. 225.

Laborer not entitled to such rights unless the contract is reduced to writing. *Hair v. Blease*, 8 S. C. 63. Laborer cannot bind share in crops by a lien for advances. *Carpenter v. Strickland*, 20 S. C. 1; *Richey v. DuPre*, 20 S. C. 6. Contract with laborer. *McCutchen v. Crenshaw*, 40 S. C. 511, 19 S. E. 140.

Jurisdiction of Magistrate. *Wilkie v. Murphy*, 88 S. C. 415, 418.

Hamilton v. Blanton, 107 S. C. 142, 92 S. E. 275.

(5694) § 3. Rank of Liens for Rent, for Labor, and for Supplies.—The landlord shall have a lien upon the crops of his tenant for his rent in preference to all other liens. Laborers who assist in making any crop shall have a lien thereon to the extent of the amount due them for such labor, next in priority to the landlord, and as between such laborers there shall be no preference. All other liens for agricultural supplies shall be paid next after the satisfaction of the liens of the landlord and laborers, and shall rank in other respects as they do now under existing laws.

Civ. '12, § 4164; Civ. '02, § 3060; R. S. 2515; 1885, XIX, 146.

If senior lienor by agreement permit a third person to take and apply to an unsecured claim enough of the crops to pay his own debt without notice to junior lienor he cannot afterwards maintain an action against the junior lienor for the crops seized by him and applied to his lien debt. *Hankinson v. Hankinson*, 61 S. C. 193, 39 S. E. 385. Before the Act of 1885, this preference of landlord's lien for rent without recorded agreement only extended to one-third of the crop. *Kennedy v. Reames*, 15 S. C. 548; *Whaley v. Jacobson*, 21 S. C. 51.

State v. Lanier, 79 S. C. 103, 60 S. E. 225.

(5695) § 4. Indexing Liens for Advances in Office of Register of Mesne Conveyances.—Every lien for advances shall be indexed in the office of the Register of Mesne Conveyances, or Clerk of the Court (where the office of Register of Mesne Conveyance does not exist), of the county in

which the lienor resides within thirty days from the date of the lien, and the indexing of the said lien shall constitute notice thereof to all third persons and entitle the same to the benefit of this Article. Said index shall show the names of the lienor and lienee, the date and amount of lien, and a brief description of the place so cultivated; and said indexing shall be a sufficient record of the same, and the property covered by such lien, so indexed as aforesaid, if found in the hands of subsequent purchasers or creditors, shall be deemed liable to said lien. The Clerk of Court or Register of Mesne Conveyances, as the case may be, shall endorse his official certificate upon every lien on a crop or crops filed in his office under the provisions of this Article, and his only fee for filing, indexing and certifying the same shall be fifteen cents for each lien so filed, indexed and endorsed.

Civ. '12, § 4165; Civ. '02, § 3061; G. S. 2339; R. S. 2516; 1878, XVI, 411; 1880, XVIII, 413; 1884, XVIII, 896.

State v. Lanier, 79 S. C. 103, 106, 60 S. E. 225.

Under the Act of 1878, before its amendment, the lien had to be kept on file in Clerk's office as well as indexed. Sternberger v. McSween, 14 S. C. 35. If not indexed the lien is good between the parties and enforceable by warrant. Lyons v. Tedder, 7 S. C. 60. But an unrecorded lien of landlord for advances cannot avail against a merchant's recorded lien for advances. Whaley v. Jacobson, 21 S. C. 51.

Party taking proceeds of property on which lien exists becomes liable for money had and received. Link v. Barksdale, 70 S. C. 487, 50 S. E. 189; Parks v. Laurens Cotton Mills, 70 S. C. 274, 49 S. E. 871.

Cantey v. McClary-Broadway Co., 95 S. C. 29, 78 S. E. 614.

(5696) § 5. Clerk May Arrest Unlawful Sale of Crop.—If any person making such advances shall prove, by affidavit, to the satisfaction of the Clerk of the Court of the county in which such crop is, that the person to whom such advances have been made is about to sell or dispose of his crop, or in any other way is about to defeat the lien hereinbefore provided for, accompanied with a statement of the amount then due, it shall be lawful for him to issue his warrant, directed to any of the Sheriffs of this State, requiring them to seize the said crop, and, after due notice, sell the same for cash, and pay over the net proceeds thereof, or so much thereof as may be necessary, in extinguishment of the amount then due: *Provided, however*, That if the person to whom such advances have been made, shall within thirty days after such sale has been made, give notice in writing to the Sheriff, accompanied with an affidavit to this effect, that the amount claimed is not justly due, then it shall be the duty of the said Sheriff to hold the proceeds of such sale subject to the decision of the Court upon an issue which shall be made up and set down for trial at the next succeeding term of the Court of Common Pleas for the county in which the person to whom such advances have been made resides, in which the person who makes such advances shall be the actor.

Civ. '12, § 4166; Civ. '02, § 3062; G. S. 2398; R. S. 2517; 1878, XVI, 410.

Sufficiency of affidavit. Doty v. Boyd, 46 S. C. 39, 24 S. E. 59. The lienee is strictly limited to this remedy to enforce his lien. Kennedy v. Reames, 15 S. C. 548. The affidavit is fatally defective unless it state the facts required to obtain the warrant. Segler v. Coward, 24 S. C. 119. The warrant can be issued only by the Clerk, and served only by the sheriff. Jones v. Clarkson, 16 S. C. 628. It cannot issue on liens for advances unless the agreement for a lien was in writing and signed by the party charged. Carpenter v. Strickland, 20 S. C. 1. Sheriff cannot, under such warrant, take the crops already distrained and taken into possession by the landlord for rent without payment of the rent. Brewster v. McNab, 36 S. C. 274, 15 S. E. 233. The seizure of the crop may be made elsewhere than on the land where it is made. Visanski v. Bradley, 4 S. C. 283. The only issue to be determined under notice to the Sheriff is, whether the amount claimed is justly due. Johnston v. Manigault, 13 S. C. 403. If affidavit deny any indebtedness under the lien, that is sufficient. Warren v. Lawton, 14 S. C. 476. Such notice and affidavit, when filed with the Clerk, raise the issue sufficiently for trial, and no order of Court is necessary to frame such issue. John-

ston v. Manigault, 13 S. C. 408; Warren v. Lawton, 14 S. C. 476. The lienor is the actor in the Court contesting the claim of lienee. Virginia-Carolina Chemical Co. v. Kirven, 57 S. C. 445, 85 S. E. 745. Damages for failure to advance supplies, as agreed, not recoverable hereunder. Davis v. Schmidt, 22 S. C. 128. This remedy of the lienee is not exclusive of other remedies. Segler v. Coward, 24 S. C. 119. Lienor entitled to costs as witness on trial of such issue. Winsmith v. Dewberry, 14 S. C. 554. Appeal lies from judgment in this proceeding. Johnston v. Manigault, 13 S. C. 403.

Default in agricultural lienor in serving notice of amount claimed in attachment proceedings not being due on lien account cannot be excused. Lightsey v. Rentz, 85 S. C. 401, 67 S. E. 456.

Baird v. Weatherford et al, 100 S. C. 490, 85 S. E. 59; Faust v. Bonnett, 110 S. C. 435, 96 S. E. 489.

(5697) § 6. Proceedings in Magistrate's Court for Foreclosure of Liens—Issue, Etc.—Costs.—When any person shall have made advances for agricultural purposes and shall have secured lien upon the crop or crops of the person to whom such advances may be made, according to the provisions of law relating to agricultural liens, and the amount of such advances do not exceed one hundred dollars, it shall be lawful for any Magistrate of the county in which such lien is indexed, upon the production of said lien and the proof required in cases where Clerks of the Court may issue warrants, to issue his warrant directed to a Constable or Sheriff of the county, requiring him to seize said crop or crops, and after due notice sell poses, shall have a lien in preference to all other liens, existing or otherwise same for cash and apply the net proceeds thereof, or so much thereof as may be necessary, in extinguishment of said lien: *Provided*, That if the person to whom such advances have been made shall give notice in writing within ten days after such seizure, accompanied with an affidavit to the effect that the amount claimed is not justly due, then the Magistrate issuing the warrant shall, at the expiration of twenty days, decide an issue which shall be made up, in which the person who may have made such advances shall be the actor. This Section shall not be construed to prevent Clerks of the Court from issuing warrants to enforce agricultural liens in all cases as in this Article provided. The costs and fees of Magistrates for enforcement of agricultural liens shall be the same as for Clerks of Court in similar cases; and Constables in Magistrates' Courts shall be allowed in such cases the same fees and costs allowed in like cases to Sheriffs.

Civ. '12, § 4167; Civ. '02, § 3063; R. S. 2518; 1884, XVIII, 751; 1885, XIX, 329; 1920, XXXI, 720.

Dicks v. Nimmons, 88 S. C. 428.

Motion to vacate before Magistrate. Kennedy v. Dunbar, 46 S. C. 517, 24 S. E. 383.

Improvident issue—Damages. Barfield v. Coker, 73 S. C. 181, 53 S. E. 170.

(5698) § 7. Requisites of Affidavits—Motion to Vacate Warrant—Bond of Applicant, Etc.—The affidavit and statements to be used to obtain any warrant of seizure provided for in this Article shall conform, as nearly as may be, to the practice regulating the issuing of warrants of attachment under the Code of Procedure; and the persons against whom it is issued shall have the right to move before the Clerk of the Court or Magistrate by whom it is issued, or a Circuit Judge, to vacate said warrant of seizure for any of the causes which would be sufficient to vacate a warrant of attachment issued under the Code of Procedure.

Before issuing such warrant, the officer to whom application therefor is made shall require the party applying to enter into an undertaking, with sufficient surety, to the effect that he will pay to the party whose crops are to be attached or seized such costs as may be awarded to him should said warrant be set aside, and all damages that he may sustain in consequence

of the issuing of such warrant, if it should be decided by any Court of competent jurisdiction that the same had been illegally or improvidently issued not exceeding the sum specified in the undertaking which shall be at least two hundred and fifty dollars, except in case of a warrant issued by a Magistrate, when it shall be at least twenty-five dollars.

Civ. '12, § 4168; Civ. '02, § 3064; R. S. 2519; 1885, XIX, 429; 1896, XXII, 197.

Dicks v. Nimmons, 88 S. C. 428.

The only conformity to the attachment law required is in the affidavit and statements, not in the subsequent proceedings. Blair v. Morgan, 59 S. C. 52, 37 S. E. 45; Southern Ry. Co. v. Sarratt, 58 S. C. 98, 36 S. E. 505. Failure to file affidavits. Townsend v. Sparks, 50 S. C. 380, 27 S. E. 801; Doty v. Boyd, 46 S. C. 39, 24 S. E. 59. Time within which motion to vacate may be made. Kennedy v. Dunbar, 46 S. C. 517, 24 S. E. 383. The Circuit Judge can vacate an unlawful warrant of seizure at chambers. Seigler v. Coward, 24 S. C. 119. On motion therefor the Judge cannot consider facts not appearing in affidavit submitted to the Clerk. Segler v. Coward, 24 S. C. 119. Filing undertaking is jurisdictional, damages for seizures where undertaking was not filed. Forrester v. McBee, 72 S. C. 189, 51 S. E. 675.

Faust v. Bonnett, 110 S. C. 435, 96 S. E. 489.

(5699) § 8. When Lien Creditor May Proceed Before Debt Becomes Due.

—In case any portion of the crop is removed from the land rented or leased, and the proceeds thereof not applied to the payment of the rent for the year, or to the other liens herein provided for, and this fact shall be made to appear by affidavit, persons holding liens as herein provided shall have the right to proceed to collect the amounts which will become due for rent or advances in the same way as if the same had become due according to contract before such removal.

Civ. '12, § 4169; Civ. '02, § 3065; G. S. 2401; R. S. 2520; 1878, XVI, 744.

Hamilton v. Blanton, 107 S. C. 142, 92 S. E. 275.

(5700) § 9. Lien Upon Supplies Advanced.—Any person who shall make advances in provisions, supplies, and other articles for agricultural purposes, shall have a lien in preference to all other liens, existing or otherwise, upon such provisions, supplies, and other articles, until the same shall be consumed in the use. In case any one to whom such provisions, supplies, and other articles, are so advanced, shall endeavor to dispose of the same for other purposes than that for which they were advanced, or in case any person shall endeavor to make said provisions, supplies, and other articles, liable for the debts of the party to whom they were advanced, then the party advancing said provisions, supplies, and other articles, shall have the same remedies and means for enforcing his lien as are herein provided in case of advances for agricultural supplies.

Civ. '12, § 4170; Civ. '02, § 3066; G. S. 2402; R. S. 2521; 1879, XVII, 142.

(5701) § 10. Replevy of Crop Seized—Bond, Etc.—Any person whose crop or crops, whether the same be served from the freehold or not, may be seized under the provisions of any or all of the preceding Sections of this Article, shall have the right, upon entering into bond in accordance with the provisions of law now of force in regard to actions for claim and delivery of personal property, to recover immediate possession of the crop or crops so seized; but nothing herein contained shall be so construed as to affect any of the provisions of said Sections in cases where no bond is given as herein authorized.

Civ. '12, § 4171; Civ. '02, § 3067; G. S. 2404; R. S. 2522; 1882, XVIII, 869; 1885, XIX, 329.

Such contract may be by parol. Harby v. Wells, 52 S. C. 156, 29 S. E. 563.

Sheriff, who has seized crops under agricultural lien warrant, has no authority to return them on institution of action in claim and delivery for them and execution of bond in that proceeding. Dicks v. Nimmons, 88 S. C. 428.

ARTICLE VI.**Liens of Owners of Stock Animals.**

(5702) § 1. **Lien of Owners of Stock, Etc., on Issue.**—The owner of any stock horse, jack, bull, boar or ram, kept by him for the purpose of raising from, having a claim by contract against the owner of any mare or cow, or other stock, for service, shall have a prior lien on the issue of such mare, cow or other stock for the amount of such claim: *Provided*, An action shall be instituted to enforce such claim, by suit before a Magistrate or other officer having jurisdiction, within twelve months from the time such claim shall have accrued.

Civ. '12, § 4172; Civ. '02, § 3068; G. S. 2349; R. S. 2523; 1875, XV, 943.

Such contract may be by parol. *Harby v. Wells*, 52 S. C. 156, 29 S. E. 563.

ARTICLE VII.**Liens of Employees in Factories, Etc.**

(5703) § 1. **Lien of Employees in Factories, Etc., for Their Wages.**—All employees of factories, mines, mills, distilleries, and all and every kind of manufacturing establishment of this State, shall have a lien upon all the output of the factory, mine, mill, distillery or other manufacturing establishment by which they may be employed, either by the day or month, whether the contract be in writing or not, to the extent of such salary or wages as may be due and owing to them under the terms of their contract with the employer, such lien to take precedence over any and all other liens, except the lien for municipal, State and county taxes.

Civ. '12, § 4173; Civ. '02, § 3069; 1897, XXII, 502; 1915, XXIX, 248.

The word "employees" in Act, XXII Stat. 502, entitled "employees," does not include superintendent and bookkeeper of a mine. *Malcomson v. Wappoo Mills*, 86 Fed. 192.

(5704) § 2. **How Lien of Employees in Factories May Be Enforced.**—Any one entitled to the provisions of this Article may begin suit upon his or her demands in any Court of competent jurisdiction, and at the time of commencing action may file with the officer out of whose Court he desires process to issue an affidavit setting forth the facts out of which his or her alleged lien arose, the amount of same, and shall designate the property alleged to be affected by said lien; thereupon it shall be the duty of said officer to issue his process in the nature of a warrant of attachment, directing the Sheriff of the county, or any lawful Constable, to seize so much of the property described in said affidavit as may be necessary to satisfy said alleged lien. The officer executing aforesaid process shall seize and take into his possession and custody, according to the mandate of said process, the property described, and shall hold the same until the final determination of the suit between the parties, following the usual practice in attachment cases as to sale after judgment if the property seized be perishable and ordered sold by the Court: *Provided*, That should the party claiming to be the legal owner of the property seized desire to do so pending suit, he may furnish good and sufficient security for the payment of such judgments as may be recovered by plaintiff against him in suit pend-

ing, to be approved by the officer issuing the process, and shall thereupon be entitled to the custody of the property seized, just as though no process had been issued against it: *Provided*, That the claims of third persons shall be made and determined in the same manner as such claims in attachment cases.

Civ. '12, § 4174; Civ. '02, § 3070; 1897, XXII, 502; 1906, XXV, 81.

(5705) § 3. **Costs and Fees of Officers.**—The costs and fees of officers in proceedings under this Article shall be the same as in cases of attachment under the Code.

Civ. '12, § 4175; Civ. '02, § 3071; 1897, XXII, 502.

(5706) § 4. **Provision Giving Lien on Motor Vehicle for Damage Done to Other Vehicles When Carelessly Run.**—When a motor vehicle is operated in violation of the provisions of law, or negligently and carelessly, and when any person receives personal injury thereby, or when a buggy or wagon or other property is damaged thereby, the damages done to such person or property shall be and constitute a lien next in priority to the lien for State and county taxes upon such motor vehicle, recoverable in any Court of competent jurisdiction, and the person sustaining such damages shall have a right to attach said motor vehicle in the manner provided by law for attachments in this State: *Provided*, That this Section shall not be effective in case the motor vehicle shall have been stolen by the breaking of a building under a secure lock, or when the vehicle is securely locked.

1912, XXVII, 738.

TITLE IV.

Of Legal Notices, Legal Holidays, and Costs and Fees.

CHAPTER XCI. Publication of Legal Notices—Legal Holidays, 1732.

CHAPTER XCII. Costs, Fees and Salaries of County Officers, 1736.

CHAPTER XCI.

Publication of Legal Notices—Legal Holidays.

(5707) § 1. **Charges for Legal Advertisements Regulated.**—State and county officials authorized by law to publish advertisements in the newspapers of this State, including sales of real and personal property by Masters, Clerks of Court, Judges of Probate and Sheriffs, citations, notices to creditors, and notices of final settlement by executors, administrators and guardians, and all other persons acting in a fiduciary capacity, together with all other advertising done by order of any Court, including service of summons by publication, notices of election ordered by Commissioners, reports of County Treasurers, Supervisors, Superintendents of Education, notices of County Auditors, proclamations of the Executive

Department, proposals for works and supplies by the heads of departments, or other officials authorized to advertise for competitive bids, and all other advertising whatever by State and county officials, shall be charged not exceeding one dollar per inch for the first insertion and not exceeding fifty cents per inch for each subsequent insertion, the said advertisements to be set in solid brevier type, including the caption and all other parts of said advertisements: *Provided*, That newspapers using other than brevier type shall receive compensation based on brevier measure: *Provided, further*, That all accounts rendered for printing shall be under oath that such accounts are in accordance with the requirements of this Chapter: *Provided, further*, That when the value of the real estate as to which such advertisement is made is less than two hundred dollars, only one-half of the rate hereinbefore allowed shall be charged or allowed. And when the value of such estate is less than one hundred dollars, only one-fourth of the rates hereinbefore allowed shall be charged or allowed: *Provided, further*, That if the proprietors or managers of the newspapers in any county shall refuse to insert such advertisements in their newspapers at the rates hereinbefore allowed, the same shall be posted in at least three public places in the county, one of which shall be at the Court House door: *And provided, further*, That the reports of the County Treasurers and Supervisors shall not exceed sixty dollars each per annum: *Provided*, That the publication of any of the notices therein mentioned may be let by contract for not more than prices herein mentioned: *Provided*, That provisions of this Section shall not apply to Charleston County.

Civ. '12, § 4195; Civ. '02, § 3091; 1899, XXII, 47; 1902, XXIII, 1074; 1905, XXIV, 847; 1915, XXIX, 72; 1919, XXXI, 45; 1921, XXXII, 160.

(5708) § 2. Special Provisions in Certain Counties.—In the said County of Charleston the pay for advertisements of notices of elections, rewards, reports and all other matters required by law to be published, shall be paid for at the rate of one dollar per one hundred words for the first insertion and fifty cents per one hundred words for each subsequent insertion: *Provided*, That the caption to notices shall be at the rate of five cents per word.

Civ. '12, § 4196; Civ. '02, § 3092; 1896, XXII, 393; 1921, XXXII, 160.

(5709) § 3. Lancaster County to Contract for Advertising.—It shall be the duty of the County Commissioners of Lancaster County annually to contract with some newspaper published in Lancaster County to publish or advertise such notices and other matters as are now required by law to be published or advertised in a newspaper, including all notices of the County Treasurer, County Auditor and County Superintendent of Education, for a period of one year.

Civ. '12, § 4197; 1911, XXVII, 335; 1913, XXVIII, 323.

(5710) § 4. Cost of Advertisements.—That the contract price for such advertisements and publications shall not exceed the sum of two hundred dollars per annum.

Civ. '12, § 4198; 1910, XXVI, 789; 1911, XXVII, 335; 1913, XXVIII, 323.

(5711) § 5. **May Post Advertisements.**—That in case said Commissioners are unable to contract said advertising and publishing to a newspaper in said county at said sum of two hundred dollars, said Commissioners are authorized and directed to post in five public and conspicuous places all notices and other matters now required by law to be advertised or published in a newspaper in said county.

Civ. '12, § 4199; 1910, XXVI, 789; 1911, XXVII, 335; 1913, XXVIII, 323.

(5712) § 7. **Length of Time Legal Sales Shall Be Advertised.**—All notices for the sale of any real estate under execution or order of Court shall be advertised for twenty-one days, that is to say, once a week for at least three weeks, prior to such sale; and all notices for such sales of personal property, unless otherwise specially ordered, shall be advertised for fifteen days, that is to say, once a week for two weeks, before such sale.

Civ. '12, § 4200; Civ. '02, § 3093; G. S. 2424; R. S. 2543; 1875, XVI, 14; 1878, XVI, 482.

Advertisement in weekly newspaper in three successive issues next preceding the day of sale, sufficient. *Alexander v. Messervey*, 35 S. C. 409, 14 S. E. 854.

(5713) § 8. **What Publication Equivalent to Three Weeks' Advertisement.**—That in cases where the statute requires a notice to be published in a newspaper for three (3) weeks, or twenty-one (21) days, the publication of such notice in three (3) successive weeks shall be sufficient: *Provided*, That at least sixteen (16) days shall have expired after the date of the first publication and on or before the date fixed for the doing of the thing of which notice is given.

1921, XXXII, 217.

(5714) § 9. **Equivalent of Publication for Two Weeks or Fifteen Days.**—That in cases where it is required that notice be published in a newspaper for two (2) weeks, or fifteen (15) days, the publication of such notice in two (2) successive weeks shall be sufficient: *Provided, further*, That at least eight days shall have expired after the date of the first publication and on or before the date fixed for the doing of the thing for which notice is given.

1921, XXXII, 217.

(5715) § 10. **Publication for One Week.**—That in case where it is required that notice be published in a newspaper for one week, the publication of such notice shall precede the date fixed for the doing of the thing at least six (6) days.

1921, XXXII, 217.

(5716) § 11. **Equivalent of Publication for One Month or Thirty Days.**—That in cases where publication for one month or thirty days is required, the publication in four successive weeks shall be sufficient: *Provided*, At least twenty-nine days shall have expired after the first publication thereof, on or before the date fixed for the doing of the thing of which notice is given.

1921, XXXII, 217.

(5717) § 12. **Calculation of Time.**—That in calculating time in the cases mentioned, the date of the first publication must be excluded, and the day

fixed in the notice for the doing of the thing for which notice is given shall be included.

1921, XXXII, 217.

(5718) § 13. **Legal Holidays.**—National Thanksgiving days and all general election days, and also the first day of January, the nineteenth day of January, the twenty-second day of February, the tenth day of May, the third day of June, the fourth day of July, the first Monday in September and the twenty-fifth day of December in each and every year shall be legal holidays: *Provided*, That each first Monday in any month shall be a legal day of judicial or Sheriff's sales or the transaction of any legal business.

Civ. '12, § 4201; Civ. '02, § 8094; 1898, XXII, 791; 1911, XXVII, 138; 1917, XXX, 38.

(5719) § 14. **Thursday of Fair Week a Holiday in Counties in Which Fair Is Held.**—Thursday of Fair Week in each and every year shall be, and is hereby constituted, a legal holiday in all the counties in the State wheresoever the State Agricultural and Mechanical Society holds an annual fair.

Civ. '12, § 4202; 1906, XXV, 110.

Judicial proceedings on a holiday not illegal. *Mitchell v. Bates*, 57 S. C. 44, 35 S. E. 420; *Hiller v. English*, 4 Strob. 486. Contracts executed on Sunday not void. *Hellams v. Abercrombie*, 15 S. C. 110; *Mills v. Williams*, 16 S. C. 593.

(5720) § 15. **Special Holiday Provisions in Charleston and Richland Counties—Saturday Afternoon—Negotiable Papers.**—In Charleston and Richland Counties, the holidays mentioned in the last preceding Section, and any and every other day which may at any time hereafter be made a public holiday by law, and every Saturday from twelve noon until twelve midnight, which is hereby appointed a half holiday, shall for all purposes whatsoever, as regard the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes made after the passage of this Section, be treated and considered as the first day of the week, commonly called Sunday, and as public holidays or half holidays; and all such bills, checks and notes, otherwise presentable for acceptance or payment on such public holidays, shall be presentable for acceptance or payment on the secular or business day next succeeding such holiday; but in the case of a half holiday, such bills, checks and notes shall be presentable for acceptance or payment at or before twelve o'clock noon of that day: *Provided, however*, That for the purpose of protesting or otherwise holding liable any party to any bill of exchange, check or promissory note, and which shall not have been paid before twelve o'clock at noon any Saturday, a demand of acceptance or payment thereof may be made, and notice of protest or dishonor thereof may be given after twelve o'clock at noon on Saturday, or on the next succeeding secular or business day: *And provided, further*, That when any person shall receive for collection any check, bill of exchange, promissory note, due and presentable for acceptance or payment on any Saturday, such person shall not be deemed guilty of any neglect or omission of duty, nor incur any liability in not presenting for payment, or acceptance, or collecting, such check, bill of exchange or promissory note on that day: *And provided, further*, That in constructing this Section, every Saturday, unless a whole holiday as afore-

said, shall until twelve o'clock noon, be deemed a secular or business day: *Provided, further*, That nothing herein contained shall render illegal any business which any bank or other corporation or person shall see fit to transact on any Saturday after twelve o'clock at noon.

Civ. '12, § 3095; 1892, XXI, 188; 1898, XXII, 790; 1903, XXIV, 107.

CERTAIN MONDAYS DECLARED TO BE HOLIDAYS.—Whenever any of the legal holidays mentioned in Section 8 shall fall upon Sunday, the Monday next following shall be deemed a public holiday for all or any of the purposes aforesaid: *Provided, however*, That in such case all bills of exchange, checks and promissory notes made after passage of this Section, which would otherwise be presentable for acceptance or payment on the said Monday, shall be deemed to be presentable for acceptance or payment on the secular or business day next succeeding holiday.

Civ. '12, § 4203; Civ. '02, § 3095; 1892, XXI, 188; 1898, XXII, 790; 1903, XXIV, 107.

CHAPTER XCII.

Costs, Fees and Salaries of County Officers.

(§721) § 1. Costs Follow Event of Action, Except in Chancery Cases When Otherwise Ordered—Proviso.—In every civil action commenced or prosecuted in the Courts of record in this State (except cases in chancery) the attorneys of plaintiff or defendant shall be entitled to recover costs and disbursements of the adverse party, as prescribed in this Chapter, such costs to be allowed as of course to the attorneys of plaintiff or defendant, and all officers of the Court thereto entitled, accordingly as the action may terminate, and to be inserted in the judgment against the losing party. In cases in chancery, the same rule as to costs shall prevail, unless otherwise ordered by the Court: *Provided*, That wherever, in action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, or in any other action for damages for torts, the amount recovered shall be less than one hundred dollars, the total amount of costs and disbursements shall not exceed the amount so recovered in the action.

Civ. '12, § 4204; Civ. '02, § 3096; G. S. 2425; R. S. 2547; Code Proc., § 361; 1883, XVIII, 449; 1892, XXI, 30.

The right to costs is purely statutory. *Kershaw Co. v. Richland County*, 61 S. C. 75, 39 S. E. 263; *Whittle v. Saluda County*, 56 S. C. 506, 35 S. E. 203; *Green v. Anderson County*, 56 S. C. 411, 34 S. E. 691; *Hightower v. Bamberg County*, 54 S. C. 536, 32 S. C. 576; *Lancaster v. Barnwell County*, 40 S. C. 446, 19 S. E. 74; *Carolina National Bank v. Senn*, 25 S. C. 572. Costs are in the nature of penalties. *Kershaw County v. Richland County*, 61 S. C. 75, 39 S. E. 263; *State v. Co. Treas.*, 10 S. C. 43; *Lancaster v. Barnwell County*, 40 S. C. 445, 19 S. E. 74; *Thompson v. Farr*, 1 Rich L. 4. Costs are governed by the fee bill in force at time of verdict or order for judgment. *Kapp v. Lyons*, 13 S. C. 288; *Benbow v. Richardson*, 21 S. C. 602. Taxation of costs must await final judgment when Circuit decree has been reversed. *Addison v. Duncan*, 35 S. C. 165, 14 S. E. 305. Costs and disbursements should be inserted in the judgment. *Lewis v. Brown*, 16 S. C. 58. Fees of officers of Court and witnesses should be taxed to them as costs, if not paid by the party. *Lewis v. Brown*, 16 S. C. 58; *Cureton v. Westfield*, 24 S. C. 457; *Dauntless Co. v. Davis*, 24 S. C. 536. But if so paid by him they are considered as disbursements by the prevailing party. *Lewis v. Brown*, 16 S. C. 58; *Cureton v. Westfield*, 24 S. C. 457; *Dauntless Co. v. Davis*, 24 S. C. 536. Disbursements should be taxed under fee bill of force at time incurred. *Lewis v. Brown*, 16 S. C. 58. Expenses of keeping property taken in claim and delivery is properly a disbursement to be taxed by Clerk. *Addison v. Suiette*, 60 S. C. 58, 38 S. E. 229; *Railway Co. v. Sheppard*, 42 S. C. 543, 20 S. E. 481. Disbursements do not bear interest before taxation. *Addison v. Suiette*, 60 S. C. 58, 38 S. E. 229. The right to disbursements was not affected by the repeal of the Act allowing attorney's costs. *Durham Fertilizer Co. v. Glenn*, 48 S. C. 494, 26 S. E. 796. What are disbursements. *Th. Printing arguments for Supreme Court. McElwee v. Kennedy*, 59 S. C. 335, 37 S. E. 920.

Disbursements should be verified by affidavit. *Id.*: *Cureton v. Westfield*, 24 S. C. 457. Points and authorities in Supreme Court are taxable as disbursements. *Elder v. R. R.*, 15 S. C. 610. But copying of case for printer is not so taxable. *Id.*: The payment of costs in cases in chancery is within the discretion of the Court. *Mars v. Connor*, 4 S. C. 70; *Nimmons v. Stewart*, 13 S. C. 445; *Cooke v. Pennington*, 15 S. C. 185; *Winsmith v. Winsmith*, 15 S. C. 611; *Childs v. Frazee*, 15 S. C. 612; *Jacobs v. Bush*, 17 S. C. 595; *Pearson v. Carlton*, 18 S. C. 47; *Bratton v. Massey*, 18 S. C. 555; *Lake v. Shumate*, 20 S. C. 23; *Hand v. R. R.*, 21 S. C. 162; *Covar v. Sallat*, 22 S. C. 265; *Johnson v. Pelot*, 24 S. C. 264; *Gary v. Barnwell*, 24 S. C. 595; *McAfee v. McAfee*, 28 S. C. 218, 5 S. E. 593; *Bean v. Bean*, 28 S. C. 607, 5 S. E. 827; *Alexander v. Meroney*, 30 S. C. 335, 9 S. E. 266; *Geddes v. Jones*, 40 S. C. 402, 19 S. E. 9; *Younger v. Massey*, 41 S. C. 50, 19 S. E. 125; *Brown v. Brown*, 44 S. C. 373, 22 S. E. 412. Plaintiff should not be required to pay costs incurred in a contest between co-defendants. *McCrady v. Jones*, 36 S. C. 138, 15 S. E. 430. Pretended purchaser resisting action for foreclosure should pay costs. *Dendy v. Waite*, 36 S. C. 569, 15 S. E. 712. If Circuit Court makes no order as to such costs the Supreme Court will not. *Walker v. Walker*, 17 S. C. 339; *Harbin v. Parker*, 19 S. C. 598; *Scott v. Alexander*, 23 S. C. 120; *Johnson v. Pelot*, 24 S. C. 255; *Webb v. Chisolm*, 24 S. C. 487; *Gary v. Barnwell*, 24 S. C. 595. The reversal on appeal of a decree which directs the payment of the costs sets aside this direction, although it is not made a ground of appeal. *Bratton v. Massey*, 18 S. C. 555. In actions for the benefit of persons unable to contract, or by one of a class for the benefit of all, the costs and disbursements should be appointed and paid out of the fund in Court. *Nimmons v. Stewart*, 13 S. C. 445; *Roberts v. Johns*, 24 S. C. 580. But where there are liens upon part of the fund, costs are primarily chargeable upon the unencumbered part. *Baxter v. Baxter*, 23 S. C. 114. An appeal lies from a judgment, in an action at law as to taxation of costs. *Stegall v. Bolt*, 11 S. C. 522; *Dilling v. Foster*, 21 S. C. 340; *Dauntless Co. v. Davis*, 24 S. C. 539. An appeal alleging error of law may be taken from an order made upon the sole question of costs in a chancery case. *Scott v. Alexander*, 23 S. C. 120. But the Supreme Court has no original jurisdiction as to costs. *Huff v. Watkins*, 20 S. C. 479. Witnesses fee when paid by party to be taxed as a disbursement. *Mitchell v. Barrs*, 64 S. C. 197, 41 S. E. 962. Costs in chancery cases, discretion of Court. *Cauthen v. Cauthen*, 81 S. C. 313, 62 S. C. 319. Words "or in any other action for damages for torts" apply to personal torts and do not apply in an action for damages for trespass on lands where title is involved. *Vassey v. Spake*, 83 S. C. 566, 65 S. E. 825.

(5722) § 2. Costs in Criminal Cases Where Venue is Changed.—When-ever a criminal case is transferred from one county to another for trial, all the costs of such trial shall be paid by the county in which the bill of indictment was found; such costs to be certified to such county by the Clerk of the Court of the county in which such trial is had.

Civ. '12, § 4205; 1902, XXIII, 1087.

(5723) § 3. Cases in Partition of Property and Foreclosure of Property of Certain Value.—All allowances for costs prescribed by this Chapter to which the provisions of this Section are applicable shall be subject thereto.

1. The costs allowed by law in all cases of partition where the property sought to be partitioned does not exceed one thousand dollars in value, and in actions for foreclosure of mortgage where the amount claimed does not exceed five hundred dollars, shall be one-half of the cost allowed in cases where the value exceeds those sums, and this provision shall apply to all cost in the cause.

Civ. '02, § 3097; R. S. 2548; 1897, XXII, 429.

2. **COSTS AND EXPENSES IN SETTLEMENT OF ESTATES—CERTAIN VALUES.**—All the items of cost and expenses allowed by law in the administration and settlement of estates, where the amount of such estate is less than one hundred dollars, shall be one-half the amount as now provided by law.

Civ. '02, § 3097; R. S. 2548; 1897, XXII, 429.

3. **COSTS FOR REFERENCES.**—Costs for references shall only be taxed for the number of days which the Master shall certify to have been unavoidably necessary, and no costs shall be taxed for references where no testimony has been taken, or argument had.

4. **COSTS ONLY TO SUCCESSFUL PARTY—COSTS ON PROVING CLAIMS.**—No costs shall be allowed to any party unless he succeed, in whole or in part,

in his claim or defense, unless otherwise directed by the Judge hearing the cause. No costs shall be allowed for proving uncontested claims; and in proving other claims by attorneys not of record, no costs shall be allowed except for the days in which the Master or Referee is occupied in taking proof for or against such claim.

Civ. '02, § 3097; R. S. 2548; 1897, XXII, 429.

5. COSTS TO MASTER, ETC., FOR REFERENCE.—The Master, special Master, or Referee shall be entitled to three dollars for each reference, and the work of one day shall constitute a reference, without regard to the number of claims presented and passed upon.

Civ. '02, § 3097; R. S. 2548; 1897, XXII, 429.

6. COSTS FOR MILEAGE.—No constructive mileage shall be allowed, but in all cases costs for mileage shall only be taxed for the number of miles actually traveled.

Civ. '12, § 4206; Civ. '02, § 3097; R. S. 2548; 1897, XXII, 429.

Applies to Master's commissions. *Bryan v. Reams*, 59 S. C. 340, 37 S. E. 921. Restricted to the actions named. *Williams v. Washington*, 43 S. C. 355, 21 S. E. 259.

(5724) § 4. **Attorneys' Costs on Appeal to Supreme Court, Etc.**—When an appeal is taken to the Supreme Court of this State, the following costs shall be allowed in all classes of cases legal or equitable: For the plaintiff's or defendant's attorneys, for making and serving a case or a case containing exceptions, ten dollars; for procuring an Order of Injunction, five dollars; on argument in the Supreme Court, twenty-five dollars.

Civ. '12, § 4207; Civ. '02, § 3098; 1901, XXIII, 620.

Includes appeals in proceedings in prohibition. *Bartless v. Town Council of Beaufort*, 47 S. C. 225, 25 S. E. 38. The costs of appeal in Supreme Court are to be taxed in favor of party prevailing there, irrespective of result of case below. *Cleveland v. Cohns*, 13 S. C. 397; *Sullivan v. Latimer*, 43 S. C. 262, 21 S. E. 3. Whether for appellant in action. *Huff v. Watkins*, 25 S. C. 243. Or for respondent in a special proceeding. *Sease v. Dobson*, 36 S. C. 554, 15 S. E. 703, 704. They are to be taxed under fee bill in force at the time the appeal is determined. *Winsmith v. Dewberry*, 13 S. C. 554. Former Act as to costs on appeal, under which costs for making and serving case were not allowed. *Finley v. Cudd*, 45 S. C. 87, 22 S. E. 753.

Where, for convenience, three cases are heard together, costs may be taxed in each for preparation of case and argument. *Baker v. Irvine*, 64 S. C. 430, 42 S. E. 194. Applies to appeal from justice at chamber. *Western Union Tel. Co. v. Winnsboro*, 72 S. C. 42, 51 S. E. 528.

Ketchin v. Rion, 72 S. C. 153, 51 S. E. 557. Attorneys' fees. *Cauthen v. Cauthen*, 76 S. C. 226, 56 S. E. 978; *Park v. Laurens*, 68 S. C. 212, 46 S. E. 1012; *Boyd v. Lee*, 35 S. C. 19, 15 S. E. 333; *Butler v. Butler*, 73 S. C. 402, 53 S. E. 646.

When notice of intention to appeal was served before passage of Act, 23 Stat. 620, and return was not filed until after passage of Act, prevailing party on appeal is not entitled to tax costs under Act. *Savariance v. Lockhart*, 66 S. C. 539, 45 S. E. 83.

(5725) § 5. **Costs of Plaintiffs' and Defendants' Attorneys.**—In actions which were pending, or on existing contracts which were liquidated, on the 12th day of January, 1893, attorneys shall also be entitled to the following costs:

Civ. '02, § 3099; G. S. 2426; R. S. 2549.

1. PLAINTIFFS' ATTORNEYS' COSTS, WHEN ENTITLED THERETO, SHALL BE AS FOLLOWS: For rule on Sheriff or other officers of the Court, three dollars; for issuing summons, four dollars; for issuing complaint, four dollars; for entering up judgment and issuing execution, three dollars; where special bail is required, one dollar; for every subpoena writ and ticket, one dollar; for every renewal of execution, one dollar; for every demurrer or joinder in demurrer, three dollars; for every motion for a new trial, when

granted, five dollars; for every trial of the cause in the Circuit, five dollars; for every commission to examine witness or filing cross-interrogations, or for issuing writ of partition, eight dollars; proceedings before trial on appeal from Magistrate Court, three dollars; for trial of the cause, five dollars, except when the amount sued for is under twenty dollars, only two dollars and fifty cents for trial; for all proceedings in dower, from beginning to end, twenty dollars; for cases in attachment, in addition to common costs, ten dollars; for the jury in each case tried, one dollar; for examination of a party or witnesses before trial, three dollars; for proceedings in cases where the summons is served by publication, four dollars; and for each necessary copy complaint served, where there is more than one defendant, two dollars; where the summons is served by publication, four dollars; and for each necessary copy complaint served, where there is more than one defendant, two dollars.

1882, XVII, 1063.

2. DEFENDANTS' ATTORNEYS' COSTS, WHEN ENTITLED THERETO, SHALL BE AS FOLLOWS: For giving notice of appearance when necessary, four dollars; for answer or demurrer, four dollars; for entering up judgment and issuing execution, three dollars; for trial of the cause on the Circuit, five dollars; to the jury, one dollar; for motion for new trial, when granted, five dollars; for every commission to examine witnesses or filing cross-interrogations, eight dollars; for all proceedings before trial on appeal from Magistrate Court, three dollars; for trial of the cause, five dollars; when the amount sued for is under twenty dollars, only two dollars and fifty cents to be charged for trial; for subpoena writ and ticket, one dollar.

G. S. 2427; R. S. 2550; 1880, XVII, 297.

3. ATTORNEY'S COSTS IN EQUITY CASES.—In equity cases, which were pending, or on contracts which were liquidated on the 12th day of January, 1893, attorneys shall receive the same costs allowed in actions at law, and also for the appointment of a guardian or guardians *ad litem* for an infant, ten dollars; one attorney representing all the infants in a cause to charge only ten dollars for the appointment of a guardian *ad litem* for them; for exceptions to Clerk's, Master's or Referee's report, five dollars; for each day attending before Clerk, Master, or Referee on reference, five dollars: *Provided*, That no attorney shall be allowed to tax costs both as plaintiff's and defendant's attorney; and that costs of reference shall not be taxed for more than six days.

Civ. '12, § 4208; Civ. '02, § 3099; G. S. 2428; R. S. 2551; 1882, XVI, 1063; 1888, XX, 31; 1891, XX, 1060; 1892, XXI, 30.

To what actions restricted. *Powell v. Pearlstine*, 43 S. C. 403, 21 S. E. 328.

Action on note executed in 1882, with allegation of new promise by payment since 1892, is an action which was liquidated prior to 1892. *Bolt v. Gray*, 64 S. C. 432, 42 S. E. 200. Costs on appeal from Magistrate's Courts. *Salley v. S. A. L. Ry.*, 79 S. C. 454, 60 S. E. 1123.

(5726) § 6. Fees and Costs of Certain Officers.—The several officers hereinafter named shall be entitled to receive and recover the fees and costs prescribed by this Chapter, and none other, for the services herein enumerated.

Civ. '12, § 4209; Civ. '02, § 3100; G. S. 2429; R. S. 2553.

(5727) § 7. **Fees and Costs—Secretary of State.**—For every search, fourteen cents; for entering satisfaction on a mortgage, twenty-one cents; for recording a mark or brand, twenty-one cents; for recording or copying any writing, for every copy sheet containing ninety words, nine cents; for making out a grant of lands, recording and fixing the great seal, two dollars and fourteen cents; for a testimonial with the great seal, one dollar and seven cents; for registering the certificate of a person becoming a denizen, twenty-five cents; for a family, not exceeding three, fifty cents; for a family exceeding three, one dollar; for commissioning a Notary Public or Commissioner of Deeds, three dollars and twenty-five cents.

Civ. '12, § 4210; Civ. '02, § 3101; G. S. 2430; R. S. 2454; 1790, V, 153; 1799, V, 355; 1901, XXIII, 754.

For fees for granting charter, or amendment to charter, of Charitable, Social and Religious Societies, see §§ (4316) and (4346), filing petition for corporation of business corporations, § (4302), issuing charters to same, § (4312); foreign Railroad corporations, §§ (4040)-(4042); recording railroad deeds, leases, mortgages and other instruments in writing, § (791).

(5728) § 8. **Fees of Clerks of Court for Recording Papers.**—Except in the Counties of Allendale, Bamberg, Barnwell, Beaufort, Clarendon, Colleton, Dorchester, Marlboro, Orangeburg, Pickens, Spartanburg, York, Georgetown, Fairfield, Greenville, Richland, Berkeley, Union and Horry, the following fees shall be allowed to Clerks of Court in this State, in lieu of all fees now allowed by law: For recording a deed to or a mortgage on real estate, with or without renunciation of dower, and certifying same on the back thereof, seventy-five cents: *Provided*, Such a deed or mortgage does not exceed fifteen hundred words, in which case they shall be entitled to receive and collect an additional sum of eight cents per hundred words on all words over one thousand; for recording each chattel mortgage over one hundred dollars and certifying same on the back thereof, fifty cents: *Provided*, Such chattel mortgage does not exceed one thousand words, in which case they shall be entitled to charge and receive an additional sum of eight cents per hundred words on all words over one thousand; for indexing each chattel mortgage under one hundred dollars, and certifying same on the back thereof, ten cents; for indexing each agricultural lien, and certifying same on the back thereof, ten cents; for recording each lien and mortgage combined, and certifying the same on back thereof, fifty cents; for entering each satisfaction on the record of a mortgage of real estate or a chattel mortgage, and certifying same on the back thereof, ten cents; for recording or copying plats of not more than six corners, seventy-five cents; for every corner over, six cents; for every probate in writing, twenty-five cents; for every certificate, except the certificate on the backs of paper recorded by them, and certificates of judicial records in their offices required for the Court or a Judge thereof, twenty-five cents; for recording any other paper required by law to be recorded, except judicial records, eight cents per hundred words.

Civ. '12, § 4211; Civ. '02, § 3102; 1899, XXIII, 46; 1900, XXIII, 302; 1909, XXVI, 79; 1920, XXXI, 741.

(5729) § 9. **Recording Fees of Clerk of Court of Beaufort County.**—That the Clerk of Court for Beaufort County be, and he is hereby, authorized to charge the following fees for recording certain papers, to wit: Deeds.

one and 50/100 (\$1.50) dollars; each dower in excess of one dower on said deed, twenty-five (25) cents, and for each probate in excess of one probate on said deed, twenty-five (25) cents, and for each certificate on said deed, twenty-five (25) cents; for conditional sales agreements, for which no regular blanks are furnished to the Clerk of Court, one and 50/100 (\$1.50) dollars; for plats, one (\$1.00) dollar, and ten (10) cents for each corner; for chattel mortgages under one hundred (\$100.00) dollars, twenty-five (25) cents, and for chattel mortgages over one hundred (\$100.00) dollars, fifty (50) cents; for satisfaction, twenty-five (25) cents; and assignments, seventy-five (75) cents.

1921, XXXII, 118.

(5730) § 10. Fees of Registers of Mesne Conveyances.—The Clerks of Court in all the counties excepted from the operation of Section 8, except Orangeburg and the Register of Mesne Conveyance in Charleston County, shall receive: For recording and copying deeds and other papers, per copy sheet of one hundred words, ten cents; for entering satisfaction on mortgages, twenty-five cents; for recording or copying plats of not more than six corners, one dollar; for every corner more than six, six cents; for every probate in writing, twenty-five cents; for every certificate other than that mentioned in Section 4216, twenty-five cents; for filing, indexing and certifying any bill of sale, chattel mortgage or other instruments in the nature of liens on personal property, where the amount secured is not more than one hundred dollars, fifteen cents: *Provided*, That the Register for Charleston and Clerk of Court for Beaufort County shall also be allowed ten cents for every search: *Provided*, That the Clerk of Court of Union County, who is *ex officio* the Recorder of Mesne Conveyance, be paid the fees herein named for the filing and recording the following instruments as named as follows, to wit:

For the regular short form of deeds of conveyance to real estate, and such that conform to the office book forms, one and 50/100 (\$1.50) dollars; for irregular and long form deeds of conveyance to real estate and such that do not conform to the office book form, one and 75/100 (\$1.75) dollars; for the regular short form of real estate mortgage and which conform to the office book forms, one and 50/100 (\$1.50) dollars; for the irregular and long form of real estate mortgages and such that do not conform to the office book forms, one and 75/100 (\$1.75) dollars; and for the short form of chattel mortgages and bills of sale in amounts of less than one hundred dollars, twenty-five (0.25) cents; for the short form of chattel mortgages and bills of sale in amounts of one hundred dollars and over, seventy-five (0.75) cents; for irregular and long form chattel mortgages and bills of sale which do not conform to any office book form and amounting to one hundred dollars and over, one (\$1.00) dollar; for satisfaction of judgment the Clerk of Court shall receive the regular commission now provided by law on the amount of a judgment before said judgment is satisfied of record.

Civ. '12, § 4212; Civ. '02, § 8103; 1878, XVI, 626; 1898, XXII, 695; 1921, XXXII, 66.

(5731) § 11. Special Provision as to Clerk of Court in Orangeburg for Recording Papers.—In Orangeburg County the Clerk of Court shall

receive: For recording and copying deed and other papers, per copy sheet of ninety words, six cents; for entering satisfaction on mortgages, ten cents; for recording or copying plat of not more than six corners, sixty-five cents; for every corner more than six cents; for every probate in writing, fifteen cents; for every certificate, fifteen cents.

Civ. '12, § 4213; Civ. '02, § 3104; 1894, XXI, 993.

(5732) § 12. **Fees Allowed Register of Mesne Conveyance, Spartanburg County.**—That the Register of Mesne Conveyance of the County of Spartanburg shall be entitled to charge fees as hereinafter prescribed: “A.” For recording a deed to real estate without renunciation of dower, where the number of words in such deed does not exceed one thousand, eighty-five cents; for a deed to real estate with renunciation of dower, where the number of words in such deed does not exceed one thousand, ninety cents; for recording a mortgage of real estate without renunciation of dower, where the number of words in such mortgage does not exceed one thousand, one dollar and fifteen cents; for recording a mortgage of real estate with renunciation of dower, where the number of words in such mortgage does not exceed one thousand, one dollar and twenty-five cents, and for recording any deed to, or mortgage of, real estate where the number of words shall exceed one thousand, he shall be entitled to charge ten cents for every additional one hundred words or fraction thereof; for recording a chattel mortgage without a note, where the number of words does not exceed five hundred, fifty-five cents; for recording a chattel mortgage with a note, where the number of words does not exceed five hundred, seventy-five cents, and for recording a chattel mortgage, where the number of words exceeds five hundred, he shall be entitled to charge for every additional one hundred words, or fraction thereof, ten cents; for indexing a chattel mortgage of one hundred dollars or less he shall be entitled to charge fifteen cents for each name; for an exemplification certificate of the record he shall be entitled to charge one dollar, and for copies of the record the same fees as are herein prescribed for recording such papers; for each ordinary satisfaction of a mortgage or other lien, where entered on the record, fifteen cents, and when such satisfaction is recorded, twenty-five cents; for recording or entering on the record all unusually long record of satisfaction he shall receive the same fees as are herein prescribed for recording deeds and mortgages; for filing and recording a mechanic’s lien he shall be entitled to charge one dollar and twenty-five cents, and for filing and recording a warrant of attachment one dollar and twenty-five cents; for recording a plat of land, one dollar, where the corners of such plat do not exceed four, and where such corners do exceed four, eight cents for each additional corner; for recording a charter, where the number of words in such charter does not exceed fifteen hundred, one dollar and seventy-five cents, and for each additional one hundred words in excess of fifteen hundred, or any fraction thereof, ten cents. “B.” For recording deeds of Master, Sheriff, Judge of Probate, or Executor, where the number of words in deed does not exceed twelve hundred, he shall be entitled to charge one dollar, and where the number of words does exceed twelve hundred, ten cents for each additional one hundred words or fraction thereof. “C.” For recording homestead

proceedings he shall be entitled to charge a fee of five dollars; for each search of the records he may charge a fee of fifteen cents; for recording leases, powers of attorney, bonds for title, agreements, contracts, and other papers required by law to be recorded in the office of the Register of Mesne Conveyance, he shall be entitled to charge a fee of seventy-five cents, where the number of words does not exceed five hundred, and ten cents for each additional one hundred words, or fraction thereof in excess of five hundred.

1912, XXVII, 673.

(5733) § 13. Costs and Fees of Clerk of Court of Dorchester County.

—The law as to the fees to be received by the Clerk of Court and Register of Mesne Conveyances for Dorchester County shall be, as now provided by law, except as hereinafter provided, to wit: For filing lien, fifteen cents; for indexing mortgage personal property, fifteen cents; for recording bill of sale, fifty cents; for recording lien with mortgage, one dollar; for recording without dower, one dollar; for recording deed with dower, one dollar and twenty-five cents; for recording mortgage real estate (usual form), without dower and without insurance tax and attorney fee, one dollar; for recording the same with dower, one dollar and twenty-five cents; for recording mortgage real estate (usual form), with insurance tax and with attorney's fees, without dower, one dollar and twenty-five cents; for the same with dower, one dollar and fifty cents; for entering satisfactions before the Clerk, twenty-five cents; for recording transfers, fifty cents; for recording bonds, one dollar and twenty-five cents; for recording charters (usual form), one dollar and fifty cents; for recording note and mortgage or chattel mortgages (usual form), seventy-five cents; for recording any other paper required to be recorded, at the rate of ten cents per every hundred words.

Civ. '12, § 4214; 1909, XXVI, 53; 1913, XXVIII, 180.

(5734) § 14. Special Provisions for Salary—Fees and Duties of Register of Mesne Conveyances in Greenville County.—The Register of Mesne Conveyances of Greenville County shall receive a salary of fifteen hundred dollars per annum, in lieu of all fees and charges for filing and recording papers, which salary shall be paid to him monthly by warrant of the County Commissioners on the County Treasurer, to be paid out of the funds hereinafter required to be paid by said Treasurer, from fees for recording and filing papers, any deficiency to be paid out of the county funds in his hands not otherwise appropriated. The said Register of Mesne Conveyances shall charge, collect and keep an accurate itemized account of all fees for recording for individuals, companies or corporations, the same as now allowed by law, and to pay the same over weekly to the County Treasurer taking his receipt for the same; that out of the funds thus realized, the County Treasurer shall pay the monthly warrant for salary of said Register, carrying any surplus of such fund to ordinary county purposes.

The Register of Mesne Conveyances for Greenville County shall hereafter be entitled to charge and receive the following fees, to wit: For recording deed to real estate, with or without renunciation of dower, and certifying same on the back thereof, seventy-five cents; for recording each mortgage on real estate, with or without renunciation of dower, and certifying same

on the back thereof, seventy-five cents: *Provided*, Such deed or mortgage does not exceed fifteen hundred words, and he shall be entitled to receive and collect an additional sum of eight cents for every hundred words in excess thereof; for recording each chattel mortgage in excess of one hundred dollars and certifying the same on the back thereof, fifty cents: *Provided*, Same does not exceed one thousand words, and he shall be entitled to receive and collect the sum of eight cents for every one hundred words in excess thereof; for indexing each chattel mortgage for one hundred dollars or less, and certifying the same on the back thereof, ten cents; for indexing each agricultural lien and certifying the same on the back thereof, ten cents; for recording or copying plats of not more than six corners, one dollar; for every corner more than six, six cents: *Provided*, That no charge shall be made for space in plat books, where plats are copied therein by other persons; for every probate in writing, twenty-five cents; for every certificate, twenty-five cents, except the certificate entered on the back of a paper recorded by him. He shall be allowed ten cents for every search made by him in his office, and for recording any other paper required by law to be recorded in his office, eight cents for every one hundred words.

It shall be unlawful for the Register of Mesne Conveyances of Greenville County to receive or to file for record or to record any instrument unless the same be accompanied by the full fees, in cash, for the filing and registry thereof.

The said Register of Mesne Conveyances is hereby authorized to require the payment of his fees in advance, and he may refuse to receive any paper for record before the payment of his fees, and may refuse to do any work required by law to be done by him until the payment of his fee for the same: *Provided*, That if he shall receive any paper for record without requiring the payment of his fee in advance, he shall record the same and shall be responsible for the fee.

Civ. '12, § 4215; Civ. '02, § 3105; 1892, XXI, 274; 1898, XXII, 890, 891; 1900, XXIII, 303; 1901, XXIII, 819; 1907, XXV, 544.

(5735) § 15. What Endorsement to Be Made on Paper Recorded.—

Whenever any instrument in writing required by law to be filed and recorded has been so recorded, the Clerk or Register shall endorse on said instrument a certificate showing the date and the book and page where recorded, and for this certificate no fee shall be charged or collected.

Civ. '12, § 4216; Civ. '02, § 3106; 1898, XXII, 691.

(5736) § 16. Fees and Commissions of Clerk of Court—Exceptions and Provisos.—

Clerks of the Courts of Common Pleas and General Sessions, except in the Counties of Anderson, Orangeburg and Pickens, shall receive: For signing and sealing summons, fifty cents; for filing complaint, fifty cents; for filing each answer, demurrer, or rejoinder in demurrer, twenty-five cents; for signing and sealing subpœna writ, fifty cents; for docketing a cause, one charge only at each term, fifteen cents; for attending the trial of a cause (whether civil or criminal), and swearing witnesses, fifty cents; for entering verdict or other order for final judgment on the minutes of the Court, twenty-five cents; for special order for bail, fifty

cents; for filing and entering on the journal every rule or order for arbitration, twenty-five cents; for filing affidavits for continuance when ordered by the Judge, twenty-five cents; for signing, entering and enrolling judgment, seventy-five cents; for signing and sealing first execution, fifty cents; for signing and sealing each renewal of execution, twenty-five cents; for entering satisfaction on judgment, twenty-five cents; for filing transcript, twenty-five cents; for taking security for costs, entering order therefor, if made, fifty cents; for recording judgments, one dollar and fifty cents; for recording decrees of foreclosure, partition, and reports, per copy sheet of ninety words, nine cents; for administering oath other than on trial of cause, proof of service on Sheriff's return, oath to jurors or by order of Court, fifteen cents each; for taking and filing bonds in attachment, trover, or in other cases, one dollar; for signing and sealing commission to examine witnesses, seventy-five cents; for examining each witness *de bene esse*, one dollar; exemplification of proceeding or other office copy, per copy sheet of ninety words, nine cents; recording plat of land under order of the Court, or copying the same, fifty cents; rule of survey, fifty cents; each official certificate under seal of Court not herein specified, fifty cents; issuing writ of attachment for contempt or other special writ, one dollar; signing and sealing writ of *hab. fac. possessionem*, fifty cents; receiving and paying over money officially, two per cent., if under three hundred dollars; if over that sum, two per cent. for the first three hundred dollars, and one per cent. for the balance; on every appeal from Magistrate, all services inclusive, except for entering up judgment and issuing execution therein, one dollar; on bill *nol. pros.*, before giving out, one dollar; on bill thrown out by Grand Jury or found and *nol. pros.*, abated, discontinued, or struck off, two dollars; on bill found and verdict by petit jury, three dollars; all orders for bastardy and taking recognizance, one dollar; issuing bench warrant, writ of *habeas corpus*, *scire facias*, and each execution in Sessions, one dollar and fifty cents; for issuing warrants, taking recognizance, or other services in the Sessions as Magistrate *ex officio*, same fees as allowed that officer; for each writ of *venire facias*, including all services incident to summoning juries, two dollars; for preparing and issuing certificates for Grand and petit jurors and Constables and furnishing returns to County Commissioners for each term of the Court of Common Pleas and General Sessions, five dollars; for filing petition and signing writ *de lunatico inquirendo*, one dollar; for furnishing advertisements in cases of escheat, exclusive of printer's bill, one dollar; for recording whole proceedings therein, two dollars; for license to an attorney, all services included, five dollars; for filing and entering notice of alien's intention to become a citizen; one dollar; for filing and recording report of a lien, one dollar; for administering oath of intention, one dollar; for filing and entering application to become a citizen and administering oath, two dollars; for giving certificate (over seal of office) of citizenship, one dollar; for taking renunciation of dower or inheritance, two dollars; for every search for a paper found (not to be charged to the parties or attorneys when for papers in a case pending), fifteen cents; for every search necessary for a certificate that a paper is not to be found in office, twenty-five cents; for swearing a Magistrate or Constable in office,

taking Constable's bonds, and giving certificates thereof, one dollar; for every probate in writing, twenty-five cents; for signing and sealing *dedimus potestatem*, one dollar; for official certificate to exemplification of record, one dollar; for official certificate, without the seal, twenty-five cents; each day engaged in holding reference, one dollar; for hearing application for discharge of insolvent debtors, two dollars; for hearing the same when litigated, four dollars; making up and returning report on reference, but no more than one report in each case, three dollars; deed of conveyance or mortgage, two dollars; for official notice of estray and filing papers, one dollar; for recording and copying deeds or other papers, per copy sheet of ninety words, nine cents; for entering satisfaction on mortgage, twenty-five cents; for recording or copying plats of not more than six corners, one dollar; and for every corner over six, ten cents; for granting charter of incorporation, two dollars; for granting charter to church, one dollar; for enrolling and recording transcripts of judgments from Magistrates' Courts, and issuing executions thereon, one dollar: *Provided*, That the fees to be received by the Clerk of Court and Register of Mesne Conveyance for Calhoun County shall be as now provided by law, except as hereinafter provided, to wit: For filing liens, fifteen cents; for indexing mortgages, personal property, fifteen cents; for recording bill of sale, fifty cents; for recording and filing lien with mortgage, one dollar; for recording deed without dower, one dollar; for recording deed with dower, one dollar; for recording mortgage, real estate (usual form), without dower, and without insurance tax and attorney's fee, one dollar; for recording same with dower, one dollar; for recording mortgage real estate (usual form), with insurance tax and attorney's fees, without dower, one dollar; for the same with dower, one dollar and twenty-five cents; for recording satisfaction, twenty-five cents; for entering satisfaction before the Clerk, ten cents; for recording transfers, twenty-five cents; for recording bonds, one dollar and fifty cents; for recording any other paper required to be recorded, at the rate of six cents for every hundred words.

Civ. '12, § 4217; Civ. '02, § 3107; G. S. 2431; R. S. 2555; 1880, XVII, 298; 1911, XXVII, 63; 1916, XXIX, 801.

3. SALARIES IN LIEU OF FEES IN CRIMINAL CASES IN CERTAIN COUNTIES.—All fees and costs allowed by law to Clerks of Courts in criminal matters are hereby abolished, and they shall be allowed yearly salaries, in lieu and instead of the costs and fees now allowed by law. Said salaries to be paid quarterly upon the order of the Board of County Commissioners of the respective counties.

Civ. '12, § 4217; 1899, XXII, 46; 1900, XXII, 302; 1901, XXII, 673.

(5737) § 17. Fees of Clerks of Court in Anderson County.—In Anderson County the Clerks of Court of Common Pleas and General Sessions shall receive: For signing and sealing summons, thirty-five cents; for filing complaint, fifty cents; for filing each answer, demurrer or rejoinder in demurrer, twenty-five cents; for signing and sealing subpoena writ, twenty-five cents; for docketing a cause, one charge only at each term, ten cents; for attending the trial of a cause, whether civil or criminal, and swearing witnesses,

fifty cents; for entering verdict or other order for final judgment on minutes of the Court, twenty-five cents; for making assessments on reference, twenty-five cents; for special order for bail, thirty-five cents; for filing and entering on journal every rule or order for arbitration, twenty-five cents; for filing affidavits for continuance when ordered by the Judge, twenty-five cents; for signing, entering and enrolling judgments, fifty cents; for signing and sealing first execution, twenty-five cents; for signing and sealing each renewal execution, twenty-five cents; for entering satisfaction on judgment, fifteen cents; for taking security for costs, entering order therefor, if made, fifty cents; for recording judgments, one dollar; for recording decrees of foreclosure, partition and reports, per copy sheet of one hundred words, ten cents; for administering oath other than on trial of cause, proof of service on Sheriff's return, oath to jurors or by order of Court, fifteen cents; for taking and filing bonds in attachments, trover or in other cases, seventy-five cents; for signing and sealing commission to examine witnesses, fifty cents; exemplification of proceedings or other office copy, per copy sheet of one hundred words, eight cents; recording plat of land under order of the Court or copying the same, fifty cents; rule of survey, fifty cents; each official certificate under seal of Court not herein specified, twenty-five cents; issuing writ of attachment for contempt or other special writ, one dollar; signing and sealing writ of *hab. fac. possessionem*, fifty cents; receiving and paying over money officially, two per cent. if under three hundred dollars; if over that sum, two per cent. for the first three hundred dollars and one per cent. for the balance; every appeal from Magistrate, all services exclusive, except for entering up judgment and issuing execution therein, seventy-five cents; on bill *nol. pros.* before given out, one dollar; on bill thrown out by Grand Jury, or found *nol. pros.*, abated, discontinued or struck off, two dollars; on bill found and verdict by petit jury, three dollars; all orders for bastardy and taking recognizance, one dollar; issuing bench warrant, writ of *habeas corpus*, *scire facias*, and each execution in Sessions, one dollar and fifty cents; for issuing warrants, taking recognizance or other services in the Sessions as Magistrate *ex officio*, same fees as allowed that officer; for each writ of *venire facias*, including all services incident to summoning jurors, two dollars; for preparing and issuing certificates for Grand and petit jurors and Constables and furnishing returns to County Commissioners for each term of the Court of Common Pleas and General Sessions five dollars; for filing petition and signing writ *de lunatico inquirendo*, one dollar; for furnishing advertisements in cases of escheat, exclusive of printer's bill, one dollar; for recording whole proceedings therein, two dollars; for license to an attorney, all services included, five dollars; for filing and entering notice of alien's intention to become a citizen, one dollar; for filing and recording report of alien, one dollar; for administering oath of intention, one dollar; for filing and entering application to become a citizen and administering oath of intention, one dollar; for filing and entering application to become a citizen and administering oath, two dollars; for giving certificate (over seal of office) of citizenship, one dollar; for taking renunciation of dower or inheritance, two dollars; for every search for a paper found (not to be charged to the parties or attor-

neys when for papers) in a case pending, fifteen cents; for every search necessary for a certificate that a paper is not to be found in office, twenty-five cents; for swearing a Magistrate or Constable in office, taking Constable's bonds and giving certificates thereof, one dollar; for every probate in writing, twenty-five cents; for signing and sealing *dedimus potestatem*, seventy-five cents; for official certificate to exemplification of record, seventy-five cents; for official certificates without the seal, twenty-five cents; each day engaged in holding reference, one dollar; making up and returning report, but no more than one report in each case, three dollars; deed of conveyance or mortgage, two dollars; for official record of estray and filing papers, one dollar; for recording and copying deeds or other papers, per copy sheet of one hundred words, eight cents; for entering satisfaction on mortgage, fifteen cents; for recording or copying plats of not more than six corners, one dollar; and for every corner over six, ten cents; for granting charter of incorporation, two dollars; for granting charter to church, one dollar; for recording chattel mortgage of less than \$100.00, twenty-five cents; if over \$100.00, ninety cents; indexing labor contracts, twenty-five cents; recording plat of six corners or less, one dollar; five cents for each additional corner; attesting sales and actions of mortgages, twenty-five cents, and recording same, fifty cents.

Civ. '12, § 4218; Civ. '02, § 3108; 1894, XXI, 928; 1920, XXXI, 1065.

(5738) § 18. Fees of Clerk of Court of Chester County.—The law as to the fees to be received by the Clerk of Court for Chester County shall be as now provided by law, except as hereinafter provided, to wit: For recording deed with or without dower, and certifying same on back thereof, one dollar; for indexing chattel mortgage under one hundred dollars and certifying same on back thereof, twenty cents.

1921, XXXII, 153.

(5739) § 19. Costs and Fees of the Clerk of Court of Jasper County.—The law as to the fees to be received by the Clerk of Court and Register of Mesne Conveyances for Jasper County shall be as now provided by law, except as hereafter provided, to wit: For filing lien, fifteen cents; for indexing mortgages personal property, fifteen cents; for recording bill of sale, fifty cents; for recording and filing lien with mortgage, one dollar; for recording deed without dower, one dollar; for recording deed with dower, one dollar and twenty-five cents; for recording mortgage real estate (usual form), without dower and without insurance tax and attorney's fee, one dollar; for recording the same with dower, one dollar and twenty-five cents; for recording mortgage real estate (usual form), with insurance tax and attorney's fees, without dower, one dollar and twenty-five cents; for the same with dower, one dollar and fifty cents; for recording satisfaction, fifty cents; for entering satisfaction before Clerk, twenty-five cents; for recording transfers, fifty cents; for recording bonds, one dollar and twenty-five cents; for recording any other paper required to be recorded, at the rate of ten cents for every hundred words.

1917, XXVIII, 621.

(5740) § 20. **Clerk's Fees in Orangeburg County.**—The Clerk of the Court of Common Pleas and General Sessions for Orangeburg County shall receive: For signing and sealing summons, thirty-five cents; for filing complaint, thirty-five cents; for filing each answer, demurrer or rejoinder in demurrer, fifteen cents; for signing and sealing subpoena writ, thirty-five cents; for docketing cause, one charge only at each term, ten cents; for attending trial of a cause, whether civil or criminal, and swearing witnesses, thirty-five cents; for entering verdict or other order for final judgment on minutes of Court, fifteen cents; for special order for bail, thirty-five cents; for filing and entering on journal every rule or order for arbitration, twenty-five cents; for filing affidavit for continuance when ordered by the Judge, fifteen cents; for signing, entering and enrolling judgment, fifty cents; for signing and sealing first execution, thirty-five cents; for signing and sealing renewal of execution, fifteen cents; for entering satisfaction on judgment, twenty-five cents; for filing transcript, fifteen cents; for taking security for costs, entering order thereof, if made, thirty cents; for recording judgment, one dollar; for recording decrees of foreclosure, partition and reports, per copy sheet of ninety words, six cents; for administering oath other than on trial of cause, proof of service on Sheriff's return oath, to jurors or by order of Court, ten cents each; for taking and filing bond in attachment, trover or in other cases, sixty-five cents; for signing and sealing commissions to examine witnesses, fifty cents; for examining each witness *de bene esse*, sixty-five cents; exemplification of proceedings or other office copy, per copy sheet of ninety words, six cents; recording plat of land under order of Court, or copying same, thirty-five cents; rule of survey, thirty cents; each official certificate under seal of Court not herein specified, thirty-five cents; issuing writ of attachment for contempt, or other special writ, sixty-five cents; signing and sealing writ of *habeas facias possessionem*, thirty-five cents; receiving and paying over money officially, one per cent.; on every appeal from Magistrates, all services inclusive, except for entering up judgment and issuing execution therein, sixty-five cents; in bill *nol. pros.* before giving out, sixty-five cents; on bill thrown out by Grand Jury, or found and *nol. pros.*, abated, discontinued or struck off, one dollar and twenty-five cents; on bill found and verdict by petit jury, two dollars; all orders for bastardy recognizance, sixty-five cents; issuing bench warrants, writ of *habeas corpus*, *scire facias*, and each execution in Sessions, one dollar (\$1.00); for issuing warrant, taking recognizance, or other services in the Session as Magistrate *ex officio*, thirty cents (30c); for each writ of *venire facias*, including all services incident to summoning juries, one dollar and twenty-five cents (\$1.25); for preparing and issuing certificates for Grand and petit jurors and Constables, and furnishing returns to County Board of Commissioners for each term of the Court of Common Pleas and General Sessions, three dollars and twenty-five cents (\$3.25); for filing petitions and signing writ *de lunatico inquirendo*, sixty cents (60c); for furnishing advertisements in cases of escheat, exclusive of printer's bill, sixty-five cents (65c); for recording whole proceedings therein, one dollar and twenty-five cents (\$1.25); for license to attorney, all services included, three dollars (\$3.00); for filing and entering notice of alien's intention to become

a citizen, sixty cents (60c); for filing and recording report of alien, sixty-five cents (65c); for administering oath of intention, sixty-five cents (65c); for filing and entering application to become a citizen and administering oath, one dollar (\$1.00); for giving certificates (over seal of office) of citizenship, seventy-five cents (75c); for taking renunciation of dower or inheritance, fifty cents (50c); for every search for a paper found, not to be charged to the parties or attorneys when for papers in a case pending, ten cents (10c); for every search necessary for a certificate that a paper is not to be found in office, fifteen cents (15c); for swearing a Magistrate or Constable in office, taking Constable's bonds and giving certificates thereof, sixty cents (60c); for every probate in writing, fifteen cents (15c); for signing and sealing *dedimus potestatem*, sixty-five cents (65c); for official certificate to exemplification of record, sixty cents (60c); for official certificate without the seal, fifteen cents (15c); each day engaged in holding reference, sixty cents (60c); making up and returning report on reference, but no more than one report in each case, two dollars (\$2.00); for hearing application for discharge of insolvent debtors, one dollar and twenty-five cents (\$1.25); for hearing the same when litigated, two dollars and twenty-five cents (\$2.25); deed of conveyance and mortgage, one dollar (\$1.00); for official note of estray and filing papers, sixty cents (60c); for recording and copying deeds or other papers, per copy sheet of ninety words, six cents (6c); for entering satisfaction on mortgage, ten cents (10c); for recording or copying plats of not more than six corners, sixty-five cents (65c); and for every corner over six, six cents (6c); for granting a charter of incorporation, one dollar (\$1.00); for granting charter to church, fifty cents (50c).

Civ. '12, § 4220; Civ. '02, § 8110; 1894, XXI, 990.

(5741) § 21. **Fees of Clerk of Court in Pickens County.**—The Clerk of the Circuit Court for the County of Pickens shall be entitled to the following fees, to wit: For signing and sealing summons, forty cents; for filing complaint, forty cents; for filing each answer, demurrer, or joinder in demurrer, twenty cents; for signing and sealing subpoena writ, forty cents; for docketing a cause, one charge only at each term, twelve cents; for attending the trial of a cause, whether civil or criminal, and swearing witnesses, forty cents; for entering verdict or other order for final judgment on the minutes of the Court, twenty cents; for special order for bail, forty cents; for filing and entering on the journal every rule or order for arbitration twenty cents; for filing affidavits for continuance when ordered by the Judge, twenty cents; for signing, entering and enrolling judgment, sixty cents; for signing and sealing first execution, forty cents; for signing and sealing each renewal of execution, twenty cents; for filing transcript, twenty cents; for entering satisfaction on judgment, twenty cents; for taking security for costs, entering order therefor if made, forty cents; for recording judgment, one dollar and twenty cents; for recording decrees of foreclosure, partition and reports, per copy sheet of ninety words, seven cents; for administering oath other than on trial of cause, proof of service on Sheriff's return, oath of jurors, or by order of Court, twelve cents; for taking and filing bonds in attachments, trover, or in other cases, eighty cents;

for signing and sealing commission to examine witnesses, sixty cents; for examining each witness *de bene esse*, eighty cents; exemplification of proceeding, or other office copy, per copy sheet of ninety words, seven cents; recording plat of land under order of the Court, or copying the same, forty cents; rule of survey, forty cents; each official certificate under seal of Court, not herein specified, forty cents; issuing writ of attachment for contempt, or other special writ, eighty cents; signing and sealing writ of *hab. fac. possessionem*, forty cents; receiving and paying over money officially, one and one-half of one per cent. if under three hundred dollars; if over that sum, one and one-half of one per cent. for the first three hundred dollars and one per cent. for the balance; on every appeal from Magistrate, all services inclusive, except for entering up judgments and issuing executions therein, eighty cents; on bill *nol. pros.* before given out, eighty cents; on bill thrown out by Grand Jury, or found and *nol. pros.*, abated, discontinued, or struck off, one dollars and sixty cents; on bill found, and verdict by petit jury, two dollars and forty cents; all orders for bastardy and taking recognizance, eighty cents; issuing bench warrant, writ of *habeas corpus*, *scire facias*, and each execution in Sessions, one dollar and twenty cents; for issuing warrants taking recognizance, or other service in the Sessions, as Magistrate *ex officio*, same fees as allowed that officer; for each writ of *venire facias*, including all services incident to summoning juries, one dollar and sixty cents; for preparing and issuing certificates for Grand and petit jurors and Constables, and furnishing returns to County Commissioners for each term of the Court of Common Pleas and General Sessions, four dollars; for filing petition and signing writ *de lunatico inquirendo*, eighty cents; for furnishing advertisements in cases of escheat, exclusive of printer's bill, eighty cents; for recording whole proceedings therein, one dollar and sixty cents; for license to an attorney, all services included, four dollars; for filing and entering notice of alien's intention to become a citizen, eighty cents; for filing and recording report of alien, eighty cents; for administering oath of intention, eighty cents; for filing and entering application to become a citizen and administering oath, one dollar and sixty cents; for giving certificate (over seal of office) of citizenship, eighty cents; for taking renunciation of dower or inheritance, one dollar and sixty cents; for every search for a paper found (not to be charged to the parties or attorneys when for papers in a case pending), twelve cents; for every search necessary for a certificate that a paper is not to be found in office, twenty cents; for swearing a Magistrate or Constable in office, taking Constable's bonds and giving certificates thereof, eighty cents; for every probate in writing, twenty cents; for signing and sealing *dedimus potestatem*, eighty cents; for official certificate to exemplification of record, eighty cents; for official certificate without the seal, twenty cents; each day engaged in holding reference, eighty cents; making up and returning report on reference, but no more than one report in each case, two dollars and forty cents; for hearing application for discharge for insolvent debtors, one dollar and sixty cents; for hearing the same when litigated, three dollars and twenty cents; deed of conveyance, or mortgage, one dollar and sixty cents; for recording and copying deeds or other papers, per copy sheet of ninety words, seven cents;

for entering satisfaction on a mortgage, twenty cents; for recording or copying plats of not more than six corners, eighty cents; and for every corner over six, eight cents; for granting charter of incorporation, one dollar and sixty cents; for granting charter to church, eighty cents.

Civ. '12, § 4221; Civ. '02, § 3111; 1893, XXI, 675.

(5742) § 22. Recording Fees Allowed Clerk of Court of Saluda.—The following fees shall be allowed to the Clerk of Court of Saluda County in lieu of all fees now allowed by law: For recording a deed or a mortgage on real estate, with or without renunciation of dower, and certifying same in the back thereof, seventy-five cents (75c): *Provided*, Such deed or mortgage does not exceed fifteen hundred words, in which case he shall be entitled to receive and collect an additional sum of eight cents per hundred words over one thousand; for recording each chattel mortgage under one hundred dollars, and certifying same on back thereof, 50 cents: *Provided*, Such chattel mortgage does not exceed one thousand words, in which case he shall be entitled to charge and receive an additional sum of eight cents per hundred words on all words over one thousand; for indexing each chattel mortgage under one hundred dollars, and certifying same on the back thereof, ten cents; for indexing each agricultural lien, and certifying same on the back thereof, ten cents; for recording each lien and mortgage combined, and certifying same on the back thereof, 50 cents; for entering each satisfaction on the record of a mortgage of real estate or a chattel mortgage, and certifying same on the back thereof, ten cents; for recording or copying plats of not more than six corners, seventy-five cents; for every corner over six, six cents; for every probate in writing, twenty-five cents; for every certificate, except the certificate on the back of paper recorded by him, and certificates of judicial records in his office required for the Court, or a Judge thereof, twenty-five cents; for recording any other paper required by law to be recorded, except judicial records, eight cents per hundred words.

1916, XXIX, 807.

(5743) § 23. Fees for Clerk of Court and Register of Mesne Conveyance for Williamsburg County.—That the law as to the fees to be received by the Clerk of Court and Register of Mesne Conveyance for Williamsburg County shall be as now provided by law, except as hereinafter provided, to wit: For indexing chattel mortgage, 15 cents; for recording bill of sale, 50 cents; for recording mortgage personal property, 75 cents; for recording mortgage personal property, when over 750 cents in length, 10 cents per hundred words; for recording mortgage of real estate, \$1.00; for recording mortgage of real estate, when over 1,000 words in length, 10 cents per hundred words; for recording deed to real estate (usual form), 75 cents; for recording deed to real estate, when same has more than one dower or more than one probate, 10 cents for each extra probate and 25 cents for each extra dower, in addition to the regular fee of 75 cents; for recording satisfaction of mortgage and cancelling index of same, 15 cents; for recording charter (usual form), \$1.00; for recording transfers of mortgage, 10 cents; for recording release of part of property contained in mortgage, 15 cents; for recording any other paper required to be recorded, 10

cents for every 100 words; for indexing labor contracts, 10 cents; for registering physician's license, \$1.00; for registering notary commission, 25 cents; for signing and sealing summons, 50 cents; for filing complaint, 50 cents; for filing each answer, demurrer or rejoinder in demurrer, 25 cents; for signing and sealing subpoena writ, 50 cents; for docketing a cause, one charge only at each term, 15 cents; for attending the trial of a cause, and swearing witnesses, 50 cents; for entering verdict on minutes of the Court, 25 cents; for filing affidavits for continuance when ordered by the Judge, 25 cents; for signing, entering and enrolling judgment, 75 cents; for recording judgment, entering on abstract and indexing same, \$1.50; for signing and sealing first execution, 50 cents; for signing and sealing each renewal of execution, 25 cents; for entering satisfaction on judgment, 25 cents; for filing transcript from Magistrate's Court, enrolling on abstract and indexing same, \$1.25; for filing transcript from Common Pleas Court, enrolling on abstract and indexing same, \$2.25; for recording decree, partition or foreclosure, reports, pleadings and other papers in any action necessary to be recorded in the Common Pleas journal or pleadings and judgment book, and for indexing same, 10 cents per hundred words; for taking and filing bonds in attachment, or in other cases, when no witnesses are examined, 50 cents; for taking and filing bonds in attachment, or in other cases, when witnesses are examined or qualification is questioned, \$3.00 for each day engaged in the hearing; for each order appointing guardian *ad litem*, or other order under seal of office, \$2.00; for each day engaged in holding reference, \$3.00; for report of reference held, \$3.00; for swearing each witness at reference, 25 cents; for executing deed under order of Court, \$3.00; for taking bond and mortgage to secure purchase of land under order of Court, \$3.00; for receiving money officially, two per cent. for first three hundred dollars, and one per cent. for balance; for disbursing money officially, other than the Clerk's costs and commissions, one-half of one per cent.; for recording plats of not more than six corners, 75 cents; and for every corner over six, 6 cents; on every appeal from Magistrate, all services included, except for entering of judgment and issuing execution therein, \$1.00; for giving certificate (over seal of office), 50 cents; for swearing a Magistrate or Constable in office, taking Constable's bond, and giving certificate thereof, \$1.00; for filing *lis pendens*, 25 cents: *Provided*, That for recording mortgages or deeds conveying more than one tract or lot of land an additional fee of 25 cents per tract or lot may be charged by the Clerk of Court of Williamsburg County.

1912, XXVII, 626; 1916, XXIX, 807.

(5744) § 24. **Fees of Clerk of Court of Sumter County.**—The fees of the Clerk of the Court of Sumter County shall be as now provided by law, except as follows: For recording real estate mortgages of two thousand words or under, one dollar and fifty cents; for recording like mortgages of more than two thousand words, one dollar and fifty cents for the first two thousand words, and for additional words at the rate of ten cents per one hundred words; for recording deeds of real estate, one dollar, including the Auditor's fee of twenty-five cents; for recording agricultural mortgages of one hundred dollars and over, one dollar; indexing agricultural mort-

gage under one hundred dollars, thirty cents; recording chattel mortgages over one hundred dollars, fifty cents; indexing chattel of one hundred dollars and less, fifteen cents.

Civ. '12, § 4222; 1909, XXVI, 147; 1910, XXVI, 714.

(5745) § 25. **Referee.**—Each Referee shall be entitled to receive for every day occupied in the business of the reference, the sum of three dollars; but the parties may agree in writing upon any other rate of compensation.

Civ. '12, § 4223; Civ. '02, § 3112; G. S. 2423; R. S. 2556; 1878, XVI, 630; 1888, XX, 31.

(5746) § 26. **Masters.**—Masters shall be entitled to the following fees: For every day spent in the business of a reference, three dollars, but the parties may agree in writing on any other rate of compensation; for making and filing each report in a cause, three dollars; swearing and taking testimony of each witness produced, twenty-five cents; he shall be allowed the same commissions for moneys passing through his hands by sales or otherwise, as are now allowed by law to Sheriffs; for each appointment of guardian *ad litem*, two dollars; for making and certifying, upon proper application to him, any order which the Master is authorized to grant, two dollars; for taking, transcribing and filing any bond of guardian, receiver, or trustee, or any other injunction or *ne exeat* bond, three dollars; for examining and auditing accounts of guardians, receivers, or trustees, one dollar; for granting commissions to take testimony of witnesses or answers of absent defendants, one dollar; for every deed or mortgage prepared or executed by him, three dollars; for proceedings on petition for homestead, five dollars.

Civ. '12, § 4224; Civ. '02, § 3113; G. S. 2433; R. S. 2557; 1880, XVII, 514; 1909, XXVI, 33; 1910, XXVI, 642; 1911, XXVII, 85.

Except in Anderson County, where the Master shall receive for every day spent in the business of a reference, two dollars and twenty-five cents, but the parties may agree in writing on any other rate of compensation; for making and filing each report in a cause, two dollars and twenty-five cents; swearing and taking testimony of each witness produced, fifteen cents; he shall be allowed the same commissions for moneys passed through his hands, by sale or otherwise, as are now allowed by law to Sheriffs; for each appointment of a guardian *ad litem*, one dollar and fifty cents; for making and certifying, upon proper application to him, any order which the Master is authorized to grant, one dollar and fifty cents; for taking, transcribing and filing any bond, guardian, receiver, or trustee, or any other injunction or *ne exeat* bond, two dollars and twenty-five cents; for auditing and examining accounts of guardians, receivers, or trustees, seventy-five cents; for granting commissions to take testimony of witnesses or answers of absent defendants, seventy-five cents; for every deed or mortgage prepared or executed by him, two dollars and twenty-five cents: *Provided*, That in Sumter County the Master shall receive one-half of one per cent. on all moneys paid to the parties direct by order of the Court in cases pending before him, and in all sales he shall be entitled to a minimum fee of two dollars for his commissions: *Provided*, That in addition to the fees and commissions now allowed by law, the Master of Union County

shall be paid an annual salary of three hundred dollars, payable quarterly: *Provided, further*, That the Master of Aiken County shall receive a fee of five (\$5.00) dollars per day for holding references in all litigated cases where the value of the subject matter of litigation exceeds the sum of five hundred (\$500.00) dollars. The said fees shall be taxed as costs, the same as the Master's fees are now taxed in said county.

Civ. '12, § 4224; Civ. '02, § 3113; 1894, XXI, 933; 1911, XXVII, 85; 1921, XXXII, 123.

Half costs in certain cases. *Bryan v. Reams*, 59 S. C. 340, 37 S. E. 921.

Master selling lands for partition, under decree of Court is entitled to commissions of two per cent. on first \$800 and one per cent. on balance on amount collected by him, and one-half of one per cent. on all amounts disbursed by him except his own costs and commissions. *Barr v. Barr*, 82 S. C. 573, 64 S. E. 858. See post, § (5753).

(5747) § 27. **Costs and Fees of Judge of Probate—Exceptions and Provisos.**—Except in Marion, Anderson and Orangeburg Counties, the Probate Judge shall receive: For a citation, fifty cents; for qualifying executor, administrator or guardian, issuing letters to either and recording such letters, two dollars and fifty cents; for taking bond from administrator or guardian and recording same, one dollar; for issuing warrant of appraisement and oath, fifty cents; for proving a will in common form and filing and certifying the same, one dollar; for proving a will in solemn form and filing and certifying the same, five dollars; for recording will, probate and certificate, per copy sheet of ninety words, nine cents; for filing and entering renunciation of executor, fifty cents; for *dedimus potestatem* to prove will or qualify an executor, one dollar; for recording each inventory and appraisement of account of sales, each figure counting for a word, per copy sheet of ninety words, nine cents; for receiving, examining and filing the annual or final accounts of each administrator, executor or guardian, for first year, three dollars; for each succeeding year, one dollar; for recording said accounts, per copy sheet of ninety words, nine cents; for hearing and filing petition for sale of personal estate and order, one dollar; for hearing and filing petition for guardianship and appointment of guardian or guardian *ad litem*, one dollar; for entering a caveat or withdrawing the same, fifty cents; for hearing every litigated case, three dollars for each day engaged, not to exceed twelve dollars in any one case; for swearing and examining each witness, fifteen cents; for certifying copy of any paper on file in his office, fifty cents; for copying such paper, per copy sheet of ninety words, nine cents; for every rule issued against defaulting witness or party failing to account, two dollars; for every attachment issued on the return of such rule, one dollar; for furnishing and certifying copy of proceedings in case of appeal, three dollars; for every search, fifteen cents; for every certificate not hereinbefore specified, twenty-five cents; for hearing petition to sell real estate in aid of assets and granting order therefor, two dollars; for taking administrator's or executor's bond, in each case, one dollar; for final discharge of executor, administrator, or guardian, two dollars; for proceedings in dower, inclusive of all charges, where the amount is under two hundred dollars, five dollars; when over that amount, ten dollars; for proceedings in lunacy, ten dollars: *Provided*, Where proceedings in lunacy are only had by certificate of physicians, three dollars; for proceedings and services setting off homestead, including titles, five dollars: *Provided*, That in case the amount of estate in the Probate Court does not

exceed two hundred and fifty dollars, the cost to be taxed on the case shall not exceed one-half of the amount above allowed; receiving and paying over money officially, two per cent., if under three hundred dollars; if over that sum, two per cent. for the first three hundred dollars, and one per cent. for the balance: *Provided, further*, That the Judge of Probate of Spartanburg and of Cherokee Counties shall not charge or receive more than one-fourth of the fees hereinbefore fixed and allowed when the value of the personal estate of any deceased person, or any infant, lunatic, or other ward or *cestui que trust* in the hands of his personal representative or of his guardian, committee or other trustee is more than one hundred dollars and less than two hundred dollars, and when the value of such estate is more than one thousand dollars he may add twenty-five per cent. to said costs and fees. That the Judge of Probate of Spartanburg and of Cherokee Counties, when the value of the personal estate of any deceased person, or any infant, lunatic, or other ward or other *cestui que trust* in the hands of his personal representative or of his guardian, committee, or other trustee, is more than one hundred (\$100.00) dollars and less than two hundred (\$200.00) dollars, shall receive or charge not more than five per cent. of the estate, and where said personal estate is less than one hundred (\$100.00) dollars he shall not charge or receive more than ten per cent. of said estate: *And provided, further*, That in estates of less than two hundred (\$200.00) dollars no publication for any purpose shall be required to be inserted in any newspaper, but in lieu thereof, notices to be posted at the Court House door, which shall have the same force and effect as if published: *Provided*, That in the Counties of Sumter, Clarendon, Darlington and Florence, Judges of Probate shall receive: For filing every summons, petition, caveat, or other paper, entering same on journal, file-book or calendar and indexing same, fifty cents; for each citation notice issued, fifty cents; for hearing petition and granting order thereon in uncontested cases, one dollar and fifty cents; in contested cases, per day, three dollars; for qualifying executors, administrators, guardians or committees, issuing letters to each and recording same, two dollars and fifty cents; for each bond taken, justification of surety or sureties, and recording same, one dollar and twenty-five cents; for each warrant of appraisement, qualifying the appraisers and recording same, one dollar; for proving each will, or codicil, in common form of law, one dollar; for proving will or codicil in solemn form of law, five dollars; for examining and vouching the annual or final returns of executors, administrators, guardians, trustees of committees for each item vouched, ten cents; for each item not vouched, five cents; for recording wills or codicils, testimony in contested cases, orders of Court, final and annual returns, inventories, and appraisers' (each figure counting as one word), and verifying and certifying same as being correct, per one hundred words, twenty cents; for certified copies of same on appeal or otherwise, including certificate, per one hundred words, twenty cents; for ordinary entries in journal, and other recording not herein provided for, per one hundred words and figures, fifteen cents; for certified copies of same, including certificate, on appeal or otherwise, same price per one hundred words and figures, fifteen cents; for every rule against defaulting wit-

ness or party failing to account or otherwise, two dollars; for every attachment or return of rule, one dollar; enrolling all papers pertaining to an estate, placing same inside of wrapper, numbering same, and placing it on general index of estates and in proper bundle and case, one dollar; on trial of every litigated case in which testimony is taken, stenographer's fees, same as in Master's Court, and fifteen cents for swearing each witness, fifteen cents for final discharge of each executor, administrator, guardian or committee, two dollars; proceedings to sell real estate in aid of assets, and order thereon, five dollars; proceedings in dower, if estate is under two hundred dollars, five dollars; if estate is two hundred dollars or over, ten dollars; proceeding and service in setting off homestead, five dollars; proceedings in lunacy and appointment of committee, ten dollars; proceedings in lunacy under laws governing State Hospital for Insane, ten dollars; receiving and paying over money, if amount is under two hundred dollars, two per centum; if amount is three hundred dollars or over, two per centum on first three hundred dollars, and one per centum on balance; recording description of devised lands in book provided for that purpose and indexing same for name of each devisee, one dollar; for each plat recorded in this or other books, one dollar for first six corners, and fifteen cents for each additional corner; for *dedimus potestatem* to prove will or qualify executor, or administrator, one dollar; for other official services, same as allowed Clerks of Court, Masters or Notaries Public.

Civ. '12, § 4225; Civ. '02, § 3114; G. S. 2435; R. S. 2559; 1880, XVII, 300; 1898, XXII, 696; 1908, XXV, 1070, 1113; 1909, XXVI, 28.

(5748) § 28. Special Provisions for Fees of Probate Judge in Anderson County.—In Anderson County the Probate Judge shall receive: For a citation, forty cents; for qualifying executor, administrator or guardian, issuing letters to either and recording such letters, two dollars; for taking bond from administrator to guardian and recording same, seventy-five cents; for issuing warrant of appraisement and oath, forty cents; for proving a will in common form and filing and certifying the same, seventy-five cents; for proving a will in solemn form and filing and certifying the same, four dollars; for recording will, probate and certificate, per copy sheet of one hundred words, eight cents; for filing and entering renunciation of executor, forty cents; for *dedimus potestatem* to prove will or qualify as executor, seventy-five cents; for recording each inventory and appraisement of account of sales, each figure counting for a word, per copy sheet of one hundred words, eight cents; for receiving, examining and filing the annual or final accounts of each administrator, executor, or guardian, for first year, two dollars; for each succeeding year, one dollar; for recording said accounts, per copy sheet of one hundred words, ten cents; for hearing and filing petition for sale of personal estate and order, seventy-five cents; for hearing and filing petition for guardianship and appointment of guardian or guardian *ad litem*, seventy-five cents; for entering a caveat or withdrawing the same, forty cents; hearing every litigated case, two dollars for each day engaged, not to exceed ten dollars in any one case; for swearing and examining each witness, ten cents; for certifying copy of any paper on file in his office, fifty cents; for copying such paper, per copy sheet of one

hundred words, eight cents; for every rule issued against defaulting witness or party failing to account, one dollar; for every attachment issued on the return of such rule, seventy-five cents; for furnishing and certifying copy of proceedings in case of appeal, two dollars; for every such, fifteen cents; for every certificate not hereinbefore specified, twenty-five cents; for hearing petitions to sell real estate in aid of assets and granting order therefor, two dollars; for taking administrator's or executor's bond, in each case, seventy-five cents; for final discharge of executor, administrator or guardian, two dollars; for proceedings in dower, inclusive of all charges, where the amount is under two hundred dollars, five dollars; when over that amount, ten dollars; for proceedings in lunacy, five dollars: *Provided*, Where proceedings in lunacy are only had by certificate of physician, three dollars; for proceedings and services setting off homesteads, including titles, five dollars: *Provided*, That in case the amount of estate in the Probate Court does not exceed two hundred and fifty dollars the cost to be taxed on the case shall not exceed one-half of the amount above allowed. Receiving and paying over money officially, two per cent., if under three hundred dollars; if over that sum, two per cent. for the first three hundred dollars, and one per cent. for the balance.

Civ. '12, § 4226; Civ. '02, § 3115; 1894, XXI, 932.

(5749) § 29. Fees of Probate Judge of Cherokee County for Investigations Relating to Abandoned Children.—That the County Commissioners of Cherokee County are hereby required to pay to the Probate Judge of said county such fees as now are fixed by law in case of investigations required in behalf of abandoned children, or such fees for like services in lunacy investigations.

1919, XXXI, 68.

(5750) § 30. Fees of Judge of Probate for Union County—Proviso as to Georgetown County.—In Union County the Probate Judge shall receive: For each citation to kindred and creditors, and each necessary copy thereof, sixty cents; for qualifying each executor, administrator or guardian, issuing letters to either, and recording same, three dollars; for preparing petition for administrator or guardian and filing same, two dollars; for each order, one dollar and twenty-five cents; for taking bond for each administrator, guardian or executor, and recording same, one dollar and twenty-five cents; for each warrant of appraisement and recording same, sixty cents; for proving a will in common form, one dollar and twenty-five cents; for proving a will in due form of law, certifying same and recording, six dollars; for recording will, probate and certificate, and for recording any and all other papers required by law to be recorded in his office, ten cents per hundred words; for taking, receiving and filing annual returns of executors, administrators, guardians and trustees, for the first and last returns, three dollars, and for all other of such returns, two dollars; for hearing and filing petition for sale of personal property, and recording same, with order thereon, one dollar and fifty cents; for petition and order for appointment of guardian *ad litem*, two dollars for each minor; for hearing or reference in any litigated case,

three dollars and fifty cents for each day so engaged, fifty cents for each witness sworn, ten cents per hundred words for taking the testimony at such hearing or reference; for certifying to any paper on file in his office, fifty cents for each certificate and ten cents for each hundred words in copying same; for furnishing on appeal, copy of proceedings, or cases, before him, ten cents per hundred words and fifty cents for each necessary certificate; for hearing petition to sell estate in aid of assets, three dollars and a half for each day so engaged, fifty cents for each witness examined, ten cents per hundred words for taking the testimony, and one dollar and twenty-five cents for each order, and the fees above provided for recording same; for final discharge of executors, administrators and guardians, three dollars and fifty cents; for proceedings in dower and in setting off homestead, the same fees allowed in proceedings to sell lands in aid of assets; for proceedings in lunacy, ten dollars; for receiving and paying over money, officially, two per cent. on the first four hundred dollars, and one and a half per cent. on all money over and above four hundred dollars; for each marriage license, one dollar and twenty-five cents; for administering any oath, twenty-five cents; for taking renunciation of dower, one dollar; for filing and docketing each summons and complaint or notice, each fifty cents; for selling each lot or tract of land, two dollars; for each deed or mortgage executed or made by him, three dollars and fifty cents; for each report made by him, as Master, three dollars and a half: *Provided*, That the parties to the cause, in cases where they are referred to him by the Court of Common Pleas, may agree on further and additional compensation when circumstances justify same; and, in all other instances, matters and cases, where compensation is not herein specifically provided, he shall receive the same fees and compensation as allowed by law to other officers for like services: *Provided*, The Judge of Probate of the County of Georgetown shall receive as compensation for his services, in addition to his salary, all fees now allowed by law to be charged by Judges of Probate in this State.

Civ. '12, § 4227; 1908, XXV, 1122; 1921, XXXII, 57.

(5751) § 31. **Fees of Probate Judge in Orangeburg County.**—In Orangeburg County the Probate Judge shall receive: For a citation, forty cents; for qualifying executor, administrator or guardian, issuing letters to either, or recording such letters, one dollar and seventy-five cents; for taking bond from administrator or guardian and recording same, seventy-five cents; for issuing warrants of appraisement and oath, forty cents; for proving a will in common form and filing and certifying the same, seventy-five cents; for proving a will in solemn form and filing and certifying the same, three dollars and fifty cents; for recording will, probate and certificate, per copy sheet of ninety words, seven cents; for filing and entering renunciation of executor, forty cents; for *dedimur potestatem* to prove will or qualify as executor, seventy-five cents; for recording each inventory and appraisement of account of sales, each figure counting for a word, per copy sheet of ninety words, seven cents; for receiving, examining and filing the annual or final account of each administrator, executor or guardian, for first year, two dollars and twenty-five cents; for each succeeding year, seventy-five cents; for recording said account, per copy sheet of ninety words, seven

cents; for hearing and filing petition for sale of personal estate or order, seventy-five cents; for hearing and filing petition for guardianship and appointment of guardian or guardians *ad litem*, seventy-five cents; for entering a caveat or withdrawing the same, thirty-five cents; for hearing every litigated case, two dollars and twenty-five cents for each day engaged, not to exceed ten dollars in any one case; for swearing and examining each witness, thirty-five cents; for certifying copy of any paper on file in his office, thirty-five cents; for copying such paper, per copy sheet of ninety words, seven cents; for every rule issued against defaulting witness or party failing to account, one dollar and fifty cents; for every attachment issued on the return of such rule, seventy-five cents; for furnishing and certifying copy proceedings in case of appeal, two dollars and twenty-five cents; for every search, ten cents; for every certificate not hereinbefore specified, twenty cents; for hearing petition to sell real estate in aid of assets and granting order therefor, one dollar and fifty cents; for taking administrator's or executor's bond, in each case seventy-five cents; for final discharge of executor, administrator or guardian, one dollar and fifty cents; for proceedings in dower, inclusive of all charges, where the amount is under two hundred dollars, three dollar and seventy-five cents; when over that amount, seven dollars and fifty cents; for proceedings in lunacy, seven dollars and fifty cents: *Provided*, Where proceedings in lunacy are only had by certificate of physician, two dollars and twenty-five cents; receiving and paying over money officially, one and one-half per cent., if under three hundred dollars; if over that sum, one and one-half per cent. for first three hundred dollars and one per cent. for balance.

In addition to the foregoing fees, the said Probate Judge shall receive: For every day spent in the business of a reference, one and one-half dollars; for making and filing each report in a cause, one and one-half dollars; for moneys passing through his hands, by sale or otherwise, he shall be allowed the same commissions as are now allowed to Sheriffs for said county; for each appointment of a guardian *ad litem*, one dollar; for making and certifying, upon proper application to him, any order which the Master is authorized to grant, one dollar; for taking, transcribing and filing any bond of guardian, receiver or trustee, or any other injunction or *ne exeat* bonds, one and one-half dollars; for examining and auditing accounts of guardians, receivers or trustees, fifty cents; for granting commissions to take testimony of witnesses or answers of absent defendants, fifty cents; for every deed or mortgage prepared or executed by him, one and one-half dollars.

Civ. '12, 4228; Civ. '02, § 3116; 1894, XXI, 976, 993.

(5752) § 32. **Magistrates.**—Oath and warrant in criminal case, forty cents; each recognizance, forty cents; taking bond in proceedings for claim and delivery of personal property and in attachment proceedings, fifty cents; each commitment and release, twenty cents; administering and certifying oath in writing other than above, thirty cents; issuing writs of *habeas corpus*, to the two Magistrates jointly, one dollar and fifty cents; issuing summons and copy for defendant in civil cases, thirty-five cents; issuing summons for witnesses in any civil case, twenty cents; taking exami-

nation of witnesses in writing in any case, as prescribed by law, fifty cents for each witness, not exceeding six in any case, and the fees for taking examination of witnesses shall in no case exceed three dollars; for giving judgment on hearing litigated case, twenty-five cents; for giving judgment in case not defended, twenty cents; for issuing execution or renewal, twenty-five cents; report of case and taking bond to appeal, sixty cents; for making transcript of judgment to Court of Common Pleas, twenty-five cents; issuing attachment, returnable to Court or to Magistrate, including all notices, one dollar; filing return or garnishee and order thereon, fifteen cents; proceedings on behalf of landlord or lessor against tenant or lessee, to the two Magistrates, five dollars; proceedings on certifying indenture of apprentice or assignment, one dollar; for the trial of any criminal case, inclusive of all costs, except for issuing papers, one dollar; for every preliminary examination of any criminal case, fifty cents; proceedings on Coroner's inquest, as prescribed by law, eight dollars and fifty cents, except in Orangeburg County, where the Magistrate shall receive only three dollars, and in Berkeley County, where the Magistrate shall receive five dollars; proceedings on estray horse or mule, fifty cents; proceedings on all other estrays, each fifteen cents; taking and certifying renunciation of dower, two dollars; granting order for special bail, fifty cents; for qualifying each appraiser in setting off homestead, besides five cents per mile for all travel actually necessary, twenty-five cents; issuing summons for jurors in a criminal case, twenty-one cents.

Civ. '12, § 4229; Civ. '02, § 3117; 1880, XVII, 301; 1882, XVII, 1063; 1894, XXI, 996; 1907, XXV, 485; 1919, XXXI, 51.

Magistrate holding inquest in Anderson County more than fifteen miles from Court House cannot collect from County fees therefor. *Acker v. Anderson County*, 77 S. C. 478, 58 S. E. 337.

(5753) § 33. **Sheriffs.**—Except in Anderson County: For entering every writ, summons, process, execution or other paper in writ or execution book, and making endorsements thereon, twenty-five cents;* for serving every writ, summons, notice or rule, not otherwise herein specified, besides mileage, one dollar; mileage from Court House to defendant or witness' residence, or place where found, going and returning each way, per mile, five cents; commitment and release of prisoner, each fifty cents; conveying lunatics to the asylum, two dollars per day and actual necessary expenses: *Provided*, The Sheriff may, in extreme cases, call not more than two Constables, and be allowed therefor one dollar per day and actual expenses; issuing each venire for Grand Jury, fifteen dollars; serving each venire for petit jurors, twenty-five dollars; serving subpoena writ, and mileage on each ticket, fifty cents; serving bench or other warrants *scire facias* from the Court of Sessions, or writ of attachment for contempt, besides mileage, one dollar and fifty cents; search for persons or goods not found and return on the execution of *non est inventus* or *nulla bona*, fifty cents; each execution returned to Clerk's office on schedule, twenty-five cents; levying executions or attachments, besides mileage, one dollar; dieting prisoners in jail, per day, thirty cents; executing convict, including all charges and expenses, twenty dollars; bringing up prisoner under *habeas corpus*, to be paid by prisoner if able, if not, by the county, besides mileage and necessary expenses, one dollar; conveying prisoner from one place to another, for

every mile going and returning, besides all necessary expenses, six cents; commissions on all moneys collected by him, if under three hundred dollars, two per cent.; if over that sum, two per cent. for the first three hundred dollars, and one per cent. for the balance, and one-half of one per cent. on all sums paid to plaintiff, his agent or attorney, on execution lodged with the Sheriff; execution lodged to bind, with order not to levy, fifty cents; for advertising defendant's property, in addition to printer's bill, one dollar; drawing and executing a deed of conveyance or taking a mortgage, two dollars; drawing and executing each bill of sale, when required by purchaser, two dollars; no Sheriff shall charge more than one bill of sale for property bought at the same sale by the same party; for executing a writ of *habere facias possessionem*, besides mileage, one dollar; transferring money bonds or other securities for money to party, one-half of one per cent.; for selling land under decree of Court, in lieu of commissions and all other charges, except for advertising, two dollars;† for serving notice on each set of managers of election, besides mileage, one dollar; summoning freeholders to try suggestions of fraud, five dollars; for every fine paid before levy, fifty cents; for every fine paid after levy and before sale, one dollar; for the service or execution of papers issued by a Magistrate, the Sheriff or his Deputy serving or executing the same shall be allowed the same fees as are allowed to Constables:‡ *Provided*, That the Sheriff of Charleston and Aiken Counties shall receive for dieting prisoners in jail, per day, twenty-five cents only: *Provided, further*, That in Barnwell County, the Sheriff shall receive no fees or costs for dieting prisoners.

Civ. '12, § 4230; Civ. '02, § 3118; G. S. 2437; R. S. 2561; 1894, XXI, 971; 1898, XXII, 740; 1905, XXIV, 879.

Barr v. Barr, 82 S. C. 573, 64 S. E. 858.

Does not apply to warrants issued by Magistrates. *Lancaster v. Barnwell Co.*, 40 S. C. 446, 19 S. E. 74.

Fees for dieting prisoners. *Gilreath v. Greenville County*, 63 S. C. 75, 149, 40 S. E. 1028.

Smith v. The Morgan City, 39 Fed. 572.

*Salary Act of 1912 gives Sheriff of Greenville County salary for all services performed for county, and he cannot collect fees for serving papers issued by Magistrate in criminal case. *Gilreath v. Greenville County*, 70 S. C. 389, 50 S. E. 18.

Does not apply to process from a Magistrate's Court. *Green v. Anderson Co.*, 56 S. C. 411, 34 S. E. 691; *Whittle v. Saluda County*, 56 S. C. 506, 35 S. E. 203.

†Applies only to cases where the Sheriff acts merely as auctioneer. *Williams v. McLendon*, 44 S. C. 174, 21 S. E. 616. See, also, ante, § 1192.

‡Allowed one dollar for executing warrant on all witnesses named in it, not one dollar for arrest of each witness. *Whittle v. Saluda Co.*, *supra*. *Lancaster v. Barnwell County*, *supra*. Where process was executed in several cases on one trip, mileage allowed in each case. *Green v. Anderson County*, 56 S. C. 411, 34 S. E. 691.

Morris, Sheriff, v. Buist et al, County Com'rs, 98 S. C. 415, 82 S. E. 675.

(5754) § 34. **Special Provisions as to Fees and Costs of Sheriff in Anderson County.**—In Anderson County the Sheriff shall receive: For entering every writ, summons, process, execution or other paper in writ or execution book, and making endorsements thereon, twenty-five cents; for serving every writ, summons, notice or rule not otherwise herein specified, besides mileage, one dollar; mileage from Court House to defendant's or witness' residence or place where found, going but not returning, per mile, five cents; commitment and release of prisoner, each fifty cents; issuing each venire for Grand Jury, fifteen dollars; serving each venire for petit jurors, twenty-five dollars; serving subpoena writ and mileage on each ticket, fifty cents; serving bench or other warrant, *scire facias* from the Court of Sessions, or writ of attachments for contempt, besides mileage, one dollar and fifty cents; search for person or goods not found and return

on the execution of *non est inventus* or *nulla bona*, fifty cents; each execution returned to Clerk's office on schedule, twenty-five cents; levying executions or attachments, besides mileage, one dollar; dieting prisoners in jail, per day, thirty-five cents; executing convict, including all charges for burying and other expenses, twenty dollars; bringing up prisoner under *habeas corpus*, to be paid by prisoner, if able (if not, by the county), besides mileage and necessary expenses, one dollar; conveying prisoner from one place to another, for every mile going and returning, besides all necessary expenses, six cents; commissions on all moneys collected by him, if under three hundred dollars, and one per cent. for the balance, and one-half of one per cent. on all sums paid to plaintiffs as agent or attorney on execution lodged with the Sheriff; execution lodged to bind, with order not to levy, fifty cents; for advertising defendant's property, in addition to printer's bill, one dollar; drawing and executing a deed of conveyance or taking mortgage, two dollars; drawing and executing each bill of sale when required by purchaser, two dollars. No Sheriff shall charge more than one bill of sale for property bought at the same sale by the same party. For executing a writ of *habere facias possessionem*, besides mileage, one dollar; transferring money, bonds or other securities for money to party, one-half of one per cent.; for selling land under decree of Court, in lieu of commissions and all other charges, except for advertising, two dollars; for serving notice on each set of Managers of Elections, besides mileage, one dollar; summoning freeholders to try suggestions of fraud, five dollars; for every fine paid before levy, five cents; for every fine paid after levy and before sale, one dollar.

Civ. '12, § 4231; Civ. '02, § 3119; 1894, XXI.

(5755) § 35. Sheriff of Barnwell to Serve Certain Process Without Charge—Compensation—Proviso.—That the Sheriff of Barnwell County shall be required to serve all writs and other process issuing out of the Court of General Sessions without extra charge: *Provided, however*, That in addition to his salary, as is now provided for by law, he shall be paid by the county fifty cents each for serving State's witness in criminal cases, and five cents per mile going and returning: *Provided, further*, That the county shall not be liable to pay for defendants' witnesses in any case, unless otherwise ordered by the Court.

1917, XXX, 113.

(5756) § 36. Fees Not Allowed Sheriff for Serving Jury Venires.—That the Sheriff of the County of Orangeburg shall not be allowed any fee or fees for serving jury venires in the County of Orangeburg. If personal service of any juror shall be necessary, the same may be served by any Rural Policemen of the county.

1916, XXIX, 506; 1917, XXX, 123.

(5757) § 37. Constables.—Summoning witnesses in a civil or criminal case, twenty-five cents; for summoning freeholders to try question before Magistrate between landlord and tenant, to be paid by unsuccessful party, three dollars; for summoning Coroner's jury and witnesses, to be paid by the county, two dollars; for summoning jury in Magistrate's Court, in

civil or criminal cases, twenty cents each; for serving a summons, rule or notice by a Magistrate, in a civil case, fifty cents, five cents a mile going and returning; for serving attachment on persons absconding or about to abscond, and making inventory and return, besides commissions of five per cent. on sale of effects, but no mileage, one dollar; for selling estray, five per cent. on the proceeds; for levying execution, advertising sale and paying over proceeds, besides commissions at five per cent. on amount to be collected, but no mileage, to be paid by the defendant in execution, twenty cents; for every day in search for stolen goods, to be paid by party complaining, one dollar; for serving warrant in any criminal case, upon each person included in said warrant, besides five cents a mile for each mile necessarily traveled, one dollar; for serving warrant for witnesses in any criminal case, upon all the persons included in said warrant, besides five cents a mile for each mile necessarily traveled, one dollar;* for conveying prisoners to county jail, five cents per mile going and returning: *Provided*, That the Constable be reimbursed for necessary ferriage.

Civ. '02, § 3121; G. S. 2438; R. S. 2562; 1882, XVIII, 165.

*Green v. Anderson County, 56 S. C. 411, 34 S. E. 691; Whittle v. Saluda County, 56 S. C. 506, 35 S. E. 203; Lancaster v. Barnwell County, 40 S. C. 446, 19 S. E. 74.

MILEAGE OF CONSTABLES FOR SERVICE BEYOND LIMITS OF COUNTY.—All Constables, when required by the necessities of the case, in the enforcement of law by service of arrest warrants, or other process, shall be paid all necessary expenses and mileage at the rate of five cents per mile for every mile actually traveled beyond the limits of the county in which said Constables reside.†

Civ. '12, § 4232; Civ. '02, § 3121; 1908, XXV, 1056.

†Allowed Sheriff, acting as constable. Mullins v. Marion County, 72 S. C. 84, 51 S. E. 535.

(5758) § 38. Special Provisions as to Constables' Fees in Anderson County.—In Anderson County Constables shall receive the following fees: Summoning witnesses in a civil case, twenty cents; for summoning freeholders to try questions before Magistrates between landlord and tenant, to be paid by unsuccessful party, three dollars; for summoning Coroner's jury and witnesses, to be paid by the county, two dollars; for serving a summons, rule or notice by a Magistrate in a civil case, no mileage to be allowed, fifty cents; for serving attachment on persons absconding or about to abscond, and making inventory and returns, besides commissions of five per cent. on sales of effects, but no mileage, one dollar; for selling estray, five per cent. on the proceeds; for levying executions, advertising sale and paying over proceeds, besides commissions at five per cent. on amount to be collected, but no mileage, to be paid by the defendant in execution, twenty cents; for every day in search for stolen goods, to be paid by party complaining, one dollar; for serving warrant in any criminal case, besides five cents a mile for each mile necessarily traveled, one dollar; for arrest of witnesses in any case to be tried before a Magistrate, besides mileage, one dollar.

Civ. '12, § 4233; Civ. '02, § 3122; 1894, XXII, 934.

(5759) § 39. Notaries Public.—For taking deposition and swearing witness, per copy sheet, twenty-five cents; for duplicate of deposition, pro-

test and certificate, per copy sheet of one hundred words, ten cents; for each attendance upon any person for proving a matter or thing and certifying the same, fifty cents; for every notarial certificate, with seal, fifty cents; for administering oath on affidavit, twenty-five cents; for taking renunciation of dower or inheritance, one dollar; for every protest, fifty cents, together with the cost of postage for transmitting notice thereof.

Civ. '12, § 4234; Civ. '02, § 3123; G. S. 2440; R. S. 2564; 1898, XXII, 699.

(5760) § 40. Fees of Physicians for Post Mortem Examinations—Claim—How Proven.—Physicians in this State shall be paid the following fees for post mortem examinations and testifying at Coroners' inquests: For a post mortem examination and testifying, when no dissection is required, five dollars; when dissection is necessary and the body not interred, if requested by the Coroner's jury, ten dollars; for same after interment for three days or more, fifteen dollars; for chemical analysis, a sum not exceeding forty dollars and expenses for such analysis; and when chemical analysis has been made, the chemist who makes it must furnish to the County Board of Commissioners with his account, a full statement of the analysis. The Clerk of the County Board of Commissioners shall verify and file with the Clerk of Court of General Sessions a copy of such statement of analysis and account.

The account of claim for the services herein named shall be certified to by the Coroner, and if dissection is made it shall be certified that it was done at the request of the jury.

Civ. '02, § 3125; G. S. 2442; R. S. 2566; 1896, XXII, 256; 1901, XXIII, 735.

Payment of. See ante, §§ (1100), (1102).

FEES OF PHYSICIANS TESTIFYING AS EXPERTS.—Physicians and surgeons bound over or summoned by the State to testify as experts in any case in the Courts of General Sessions, or actually bound over at the instance of the defendant, to testify as experts in any case of felony in the Court of General Sessions, shall receive as compensation therefor, to be paid by the county in which the case is tried, the sum of five dollars in addition to the fees provided by law, to be paid to other witness in such cases: *Provided*, That the Circuit Judge before whom the case is tried shall certify that the testimony of such expert is material.

Civ. '12, § 4235; Civ. '02, § 3125; 1890, XX, 651; 1894, XXI, 970; 1905, XXIV, 912.

(5761) § 41. Deputy Surveyors.—For surveying every acre of land, one cent; for making out a fair plat, certifying, signing and returning the same, two dollars and fourteen cents; for running old lines for any person, or between parties, or by order of Court, while they are on the survey, per day, three dollars.

Civ. '12, § 4236; Civ. '02, § 3126; G. S. 2443; R. S. 2566; 1791, V, 158.

(5762) § 42. County Auditors.—For every entry and endorsement on any deed of conveyance of real property recorded in his office, twenty-five cents.

Civ. '12, § 4237; Civ. '02, § 3127; G. S. 2444; R. S. 2567; 1871, XIV, 621.

(5763) § 43. **Appraisers, Etc.**—Appraisers who appraise the estates of deceased persons, one dollar per day; appraisers to set out the homestead, two dollars per day; commissioners in dower or in partition, each one dollar and a half per day, and five cents per mile for necessary travel.

Civ. '12, § 4238; Civ. '02, § 3128; G. S. 2445; R. S. 2568; 1788, IV, 724; 1839, XI, 61; 1868, XIV, 21; 1918, XXX, 717.

(5764) § 44. **No Other Costs or Fees Allowed.**—If any officer herein named shall charge any other fee or fees for any services herein cited, such officer shall be liable to forfeit ten times the amount as improperly charged, to be recovered by suit in the Court of Commons Pleas, or attachment, or by sale, when the penalty does not exceed twenty dollars. In any case in which the Clerk of the Court of Common Pleas, or a Magistrate, shall issue an execution, he shall attach thereto a bill of each item of costs therein charged, and shall, on application of defendant in execution, tax all costs which accrue to the Sheriff for services on such execution.

Civ. '12, § 4239; Civ. '02, § 3129; G. S. 2446; R. S. 2570; 1878, XVI, 631.

Dean v. Todd, 49 S. C. 461, 27 S. E. 471; Tinsley v. Kirby, 8 S. C. 113.

(5765) § 45. **Witness Fees in Civil Cases.**—In Courts of Common Pleas and Judge of Probate, one dollar for every day's attendance on summons, or on request when actually appearing and testifying as a material witness, besides five cents per mile for coming to Court and returning by the shortest practical route, and ferriage to be paid by the person or persons at whose suit he is summoned. In Magistrate's Courts in civil cases, fifty cents per day for each day's attendance and the same mileage as is allowed in Circuit Courts.

Civ. '12, § 4240; Civ. '02, § 3130; 1913, XXVIII, 74.

Witnesses fees to be taxed as disbursements when paid by party. Mitchell v. Barrs, 64 S. C. 197, 41 S. E. 962. Subpoena necessary. Atherton v. A. C. L. Ry., 82 S. C. 474, 64 S. E. 411.

(5766) § 46. **Witness Fees in Criminal Cases.**—No fees or other compensation shall be allowed any witness bound over or summoned to testify in any case in the Court of General Sessions, unless the Circuit Judge who tried the case in which the witness was summoned, shall certify that such witness was material; and in that case the witness shall be allowed fifty cents; except in Lancaster, Jasper and Florence Counties, where they shall be allowed one dollar for each day of attendance and five cents per mile, one way, for necessary travel, besides the ferriage they are required to pay in attending the Court; except in Greenville and Williamsburg Counties, where he shall be allowed one dollar for each day of attendance and five cents for every mile necessarily traveled in going to and from Court; and each witness bound over or summoned in behalf of the State, shall be paid, on approval of the Solicitor of the Circuit in which said Counties of Greenville and Williamsburg are situated, and upon such approval, shall be paid, whether the case in which said witness is bound over or summoned to testify shall be tried or not: *Provided, however,* That in the Magistrate's Courts they shall receive no fees or compensation whatever for attendance in criminal cases. In Charleston and Berkeley Counties they shall be paid fifty cents per day for every day's attendance upon the Court of General Sessions and five cents for every mile necessarily traveled in going and

returning from Court: *Provided, further*, That no per diem shall be paid to any witness who is in receipt of a salary or per diem compensation from the State, or any county, town or city thereof; and in no case shall any witness receive more than five cents for every mile necessarily traveled or more than fifty cents per diem though attending Court or testifying in more cases than one: *Provided, however*, That this proviso shall not apply to Richland County.

Civ. '12, § 4241; Civ. '02, § 3131; 1878; XVI, 412; 1894, XXI, 943, 1000; 1896, XXII, 19; 1898, XXII, 875; 1900, XXIII, 175; 1904, XXIV, 407; 1913, XXVIII, 9; 1916, XXIX, 818; 1917, XXX, 158.

Defendant's witnesses are to be paid in cases of felony only. See Criminal Code.

APPENDIX

Notice—In deference to the wishes of the General Assembly, expressed in an Act approved March 22nd, 1922, (after the adoption of the Code of Laws of 1922), and for the accommodation of the legal profession and the public at large the Code Commissioner and the Code Collaborators have incorporated within Volumes 1, 2 and 3 of the Code of Laws of 1922, respectively, as an appendix only to the respective volumes of the Code, but in no sense as a part of the official Code, all Acts of the General Assembly of the year 1922 which were amendatory of specific Sections of the Code of Laws, Volumes 1 and 2, of 1912; also all amendments to the Constitution, ratified theretofore and at said session.

Where there is in the Code of 1922 a corresponding section to that which in the Code of 1912 was amended by the General Assembly of 1922, reference is made at the head of the Amendatory Acts to the sections so affected.

No. 579.

AN ACT to Require all Amendments Made at This Session of the General Assembly to Sections of the Code of Laws of 1912, Volumes I and II, to Be Incorporated as Amendments Thereof in the Code of Laws of 1922, Volumes I, II, and III; and all Amendments to the Constitution Ratified at This and Former Sessions.

Section 1. Amendments of Present Session to Code of 1912 to be Incorporated in Code of 1922—Proviso.—Be it enacted by the General Assembly of the State of South Carolina: That the Code Commission and Commissioners be, and they are hereby required to incorporate within Volumes I, II, and III of the Code of Laws of 1922, all Sections of the Code of Laws of 1912, Volume I and II, which have been amended at the session of the General Assembly held in 1922; also all amendments to the Constitution ratified heretofore and at said session, as amendments to the Reports of the Commission and Commissioner laid upon the desks at the former and present Sessions of the General Assembly: *Provided*, Only amendments directly specifying by number or numbers the section or sections amended shall be so inserted, and Acts of 1922 relating to the time of holding Courts in the several Circuits, and Acts relating to the drawing and empaneling of jurors.

§ 2. This Act shall take effect immediately upon its approval by the Governor.

Approved the 22nd day of March, A. D. 1922.

No. 446.[See § (5351) *Infra.*]

AN ACT to Amend an Act Entitled "An Act to Amend Section 3579 of the Code of Laws of 1912, Volume I, Relating to the Mode of Proving Wills in Common Form, Etc.," Approved February 26, 1920, by Further Defining the Mode of Proof.

Section 1. Act (1920, XXXI Stats. 825), Amending Sec. 3579, Civil Code, 1912, Amended—Probate of Wills in Common Form.—Be it enacted by the General Assembly of the State of South Carolina: That an Act entitled "An Act to Amend Section 3579, Code of Laws 1912, Volume I," approved February 26th, 1920, be amended by striking out of Section 1 all after the word "form" on line 11, so that said section as amended shall read as follows:

Section 1. Without citing or calling before him such as have interest, he may examine one or more of the subscribing witnesses thereto, or in case of their death or their removal from the State, or when their whereabouts are unknown, by proof of the handwriting of the testator or testatrix, and one of the subscribing witnesses, or if it is for any reason impossible to prove the handwriting of the testator or testatrix and of at least one of the subscribing witnesses, he may receive any other secondary evidence admissible and sufficient by the rules of the common law; and if such proof shall satisfy the Judge of Probate that the paper is the last will and testament of the deceased he shall admit it to probate in common form.

§ 2. Probate of Certain Wills Declared Valid.—Any and all wills and codicils admitted to probate in common form since the 26th day of February, 1920, are hereby declared to have been duly and sufficiently probated in common form, provided they shall have been probated according to the requirements of the law as prescribed in the first section of this present Act.

§ 3. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

§ 4. This Act shall take effect immediately upon its approval by the Governor.

Approved the 3rd day of February, A. D. 1922.

No. 451.[See § (2963) *Infra.*]

AN ACT to Amend an Act Entitled "An Act to Amend an Act Entitled 'An Act to Amend Section 1981, Volume I, of the Code of Laws of 1912, Relating to Commutation Tax in Bamberg County,' by Changing the Word 'Five' to 'Four,'" Approved February 24, 1921, by Further Reducing the Commutation Tax in Said County.

Section 1. Act (1921, XXXII Stats. 103) Amended—Commutation Tax in Bamberg County.—Be it enacted by the General Assembly of the State

of South Carolina: That an Act to amend an Act entitled "An Act to Amend an Act Entitled 'An Act to Amend Section 1981, Volume I, of the Code of Laws of 1912, Relating to Commutation Tax in Bamberg County,' by Changing the word 'Five' to 'Four,' " approved February 24th, 1921, be, and the same is hereby, amended by striking out all after the word "head" on line 12, and before the word "which" on line 14, so that said Act when so amended shall read as follows:

"Section 1981. All persons who are liable to road duty in said counties, as fixed by Section 1980, in lieu of performing or causing to be performed, labor upon the public highways of said counties, shall be required to pay to the County Treasurers of said counties an annual commutation tax of two dollars per head, which shall be expended upon the public roads of the county, and, as nearly as possible, within the township from which it was collected; and any failure to pay said road tax shall be a misdemeanor, and the offender, upon conviction, shall be punished by a fine of not less than five dollars and not more than fifty dollars, or imprisoned for not more than thirty days."

§ 2. This Act shall take effect immediately upon its approval by the Governor.

Approved the 16th day of February, A. D. 1922.

No. 452.

[See § (2772) *Infra*.]

AN ACT to Amend Section 1843, Code of Laws 1912, Volume I, Relating to the Display of the State Flag on Certain Buildings.

Section 1. Sec. 1843, Civil Code, 1912, Volume I, Amended—Display of State Flag at Schools.—Be it enacted by the General Assembly of the State of South Carolina: That Section 1843, Code of Laws 1912, Volume I, be amended by striking out on line 4 of said Section the following words: "And upon every public school building," and inserting in lieu thereof the following words: "And upon the inside of every public school building so that all school children shall be instructed in proper respect for the flag," so that said section, when so amended, shall read as follows:

"Section 1843. The State flag shall be displayed daily, except in rainy weather, from a staff upon the State House, and every courthouse, one building of the State University and of each State College, and upon the inside of every public school building so that all school children shall be instructed in proper respect for the flag, except when the school is closed during vacation."

Approved the 16th day of February, A. D. 1922.

No. 455.

[See § (4431) *Infra*.]

AN ACT to Declare and Re-enact the Law with Respect to the Board of Public Works in the Town of Gaffney, South Carolina.

Section 1. Law as to Board of Public Works of Town of Gaffney Declared.—Be it enacted by the General Assembly of the State of South

Carolina: That the Board of Public Works in the Town of Gaffney, S. C., is a duly constituted body as prescribed by an Act of the General Assembly of the State of South Carolina, approved the 19th day of February, A. D. 1907, as amended by an Act of the General Assembly of the State of South Carolina, approved February 14th, 1908, as found in Volume XXV of the Statutes of South Carolina, pages 808 and 1271; and other Acts amendatory thereof: *Provided, however*, The Act of the General Assembly, approved February 15th, 1915, XXIX, Statutes of South Carolina, page 400, is not applicable, as said Act failed to become the law by an adverse result of the election held thereunder in the town of Gaffney.

§ 2. Inconsistent Provisions of Section 3016, Civil Code 1912, Vol. I, Repealed.—That the provisions contained in Section 3016 of the Code of 1912, Volume I, in any wise inconsistent with the provisions of this Act, and the Acts above referred to, are hereby repealed.

§ 3. Report of Code Commission Amended to Correspond.—That so much of Section 53 of Article 1, of Chapter LI of the Report of the Code Commissioners, page 1372, whereby the duties of the Board of Public Works, of Gaffney, S. C., are made to devolve, *ex officio*, on the Mayor, Treasurer, and Clerk of the Town Council of Gaffney, S. C., are stricken out, as inapplicable and incorrect.

§ 4. Acts (1907, XXV Stats. 806) and (1908, XXV Stats. 1271), Re-enacted.—That the said Act of the General Assembly of South Carolina, approved February 16th, 1907, creating a Board of Public Works for the Town of Gaffney, S. C., and defining their powers, duties, etc., XXV Sts. S. C. 808; the Act of the General Assembly of South Carolina, approved the 14th day of February, 1908, whereby the former Act is amended, XXV Sts. 1271; and other Acts amendatory thereof, with the exception of the Acts of Feb. 16, 1915, XXIX Sts. 400, are all hereby re-enacted, and declared to be the law now governing the said Board of Public Works of the Town of Gaffney, S. C., and to have been in force and effect since the original enactments of said Acts.

§ 5. That all Acts and parts of Acts inconsistent with this Act are hereby repealed.

§ 6. This Act to take effect upon its approval by the Governor.
Approved the 16th day of February, A. D. 1922.

No. 465.

[See § (5747) *Infra*.]

AN ACT to Fix the Compensation of the Judge of Probate of Marlboro County.

Section 1. Compensation of Judge of Probate, Marlboro County.—Be it enacted by the General Assembly of the State of South Carolina: That the Probate Judge of Marlboro County shall receive as his compensation for services the same fees now provided by Section 4225 of the Code of Laws of 1912 (Civil Code) Volume I, for the Probate Judges of Sumter,

Clarendon, Florence, and Darlington Counties, and that he be allowed to retain the fee of One Dollar as compensation for issuing each marriage license.

§ 2. That this Act shall take effect immediately upon its approval by the Governor.

Approved the 17th day of February, A. D. 1922.

No. 470.

[See §§ (4431) and (4432) *Infra*.]

AN ACT to Make Provisions of Sections 3016 and 3017 of the Code of Laws of South Carolina of 1912, Volume I, Apply to the City of Laurens Wherein Said Sections Provide for a Board of Commissioners of Public Works: to Prescribe their Duties, and to Provide for their Election at the Next Regular Municipal Election.

Section 1. Sec. 3016 Civil Code, 1912, Volume I, to Apply to Board of Public Works of City of Laurens.—Be it enacted by the General Assembly of the State of South Carolina: That hereafter the provisions of Section 3016 wherein said section provides for a Board of Commissioners of Public Works shall apply to the City of Laurens notwithstanding any exception contained in said original Section exempting the City of Laurens from the provisions thereof, or any Acts amendatory thereto.

§ 2. **Election.**—That a Board of Commissioners of Public Works shall be elected at the next regular and subsequent municipal elections for municipal officers for the City of Laurens, as in said original Section 3016 is provided for.

§ 3. **Duties Devolved.**—That all the duties, authorities, powers and responsibilities as provided in Sections 3016 and 3017, Code of Laws of South Carolina, of 1912, Volume I, be, and the same are hereby, devolved upon the Board of Commissioners of Public Works in said sections provided.

§ 4. That all Acts or parts of Acts inconsistent with this Act be, and the same are hereby, repealed.

§ 5. That this Act shall take effect immediately upon its approval by the Governor.

Approved the 17th day of February, A. D. 1922.

No. 471.

[See § (65) *Infra*.]

AN ACT to Repeal Section 55 of the Code of Laws of 1912 (Civil Code, Volume I) Relating to the Printing for the State Board of Health.

Section 1. Section 55, Civil Code, 1912, Volume I, Repealed—Printing for State Board of Health.—Be it enacted by the General Assembly of the State of South Carolina: That Section 55 of the Code of Laws of 1912

(Civil Code, Vol. I) relating to the printing for the State Board of Health be, and the same is hereby, repealed.

Approved the 17th day of February, A. D. 1922.

No. 490.

[See § (2615) Infra.]

AN ACT to Amend Section 1752 of Volume I of the Code of Laws of South Carolina, 1912, by Adding Shaw's Fork School District No. 49, in Aiken County, to the Proviso Thereof.

Section 1. Section 1752, Civil Code 1912, Volume I, Amended—Election of School Trustees in School District No. 49, Aiken County.—Be it enacted by the General Assembly of the State of South Carolina: That Section 1752 of Volume I of the Code of Laws of South Carolina, 1912, be amended by adding to the last proviso thereof: "*Provided, further, That upon the petition of one-third of the qualified electors of Shaw's Fork School District No. 49, in Aiken County, filed with the County Superintendent of Education on or before the first day of June, 1922, and every year thereafter when School Trustees are to be appointed, the County Board of Education shall order an election to elect the Trustees of the said School District No. 49 in the manner herein provided for in the election of Trustees of special school districts.*"

§ 2. This Act shall go into effect immediately upon its approval by the Governor.

Approved the 24th day of February, A. D. 1922.

No. 497.

[See § (5175) Infra.]

AN ACT to Amend Section 3431 of the Civil Code of Laws 1912, Volume I, by Prohibiting the Operation of Pool and Billiard Tables Outside of Incorporated Cities or Towns in the County of Greenwood.

Section 1. Sec. 3431, Civil Code, 1912, Vol. I, Amended—Pool Rooms in Greenwood County.—Be it enacted by the General Assembly of the State of South Carolina: Amend Section 3431, Civil Code of Laws 1912, Volume I, by adding after the said section the following proviso: *Provided, That in the County of Greenwood no pool or billiard tables shall be operated outside of the incorporated city or town, except by clubs or individuals where the tables are not operated for private gain, so that said section, when so amended, shall read as follows:*

"Section 3431. Every person operating any pool or billiard table in this State, outside of an incorporated city or town, shall pay to the Clerk of the Court of the County in which such table is operated, an annual license of one hundred dollars, to be turned into the school funds of such county: *Provided, That this Act shall not apply to clubs or individuals where the table is not operated for private gain: Provided, That in the County of Greenwood no pool or billiard table shall be operated outside of the incorporated city or town, except by clubs or individuals where the tables are not operated for private gain.*"

§ 2. That this Act shall take effect immediately upon its approval by the Governor.

§ 3. That all Acts or parts of Acts inconsistent with this Act are hereby repealed.

Approved the 24th day of February, A. D. 1922.

No. 504.

[See § (3919) *Infra*.]

AN ACT to Amend Section 2601 of the Code of Laws of 1912, Relating to the Sale of Leaf Tobacco Upon the Floor of Tobacco Warehouses in This State.

Section 1. Sec. 2601, Civil Code, 1912, Vol. I, Amended—Warehouse Charges on Leaf Tobacco.—Be it enacted by the General Assembly of the State of South Carolina: Amend Section 2601, Civil Code of Laws, 1912, by striking out all of said section and inserting in lieu thereof the following to be known as Section 2601:

“Section 2601. The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses in this State shall not exceed the following schedule of prices, to wit: For auction fees, fifteen (15) cents on all piles of one hundred pounds or less, and twenty-five (25) cents on all piles over one hundred (100) pounds. For weighing and handling, ten (10) cents per pile for all piles of less than one hundred (100) pounds and ten cents for each additional one hundred (100) pounds; for commission on the gross sales of leaf tobacco in said warehouse not to exceed two and one-half per centum. The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill, plainly stating the amount charged for weighing and handling, the amounts charged for auction fees and the commission charged on such sale; and it shall be unlawful for any other charges of fees exceeding those herein named to be made or accepted.

§ 2. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

§ 3. This Act shall take effect immediately upon its approval.

Approved the first day of March, A. D. 1922.

No. 510.

[See § (4100) *Infra*.]

AN ACT to Amend Section 2722 of the Civil Code of Laws, 1912, Volume I, so as to Further Include the Writing of Life Policies or Certificates.

Section 1. Sec. 2722, Civil Code, 1912, Vol. I, Amended—Incontestability of Life Insurance Policies and Certificates.—Be it enacted by the General Assembly of the State of South Carolina: Amend Section 2722 Civil Code of Laws, 1912, Volume I, by adding after the word “companies” and before the word “that” on line one the following: “Fraternal Benefit Associations or any other company, corporation or association by whatever name known, who issues a policy or certificate of in-

surance on the life of a person," so that said section, as amended, shall read as follows:

Section 2722. All life insurance companies, fraternal benefit associations or any other company, corporation or association by whatever name known, who issues a policy or certificate of insurance on the life of a person that shall receive the premium on any policy for the space of two years shall be deemed and taken to have waived any right they may have had to dispute the truth of the application for insurance, or that the assured person had made false representations, and the said application and representations shall be deemed and taken to be true.

Approved the 1st day of March, A. D. 1922.

No. 512.

[See § (5753) *Infra*.]

AN ACT to Amend Section 4230, Code of Laws of South Carolina, 1912, Volume I, Regulating Mileage Fees of Sheriffs for Serving Process.

Section 1. Sec. 4230, Civil Code, 1912, Vol. I, Amended—Mileage Fees of Sheriffs.—Be it enacted by the General Assembly of the State of South Carolina: That Section 4230, Code of Laws of 1912, Volume I, be, and the same is hereby, amended by inserting between the words "cents" and "commitment" on line 7 of said section the following words: "*Provided*, Said Sheriff shall charge mileage for only the actual number of miles traveled by himself or deputy, and in case more than one party or witness in the same case or parties or witnesses in different cases are served on one trip the mileage fee herein provided shall be prorated and charged according to the number of parties served," so that said section, when so amended, shall read as follows:

Section 4230. Except in Anderson County, for entering every writ, summons, process, execution or other paper in writ or execution book, and making endorsements thereon, twenty-five cents; for serving writ, summons, notice or rule, not otherwise herein specified, besides mileage, one dollar; mileage from courthouse to defendant or witness' residence, or place where found, going and returning each way, per mile, five cents; *Provided*, Said Sheriff shall charge mileage for only the actual number of miles traveled by himself or deputy, and in case more than one party or witness in the same case or parties or witnesses in different cases are served on one trip the mileage fee herein provided shall be prorated and charged according to the number of parties served; commitment and release of prisoner, each fifty cents; conveying lunatics to the asylum, two dollars per day and actual necessary expenses: *Provided*, The Sheriff may, in extreme cases, call not more than two constables, and be allowed therefor one dollar per day and actual expenses; issuing each venire for grand jury, fifteen dollars; serving venire for petit jurors, twenty-five dollars; serving subpœna writ, and mileage on each ticket, fifty cents; serving bench or other warrants *scire facias* from the Court of Sessions, or writ of attachment for contempt, besides mileage, one dollar and fifty cents; search for persons or goods not found and return on the execution of *non est inventus* or *nulla bona*, fifty cents; each execution returned to Clerk's office

on schedule, twenty-five cents; levying executions or attachments, besides mileage, one dollar; dieting prisoners in jail, per day, thirty cents; executing convict, including all charges and expenses, twenty dollars; bringing up prisoner under *habeas corpus* to be paid by prisoner if able, if not, by the county, besides mileage and necessary expenses, one dollar; conveying prisoner from one place to another, for every mile going and returning, besides all necessary expenses, six cents; commissions on all moneys collected by him, if under three hundred dollars, two per cent; if over that sum, two per cent. for the first three hundred dollars and one per cent. for the balance, and one-half of one per cent. on all sums paid to plaintiff, his agent or attorney, on execution lodged with the Sheriff execution lodged to bind, with order not to levy, fifty cents; for advertising defendant's property, in addition to printer's bill, one dollar; drawing and executing a deed of conveyance or taking a mortgage, two dollars; drawing and executing each bill of sale, when required by purchaser, two dollars; no Sheriff shall charge more than one bill of sale for property bought at the same sale by the same party; for executing a writ of *habere facias possessionem*, besides mileage, one dollar; transferring money, bonds or other securities for money to party, one-half of one per cent.; for selling land under decree of Court, in lieu of commissions and all other charges, except for advertising, two dollars; for serving notice on each set of managers of election, besides mileage, one dollar; summoning freeholders to try suggestions of fraud, five dollars; for every fine paid before levy, fifty cents; for every fine paid after levy and before sale, one dollar; for the service of execution of papers issued by a Magistrate, the Sheriff or his deputy serving or executing the same shall be allowed the same fees as are allowed to constables: *Provided*, That the Sheriff of Charleston and Aiken Counties shall receive for dieting prisoners in jail, per day, twenty-five cents only: *Provided, further*, That in Barnwell County the Sheriff shall receive no fees or costs for dieting prisoners.

§ 2. All Acts or parts of Acts inconsistent with this Act are hereby repealed, and this Act shall go into effect immediately upon its approval by the Governor.

Approved the 1st day of March, A. D. 1922.

No. 513.

[See § (522) *Infra.*]

AN ACT to Amend Section 471, Civil Code of Laws, 1912, Volume I, Relating to Seizure and Sale Under Execution, Redemption and Title by Enlarging the Time for Redemption and Providing Who May Redeem.

Section 1. Sec. 471, Civil Code, 1912, Vol. I, Amended—Time for Redemption After Sale Under Tax Execution—Judgment Creditor May Redeem.—Be it enacted by the General Assembly of the State of South Carolina: Amend Section 471, Civil Code of Laws, 1912, Volume I, by striking out of the said section, wherever they appear, the words "six months" and inserting in lieu thereof the words "twelve months," and by adding after the words "mortgage creditors" on line 20 of said Section 471 the words

“or judgment creditors;” by adding after the words “any mortgagee” on line 27 of said Section 471 the words “or judgment creditors;” by adding on line 31 of said Section 471 after the word “mortgage” the words “or judgment,” so that said section, as amended, shall read as follows:

“Section 471. Under and by virtue of said warrant or execution, the Sheriff shall seize and take exclusive possession of so much of the defaulting taxpayer’s estate, real or personal, or both, as may be necessary to raise the sums of money named therein, and said charges thereon; and, after due advertisement, sell the same before the courthouse door in the county, on a regular salesday, and within the usual hours for public sales, for cash, give to the purchaser (upon his complying with the terms of sale) a receipt for the purchase money, but not make title to the purchaser until the expiration of twelve months from the day of sale, if the property sold be not redeemed as hereinafter provided, and annex said receipt to the duplicate warrant with the endorsement thereon of his action thereunder, and shall, after deducting from proceeds of sale the costs and expenses of said sale, pay over to the County Treasurer the taxes, charges and penalties due and incurred by said defaulting taxpayer; and upon written notice given, or information ascertained from the records, of any mortgage or other lien on said premises so sold for taxes, shall hold the excess, if any, until authorized or directed by proper judicial authority as to mode of disposition, or by the written consent of the defaulting taxpayer that the said excess be paid over to the mortgage or lien creditor, and according to priority if more than one: *Provided*, That the owner or grantee or any mortgage creditor, or judgment creditor, may within twelve months from the day of such sale redeem such property by paying to the Sheriff the taxes, penalties, costs and expenses of said sale, together with eight per cent. interest on the whole amount of the purchase price of said land so sold, and thereupon the Sheriff shall pay back and refund to the said purchaser the amount paid on his bid, with interest as above stated, and the bid by said purchaser shall be then cancelled and revoked, the owner or grantee remaining in possession of his said land: *Provided, further*, That should any mortgagee or judgment creditor, redeem said land as above permitted, then the amount so paid by him for taxes, charges, costs and penalties shall be added to the mortgage debt or other lien, with the same incidents as to priority and with same rate of interest and collectible in the same way as the original mortgage or judgment debt. Upon failure of defaulting taxpayer or other party interested to redeem said land so sold for taxes within twelve months as stated, then the Sheriff shall make title to the purchaser and put the purchaser in possession of the property sold and conveyed: *Provided, further*, That in case of threatened waste or damage to the premises by the owner or any other party, during the twelve months allowed for redemption, the purchaser at said tax sale shall have the right to apply to the Court of Common Pleas or a Judge thereof for injunction against such waste and for a receiver to take charge of the property until the end of the twelve months for redemption unless sooner redeemed: *Provided, further*, That in any case where the Sheriff of any county shall have made a deed under the Act approved the 20th day of

February, 1901, and said land has been or shall be redeemed under the provisions of said Act, it shall be the duty of the Sheriff upon demand of the owner of said land to execute to said owner a deed of the land so redeemed, citing the proceedings under which said land was sold, and upon said deed being executed and delivered, the title to said land shall revert in the owner as though said tax sale had never been made."

§ 2. This Act shall take effect immediately upon its approval by the Governor, and all Acts or parts inconsistent herewith are hereby repealed.

Approved the 3rd day of March, A. D. 1922.

No. 514.

[See § (2343) *Infra*.]

AN ACT to Amend Section 1599, Civil Code of Laws, Volume I, 1912, Relating to the Making and Publishing of Analyses of Water, so as to Enlarge the Authority Thereunder.

Section 1. Sec. 1599, Civil Code, 1912, Vol. I, Amended—Analyses Required of Public and Quasi-Public Water Supplies.—Be it enacted by the General Assembly of the State of South Carolina: Amend Section 1599, Civil Code of Laws, Volume I, 1912, by striking out all of line one, two, three and four, and line five down to and including the word "Biologist" and inserting in lieu thereof the following: "Every person, corporation, commission, municipality or company conducting or operating a public water supply serving municipalities, districts, communities, or a quasi-public water supply serving institution, colleges, hospitals, factories or a business of bottling water to be sold or used for drink, beverage or medicinal purposes, shall have made at least once every three months, at its own expense, by a chemist to be approved by the State Board of Health, a chemical analysis, and at least once every three months at the State Board of Health Laboratory a bacteriological examination at its own expense; and that no charge shall be rendered for additional analysis other than the quarterly analysis above required," so that said section shall read as follows:

"Section 1599. Every person, corporation, commission, municipality or company conducting or operating a public water supply serving municipalities, districts, communities, or a quasi-public water supply serving institutions, colleges, hospitals, factories or a business of bottling water to be sold or used for drinking, beverage or medicinal purposes, shall have made at least once every three months, at its own expenses by a chemist and bacteriologist, to be approved by the State Board of Health, a chemical and bacterial analysis, and that no charge shall be rendered for additional analysis other than the quarterly analysis above required, to be approved by the State Board of Health, of a sample of its water drawn from a faucet used for drinking purposes, packed and shipped in accordance with the instructions to be furnished by the Secretary of the State Board of Health, and the result of such examination shall be verified by the chemist and bacteriologist making the same, and published at least once in a newspaper published in the town or city using said water, within ten days after receipt thereof."

§ 2. All Acts or parts of Acts inconsistent herewith are hereby repealed.
Approved the 11th day of March, A. D. 1922.

No. 516.

[See § (4549) *Infra.*]

AN ACT to Amend Section 2950 of Volume I, Code of Laws of South Carolina of 1912, so as to Permit the City of Spartanburg to Levy an Annual Municipal Tax of Not Exceeding Twenty-one (21) Mills.

Section 1. Sec. 2950, Civil Code, 1912, Vol. I, Amended—Tax Levy in City of Spartanburg.—Be it enacted by the General Assembly of the State of South Carolina: That Section 2950 of Volume I, of the Code of Laws of 1912, relating to municipal tax levy be, and the same is hereby, amended by adding after the word "State" in line eleven thereof the following proviso relating to the City of Spartanburg: *Provided*, That the City Council of the City of Spartanburg shall have power to impose by such ordinance an annual tax of not exceeding twenty-one (21) mills on the assessed value of such property within its limits," so that said section, as amended, shall read as follows: "Section 2950. Said Council shall have power to impose, by ordinance, published at least twenty days, an annual tax not exceeding one and one-fourth (1 1-4) per cent. in cities containing over five thousand (5,000) inhabitants, and not over one per cent. in towns containing between one thousand and five thousand inhabitants of the assessed value thereof on all real estate lying within the corporate limits of said city or town, and all personal property within the same including bonds and stocks of banks, and insurance companies and other corporations, the real estate of churches and school associations from which such churches and school associations draw a revenue, or which are intended to be rented out for such purpose, except such as is exempt from taxation under the Constitution and laws of this State: *Provided*, That the City Council of the City of Spartanburg shall have power to impose by such ordinance an annual tax of not exceeding twenty-one (21) mills, on the assessed value of such property within its limits. Such tax shall be levied by the town authorities on the property within the corporate limits as assessed for taxation for County and State purposes. The said Council shall also have power to provide for the payment of a penalty not exceeding fifteen per cent. (15%) of the taxes so levied for non-payment of the said taxes when due, payable when said the said taxes become delinquent; and the taxes so levied, and also the said penalty shall constitute a lien upon the property upon which the said tax is levied until paid, paramount to all other liens, except the lien for County and State taxes; and for the purpose of collecting the same, the said City or Town Council shall have the power to enforce the payment of all such taxes and penalties, levied and provided for under the authority of this Article against the property of defaulters, to the same extent, and substantially in the same manner, as is provided by law for the collection of State and County taxes and penalties; except that execution to enforce the payment of the said taxes and penalties due the said city or town shall be issued under the seal of the corporation by the Clerk thereof, and directed to the Chief of Police, or any other officer designated by the

City or Town Council for that purpose; and except, further, that all sales under and by virtue of such executions shall take place in front of the City or Town Hall, or other public place designated by ordinance in such city or town. The said Clerk and the said Chief of Police, or other officer so designated as aforesaid, shall be allowed the same fees and costs in the enforcement of such executions and for sales under, as are allowed, respectively to the County Treasurer and Sheriff, which fees and costs shall be enforceable and collectible in the same manner as fees and costs under County and State tax executions and on sales thereunder."

§ 2. That all Acts or parts of Acts inconsistent herewith are herewith repealed.

§ 3. This Act shall take effect immediately upon its approval by the Governor.

Approved the 15th day of March, A. D. 1922.

No. 519.

[See § (470) *Infra.*]

AN ACT to Amend Section 418, Volume I, Code of Laws, 1912, by Adding Section 1. Sec. 418, Civil Code, 1912, Amended—Compensation of Assessors for Spartanburg Township.

Section 1. Sec. 418, Civil Code, 1912, Amended—Compensation of Township Assessors.—Be it enacted by the General Assembly of the State of South Carolina: That Section 418, Volume I, Code of Laws, 1912, is hereby amended by adding thereto the following proviso: *Provided*, That in Spartanburg Township the Township Board of Assessors shall each receive the sum of Five Dollars per day for not exceeding forty days, provided the City of Spartanburg shall pay Two Dollars of the Five for each assessor: *And provided, further*, That in all other Townships of Spartanburg County the Township Boards of Assessors shall each receive the sum of Three Dollars per day for not exceeding seventeen days and mileage of five cents per mile for going to and returning from the County site, so that the said section, when so amended, shall read as follows: "Section 418. That the Township Assessors and the City Boards of Assessors of the various counties and towns and cities of the State shall each receive as a compensation for their service, the sum of two dollars per day for the time actually employed, not to exceed three days in any one year, except in those years when real estate is to be assessed, when the number of days charged for shall not exceed five: *Provided*, That in those townships or tax districts in which is situated an incorporated town or city of one thousand and less than five thousand inhabitants they shall be paid for not exceeding five days, and in those townships or tax districts in which there is an incorporated town or city or manufacturing community of four thousand and less than ten thousand they shall be paid for not exceeding ten days, and in those townships or tax districts in which there is an incorporated town or city of ten thousand inhabitants or more they shall be paid for not exceeding thirty days: *Provided, further*, That no per diem shall be paid unless accompanied by the affidavit of such member giving the number of days

actually employed and by the certificate of the County Auditor to the effect that such member has fully performed all the duties required by this Article and the chairman of all townships: *Provided, further*, That in Hampton County the said Board of Township Assessors shall each receive as compensation for his services, in the performance of the duties devolving upon them as such assessors, two dollars per day, without mileage, for each day actually employed in the performance of their duties not exceeding three days in each year; and the members of the said Board of Equalization shall each receive three dollars per day, for each day employed in the performance of their duties as such Equalization Board for not exceeding three days in each year, in addition to the time employed with the Board of Assessors: *Provided*, That no per diem of any member of said Board shall be paid unless a statement of the claim shall be presented, showing the number of days actually employed, accompanied by the affidavit of the claimant to the effect that such number of days have been employed in the performance of their duties; and by a certificate of the County Auditor to the same effect: *Provided*, That in Spartanburg Township the Township Board of Assessors shall each receive the sum of five dollars per day for not exceeding forty days, provided the City of Spartanburg shall pay two dollars of the five for each assessor: and, *Provided, further*, That in all the other townships in Spartanburg County the Township Boards of Assessors shall receive each the sum of three dollars per day for not exceeding seventeen days and mileage of five cents per mile for going to and returning from the County site.

§ 2. All Acts or parts of Acts inconsistent herewith are hereby repealed.

§ 3. This Act shall go into effect immediately upon its approval by the Governor.

Approved the 22nd day of March, A. D. 1922.

No. 520.

[See § (506) *Infra*.]

AN ACT to Amend Section 455, Volume I, Civil Code of South Carolina, 1912, so as to Permit a Judgment Creditor to Pay Delinquent Taxes of his Judgment Debtor.

Section 1. Sec. 455, Civil Code, 1912, Vol. I, Amended—Payment of Taxes by Judgment Creditor.—Be it enacted by the General Assembly of the State of South Carolina: That Section 455, Volume I, Civil Code of South Carolina, 1912, be, and the same is hereby, amended, by inserting after the word “mortgage” on line two of said section the words “or judgment;” and by inserting the words “or judgment debtor” after the word “Mortgagor” at the end of the second line; and by inserting the words “or judgment debtor” after the word “mortgagor” on the fourth line of the said section; and by inserting the words “or judgment debtor” after the word “mortgagor” on the sixth line of said section; and by inserting the words “or judgment debtor” after the word “mortgagor” on the seventh line of said section; and by inserting the words, “or judg-

ment" after the "mortgage" at the end of said section. So that said section, when so amended, shall read as follows:

Section 455. Any person holding a lien by way of, or an interest in the nature of, a mortgage or judgment upon any property, the subject of taxation, upon which the mortgagor or judgment debtor shall have failed to pay the tax, or upon which there may exist a lien for taxes on any other property of the mortgagor or judgment debtor, may at any time before the sale thereof for delinquent taxes, as hereinafter provided, pay the tax on all the property of the mortgagor or judgment debtor, with any costs, penalties or assessments which may have accrued thereon; and thereupon he shall be entitled, as against the mortgagor or judgment debtor, his representatives, privies or assigns, to include the amount so paid, and all interest thereafter accruing thereon, in the debt secured by his mortgage or judgment: *Provided*, If a judgment debtor or mortgagee pay said taxes he shall have a first lien on the property subject to said tax to the extent of the taxes so paid with interest from date of payment.

§ 2. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

§ 3. This Act shall take effect immediately upon its approval by the Governor.

Approved the 22nd day of March, A. D. 1922.

No. 523.

[See § (3933) *Infra*.]

AN ACT to Amend Section 2614, Civil Code of Laws, 1912, Relating to the Sale of Property Repaired by Mechanics so as to Further Enlarge the Powers of Such Sale.

Section 1. Sec. 2614, Civil Code, 1912, Vol. I, Amended—Sales by Mechanics of Property Repaired—Notice—Disposal of Surplus Proceeds.—Be it enacted by the General Assembly of the State of South Carolina: That Section 2614, Civil Code of Laws, 1912, Volume I, and all Acts amendatory thereto, relating to the sale of property repaired by mechanics be, and the same is hereby, amended as follows: Strike out all of said section and insert in lieu thereof the following, to be known as Section 2614 of said Code:

"Section 2614. It shall be lawful for any mechanic in this State when property may be left at his shop for repair, to sell the same at public outcry to the highest bidder after the expiration of sixty days from the time such property shall have been repaired, and the said mechanic shall before selling such property advertise the same for at least ten (10) days by posting in three conspicuous places in the county a notice of the time and place of such sale, together with the amount due to the said mechanic for his repairs. The said mechanic shall also, at least ten (10) days before the sale, send to the owner of the property repaired, at his last known address, by registered mail, a notice of his intention to sell the said property under the provisions hereof: The said mechanic shall after deducting the amount of his repair bill, together with any necessary and proper expense

connected with the advertising and sale of the property, pay the remainder, if any, of the proceeds of such sale to the Clerk of the Court, and shall take his receipt therefor. The owner of said property, upon proper application to the Clerk of Court, shall be paid the amount so held by the Clerk of Court.

§ 2. This Act shall take effect immediately upon the approval of the Governor.

Approved the 24th day of March, A. D. 1922.

No. 524.

[See §§ (5233)-(5234) *Infra*.]

AN ACT to Amend an Act Entitled "An Act to Amend Sections 3469 and 3470, Volume I, Code of Laws of South Carolina, in Reference to Renunciation of Dower," Approved February 11th, 1918, Known as Act No. 468 of the Acts of 1918.

Section 1. Act (1918, XXX Stats. 807), Amending Secs. 3469 and 3470, Civil Code, 1912, Vol. I, Amended—Certificate of Renunciation of Dower.—Certain Certificates Validated.—Be it enacted by the General Assembly of the State of South Carolina: That an Act entitled "An Act to Amend Sections 3469 and 3470, Volume I, Code of Laws of South Carolina, in Reference to Renunciation of Dower," approved February 11th, 1918, known as Act No. 468 of the Acts of 1918, be amended as follows: On line six (6) of Section 3469 immediately following the words "Notary Public" amend by inserting the words "With or without official seal;" also amend by inserting on line eighteen (18) of Section 3469 immediately following the words "Provided, That," the following words "When acknowledgment is taken in a foreign State;" also amend by inserting at the end of Section 3469 the following words: "Any and all certificates of renunciation of dower which may have heretofore been taken before a Notary Public or Magistrate within this State, who has signed the same without affixing thereto his official seal are hereby validated and their certificate affirmed," so that, when amended, said section shall read as follows:

Section 3469. When any *femme covert* shall relinquish her right of dower in any real estate and acknowledge the same in writing, if she be within this State, in open Court, or before any Judge of the Court of Common Pleas, Justice of the Supreme Court, Judge of Probate, Clerk of Court of Common Pleas, or Master, Magistrate or Notary Public with or without official seal; or, if she be without this State, before a Commissioner of Deeds of this State, or before a Commissioner duly appointed by *dedimus*, or before any Minister, Ambassador, Consul General, Consul, Vice Consul, Deputy Consular Agent, Commercial Agent of the United States or any other officer appointed by the United States in foreign countries with the power to administer oaths and having an official seal, or a Clerk of a Court of Record, or before a Notary Public, or Justice of the Peace, who must each append to the certificate of the official seal used by him, and such acknowledgment shall be recorded the same shall be effectual in law to convey and

pass away the right of such *femme covert*, although she has not executed or acknowledged any deed of conveyance for that purpose: *Provided*, That when acknowledgment is taken in a foreign State if the Notary Public or Justice of the Peace do not append to the certificate the official seal used by him, his official character must be attested by a Clerk of the Court of Record of the County in which he may reside and append to the certificate of such officer. Any and all certificates of renunciation of dower which may have heretofore been taken before a Notary Public without this State, who has signed the same and affixed thereto his official seal, but whose official character has not been attested by a Clerk of the Court of Record of the County in which he may reside, are hereby validated and their certificates affirmed. Any and all certificates of renunciation of dower which may have heretofore been taken before a Notary Public or Magistrate within this State, who has signed the same without affixing thereto his official seal are hereby validated and their certificate affirmed.

§ 2. This Act shall take effect immediately upon its approval by the Governor.

Approved the 22nd day of March, A. D. 1922.

No. 525.

[See §§ (1045) to (1048) *Infra*.]

AN ACT to Amend Sections 922 to 925, Inclusive, of Article XVI, of Chapter XIX, Volume I, of the Code of Laws of South Carolina, 1912, Relating to the Public Service Commission by Enlarging the Powers and Duties Thereof, Determining the Jurisdiction and Declaring the Procedure in Relation Thereto, and Devolving said Power, Duties, and Jurisdiction on the Railroad Commission of South Carolina.

Section 1. Secs. 922 to 925, Civil Code, 1912, Vol. I, Amended.—Be it enacted by the General Assembly of the State of South Carolina: That Sections 922 to 925, inclusive, Article XVI of Chapter XIX of Volume I of the Code of Laws of South Carolina, 1912, relating to the Public Service Commission, be, and the same are hereby, amended as follows: Strike out all of Sections 922 to 925, inclusive, and insert the following:

“Section 922. Definition of Terms.—(a) The term ‘corporation,’ when used in this Act includes joint stock companies, corporations, associations and commissions and boards whether public or private, having any powers or privileges not possessed by individuals or partnerships. (b) The term ‘person,’ when used in this Act includes an individual, a firm and copartnerships. (c) The term ‘Public Utility,’ when used in this Act includes every corporation and person furnishing or supplying in any manner gas, electricity, heat, electric power, water and street railway service, or any of them, to the public, or any portion thereof, for compensation. The term ‘Public or any portion thereof’ as used herein, means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or any political subdivision of the State, to which the service is performed or to which the commodity is delivered, and whenever such corporation or person performs a service or delivers a commodity to the

public, or any portion thereof, for which compensation is required, such corporation or person is hereby declared to be a public utility subject to the jurisdiction and regulation of the Railroad Commission, and the provisions of this Act, to the extent of its activities within the State. (d) Any corporation or person not engaged in business exclusively as a 'Public Utility,' as hereinbefore defined, shall be governed by the provisions of this Act in respect only of the 'Public Utility,' owned, leased, operated or managed by it, or by him, and not in respect to any other business or pursuit."

"Section 923. Powers of Railroad Commission.—(a) The Railroad Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every 'Public Utility' in this State as defined in this Act, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every 'Public Utility' in this State as defined in this Act and the State hereby asserts its rights to regulate the rates and services of every 'Public Utility' as herein defined. (b) The Railroad Commission may, in its discretion, establish a standardized system of accounts to be kept by the public utilities, subject to the jurisdiction, to classify said public utilities, and establish a standardized system of accounts for each class, and prescribe the manner in which such accounts shall be kept: *Provided*, That any order hereunder shall take effect at the beginning of the fiscal year of the public utilities affected, on not less than three months' notice thereof. (c) The books and accounts of all public utilities shall be subject to the examination of the Railroad Commission at any time, but no examination shall be made by any agent or employee of the said Commission unless authorized by an order of the Commission. (d) Whenever the Railroad Commission shall find, after hearing, that the rates, fares, tolls, rentals, charges or classifications or any of them, however, or whensoever the same shall have heretofore been fixed or established, demanded, observed, charged or collected by any public utility, for any service or product or commodity, or that the rules, regulations, practices, or any of them affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, non-compensatory, inadequate, discriminatory or preferential, or in any wise in violation of any provision of law, the said Commission shall have exclusive power, subject to review by the Courts, as hereinafter provided, to determine and shall determine, the just, reasonable fares, tolls, rentals, charges or classifications, rules, regulations or practices to be thereafter observed and enforced, and shall fix the same by order, as hereinafter provided. In connection with such determination, the Commission may consider all facts which in its judgment have a bearing upon a proper determination of the question, although not set forth in the complaint or application, and not within the allegations contained therein."

"Section 924. Procedure.—(a) Applications and complaints may be made by any corporation, public or private, person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association, or by any body politic, commission or board, or municipal corporation, by petition or complaint in writing, setting forth any act or thing done, or omitted to be done, with respect to which, under

the provisions of this Act, the Railroad Commission has jurisdiction, or is alleged to have jurisdiction: *Provided*, That the said Commission may, at its discretion, refuse to entertain a complaint as to the reasonableness of any rates or charges unless the same be signed by the Mayor or the President, (or) Chairman of the Board of Trustees, or a majority of the council, commission, or other legislative body of the city or county, or city or town affected by the subject matter of such complaint, or by not less than twenty-five (25) consumers of the public utility named in said complaint. Any public utility shall have the right to petition or complain to the Commission on any of the grounds upon which complaints and petitions are allowed to be filed by other parties, including the fairness, reasonableness or sufficiency of any schedule, classification, rate, price, charge, fare, toll, rental, rule, regulation, service or facility of such public utility, and the same procedure shall be adopted and followed as in other cases, or may be served upon any parties designated by the Commission. The Railroad Commission may, upon its own motion, institute an inquiry into any subject matter within its jurisdiction in like manner as though a petition or complaint had been filed. Upon determining to institute such an inquiry, the Commission shall enter an order to show cause, directing the person or corporation whose affairs are the subject matter of the investigation to appear in person, or by counsel, and show cause, the Commission shall proceed with the inquiry in like manner as though a petition or complaint had been filed as aforesaid. (c) The said Commission may, at any time, upon notice and opportunity to the public utility affected, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, as provided herein, have the same effect as is herein provided for original orders or decisions. (d) Within twenty (20) days after an order or decision has been made by the Railroad Commission, any party to the action or proceeding may apply for a rehearing in respect to any matters determined in said action or proceeding, and specified in the application for rehearing on said matter, and a rehearing shall be granted if in the judgment of the Railroad Commission sufficient reason therefor be made to appear. No cause of action arising out of any order or decision of the Commission shall accrue in any Court to any corporation or person unless such corporation or person shall have made application to the Commission for a rehearing within the time herein specified. Such application shall set forth specifically the ground or grounds on which the applicant considers such decision or order to be unlawful. Such determination shall be made by the Commission within thirty (30) days after the same shall be finally submitted. If, after such hearing, and a consideration of all the facts, including those arising since the making of the order or decision, the Commission shall be of the opinion that the original order or decision, or any part thereof, is in any respect unjust or unwarranted, or should be changed, the Commission may abrogate, change or modify the same, and if changed or modified, such modified order shall be substituted in the place of the order originally entered, with like force and effect. (e) Decisions of the Commission may be reviewed by the Court of Common Pleas upon questions of both law and fact, as hereinafter provided. Within thirty (30) days after the application for a rehearing is denied, or if the ap-

plication is granted, then within thirty (30) days after the rendition of the decision on rehearing the applicant may commence an action in the Court of Common Pleas for Richland County against the Commission as defendant, to vacate or set aside any such order of the Commission, or enjoin the enforcement thereof, on the ground that the authorization, consent, rate or rates, charges, fares, tolls, and schedules fixed in such order are insufficient, unreasonable, unjust or unlawful, or that any such regulation, practice, act or service fixed in such manner is unreasonable, unjust, insufficient or unlawful, in which action a copy of the complaint shall be served with the summons, and no order of determination of the Commission reducing any rate, fare, charge, or toll shall be in force during the pendency of such action, if the utility or utilities affected shall execute and file with the Clerk of Court a bond undertaking in such sum as the Court shall prescribe, and to be approved by the Court, conditioned to secure the refund to customers of any sums that may be collected in excess of the rates, fares, charges or tolls that shall be finally adjudged to be lawful and valid. (f) Any party to such action in the Court of Common Pleas shall have the right to appeal to the Supreme Court in accordance with existing law and procedure in such cases. (g) The Railroad Commission shall cause a record to be kept of all proceedings had before it on any formal investigation, and all testimony shall be taken down by a competent stenographer, designated by the Commission, and a copy or transcript thereof, verified by the oath of such stenographer, shall be furnished on terms fixed by the Commission to parties desiring the same, and shall be received in evidence with the same effect as if such stenographer were present and testified thereto. (h) In case of any action to review any order or decision of the Commission, a transcript of the testimony taken, together with all exhibits, or copies thereof introduced, and of the pleadings, records, proceedings and orders (which shall be accompanied by any opinion or memorandum of the Commission concerning the same) in the case, shall constitute the record of the Commission on the review: *Provided*, That on review of an order, or decision of the Commission, the parties interested in the result, and the Commission may stipulate that a certain question or questions alone, and specified portion only of the evidence shall be certified to the Court for its judgment, whereupon such stipulation and the question or questions, and the evidence therein specified shall constitute the record for review. (i) Whenever a public utility desires to put in operation a new rate, toll, rental, charge or classification or a new rule or regulation, it shall file with the Commission a new schedule or schedules embodying the same, not less than thirty (30) days prior to the date it desires to make same effective: *Provided*, The Commission may, upon application of the public utility, prescribe a less time within which the same may be made effective. In the absence of suspension or disapproval by the Commission as herein provided, the new rate, toll, rental, charge, classification, rule or regulation embodied in any such new schedule shall become effective at the time specified in such schedule, subject, however, to the power of the Commission, at any time thereafter to take any action with respect to the same authorized by this Act. To enable it to take such investigations as in its opinion the public interests require, the Commission may, in its discretion, suspend the operation of the new schedule or schedules for a period not

exceeding sixty (60) days, unless as a result of its investigation, the Commission otherwise orders before the termination of such period of sixty (60) days, such new schedule or schedules shall thereupon become effective. Should the Commission order the operation of any new schedule or schedules suspended, as herein provided, the public utility may put such new schedule or schedules into operation on the date when it, or they, would otherwise become effective by filing with the Commission a satisfactory bond, or by making other arrangements satisfactory to the Commission for the protection, during such period of suspension, of the parties interested, should the Commission, after full hearing, determine and order that such schedule or schedules shall not become effective in whole or in part, or without change or modification. Within ten (10) days after the filing of any new or changed schedule by a public utility, the Commission shall give general notice thereof by publication."

§ 2. Powers Devolved Upon Railroad Commission Additional.—The term "Commission" as herein used refers to the Railroad Commission of South Carolina and the duties hereby devolved upon said Commission are in addition to those now imposed by law upon said Railroad Commission.

§ 3. Municipal Public Utilities Excluded—Existing Contracts Declared Reasonable.—Nothing contained in this Act shall give the said Railroad Commission any power to regulate or interfere with public utilities owned or operated by any municipality, or any agency thereof: *Provided*, That nothing contained in this Act shall authorize the Railroad Commission to declare any rate, toll, charge or fare contained in any contract heretofore voluntarily entered into for a term of years by and between any public utility and any person, firm or corporation for the sale and purchase of gas, electricity or other commodity the subject of said contract, to be unreasonable and non-compensatory, without the consent of both parties to said contract, said rates, tolls, charges and fares are hereby declared, for the life of said contracts, to be reasonable and compensatory within the meaning of this Act.

§ 4. All Acts or parts of Acts not consistent with the provisions of this Act are hereby repealed.

§ 5. This Act shall take effect immediately upon its approval by the Governor.

Approved the 24th day of March, A. D. 1922.

No. 526.

[See § (5639) *Infra*.]

AN ACT to Amend Section 4113, Volume I, Code of Laws of 1912, by Including the Boring and Equipment of Wells in the Provisions Thereof.

Section 1. Sec. 4113, Civil Code, 1912, Vol. I, Amended—Mechanics' Lien for Boring and Equipment of Wells.—Be it enacted by the General Assembly of the State of South Carolina: That Section 4113, Volume I, of the 1912 Code of Laws of South Carolina, be, and the same is hereby,

amended by inserting on line three (3) after the words "real estate," and before the words "by virtue" the words "the boring and equipping of wells," so that said section, when so amended, shall read as follows:

Section 4113. Any person to whom a debt is due for labor performed or furnished, or for materials furnished and actually used in the erection, alteration or repair of any building or structure upon any real estate, the boring and equipping of wells, by virtue of an agreement with, or by consent of, the owner of such building or structure, or any person having authority from, or rightfully acting for, such owner, in procuring or furnishing such labor or materials, shall have a lien upon such building or structure, and upon the interest of the owner thereof in the lot of land upon which the same is situated, to secure the payment of the debt so due to him, and the costs which may arise in enforcing such lien under this Chapter, except as is provided in the following sections:

§ 2. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

§ 3. This Act shall take effect immediately upon its approval by the Governor.

Approved the 3rd day of March, A. D. 1922.

No. 531.

[See §§ (413) to (425) *Infra*.]

AN ACT to Require Certain Corporations to Make Annual Reports and to Pay Annual License Fees, and to Prescribe Methods for Enforcement and Rates Pertaining Thereto.

Section 1. Annual Reports Required of Domestic Corporations—of Certain Foreign Corporations.—Be it enacted by the General Assembly of the State of South Carolina: Every corporation organized under the laws of this State to do business for profit, doing business in this State, shall make a report in writing to the Tax Commission, annually, during the month of February, in such form as the Tax Commission may prescribe, containing: (1) The name of the company. (2) The location of its principal office. (3) The name and postoffice address of the President, Secretary, Treasurer, Superintendent and General Manager, and of the members of the Board of Directors. (4) The date of the annual election of such officers. (5) The amount of authorized capital stock and par value of each share. (6) The amount of capital stock subscribed, the amount of capital stock issued and outstanding, and the amount of capital stock paid up. (7) The nature and kind of business in which the company is engaged and its place or places of business. (8) The change or changes, if any, in the above particulars made since the last report. And all railroad companies, express companies, street railway companies, navigation companies, waterworks companies, power companies, light companies, telephone companies, telegraph companies, parlor, dining and sleeping car companies, exercising the right and privilege of doing business or operating under the authority of any grant of authority or permission

of this State, whether by direct enactment of the General Assembly, or otherwise, and also foreign, non-resident corporations engaged in like business and exercising similar rights and privileges, shall, in addition to the information above stated, also state in said report to the Tax Commission, the nature of the company or corporation and under the laws of what State organized. (9) In the case of express companies, the entire receipts, including all sums earned or charged, whether actually received or not, for business done in the State by each agent of such company doing business in this State, giving the name of the office for the fiscal year then next preceding for and on account of such company, including its proportion of gross receipts for business done by such company within the State in connection with other companies; also the total amount of such receipts for business done within the State. (10) In case of telegraph and telephone companies, the entire gross receipts including all sums earned or charged, whether actually received or not, for the fiscal year next preceding, from whatever source derived, whether messages, telephone tolls, rentals, or otherwise, for business done within this State, at each office within this State, giving the name of the office and the total receipts of the company for such period in South Carolina from business done within South Carolina. (11) In the case of each railroad or street railway, situated wholly within the State of South Carolina, the gross earnings from its operation, and in case of each railroad or street railway, located partly within and partly without South Carolina, the gross earnings from the operation of the entire line for the fiscal year next preceding, with the number of miles of line within South Carolina, and the miles of line without South Carolina. (12) That the fiscal year for which reports shall be made by railroad companies in the State of South Carolina to the Board of Railroad Commissioners, the Tax Commission or other officers of the State of South Carolina, shall terminate on the 31st day of December, so as to conform to the calendar year and to the fiscal year as fixed by the Interstate Commerce Commission of the United States. (13) That all reports now required by law to be made by railroad companies to the Board of Railroad Commissioners, to the Tax Commission, or to other officers of the State of South Carolina, at specified times and based upon the operations of said railroad companies for the fiscal year preceding such reports, such fiscal year now by law terminating on the 30th day of June of every year, shall be made to said Board of officers at like periods after the 31st day of December of every year, as they are now required to be made after the 30th day of June of every year. (14) And in the case of navigation companies, waterworks companies, power companies, light companies, the entire gross receipts of the company, including all sums earned or charged, whether actually received or not, for business done within this State for the fiscal year then next preceding, including the company's portion of gross receipts for business done by it within this State in connection with other companies. (15) Such other facts and information shall be furnished as the Tax Commission may require in the form of return prescribed by it.

§ 2. Reports of Foreign Corporations Having Part of Capital in State.—Every corporation organized to do business for profit under the laws of any other State, territory or country, now or hereafter doing business in

this State, and owning or using a part of its capital or plant in this State, shall, in addition to the other requirements contained in the Code of Laws of South Carolina, 1912, and Acts amendatory thereto, during the month of February, annually, make a report in writing to the Tax Commission in such form as it may prescribe, containing the same facts as required to be reported by domestic corporations in the preceding section, and in addition thereto: (1) The name and location of its office or offices in South Carolina. The name and address of the officers or agents of the company in charge of its business in South Carolina. (2) The value of the property owned and used by the company in South Carolina, and the value of the property owned and used outside of South Carolina, and where such property is situated, stating the county and township and other tax division where situated within this State. (3) The change or changes, if any, in the above particulars since the last report.

§ 3. Verification of Reports—Forms.—The report required in Sections 1 and 2 shall be signed and sworn to before an officer duly authorized to administer oaths, by the President, Vice President, Secretary, Superintendent or Managing Agent of such company within this State and forwarded to the Tax Commission. The Tax Commission shall prepare blanks for making the above report and, on application, shall furnish such blanks to any company applying therefor.

§ 4. Fees of Domestic Corporations.—Every corporation organized under the laws of this State to do business for profit, other than railroad companies, express companies, street railway companies, navigation companies, waterworks companies, power companies, light companies, telephone companies, telegraph companies, parlor, dining and sleeping car companies, shall, upon the filing of the report required of them in Section 1, pay to the State Treasurer, on or before the first day of April in each year, an annual license fee of one mill upon each dollar paid to the capital stock of said corporation, said license fee not to be less than five dollars in any case.

§ 5. License Fees of Foreign Corporations Upon Property Used in State.—Upon the filing of the report required of foreign corporations in Section 2, the Tax Commission shall, from the facts thus reported, and any other facts coming to its knowledge, determine the value of the property of such corporation used within the State by them in the conduct of their business, and shall file a statement of the value so determined, with the license tax payable thereon, and shall charge such company, in addition to the initial fees provided for in the Code of Laws of South Carolina, 1912, and Acts amendatory thereto, an annual license fee of one mill upon each dollar of the value of the property of such corporation used within this State in the conduct of its business. Such corporations shall pay the tax assessed to the State Treasurer within thirty days after the date of notice of such assessment.

§ 6. Ascertainment of Gross Receipts of Transportation and Utility Companies.—The State Tax Commission shall proceed to ascertain and determine, on or before the first Monday in April, the entire gross receipts of such railroad companies, express companies, street railway companies,

navigation companies, waterworks companies, power companies, light companies, telephone companies, telegraph companies, parlor, dining and sleeping car companies, for business done within the State of South Carolina for the fiscal year then next preceeding, and the amounts ascertained by said Commission shall be held and deemed to be gross receipts of such companies for business done within South Carolina for the year under consideration.

§ 7. Procedure Upon Failure to Report.—In case of the failure or refusal of any company to make the statement required by law, or to furnish the Commission any information requested by it, the Commission shall inform itself as best it may on matters necessary to be known in order to discharge the duties under this Act.

At any time after the annual meeting of the Commission, and before the gross receipts of any company for business done within South Carolina, or the gross earnings from its operation within South Carolina are determined, any company or person interested shall have the right, on written application, to appear before the Tax Commission and be heard in the matters of such determination. After the determination of the amount of the gross receipts of any such company or the gross receipts or earnings from its operation within South Carolina, and before the notification to the State Treasurer of such amount, the State Tax Commission may, on application of any person or company interested, or on its own motion, revise and correct its findings in such manner as seems to it to be just and proper.

§ 8. License Fee Upon Gross Income in South Carolina.—That the said Tax Commission shall, after ascertaining the gross receipts for business done in South Carolina, or the gross earnings from its operation within South Carolina of any railroad company, express company, street railway company, navigation company, waterworks company, power company, light company, telephone company, telegraph company, parlor, dining and sleeping car company, assess an annual license fee of three mills on such gross income and shall notify such corporation of the amount of said license fee, which license fee shall be paid by such corporation to the State Treasurer on or before the first day of May in every year. The Tax Commission shall furnish the State Treasurer with the names of all corporations so taxed and the amount due by each. It shall also furnish the Comptroller General with the same information in order that the Comptroller General may charge the State Treasurer with said fees.

§ 9. State Treasurer's Receipt—Reports.—The State Treasurer's receipt showing payment of the annual fees provided for in the preceeding sections of this Act, shall constitute the certificate of compliance by such corporation with the provisions of this Act, and of the payment of the annual fees therein provided for. The State Treasurer shall, when so requested, report to the Tax Commission and the Secretary of State the amount of the annual fees collected under this Act.

§ 10. Penalty for Failure to Report—Collection.—In case any corporation required to file reports or pay license fees by this Act shall fail or neglect to make such report or pay such fees within the period prescribed in

said sections, respectively, such corporation shall be subject to a penalty of fifty dollars, and an additional penalty of ten dollars per day for each day's omission after the time limit in this Act for filing such report and paying such fee. Such penalty and annual fee or fees may be recovered by an action in the name of the State, and an collection shall be paid into the State Treasury. The Attorney General, on the request of the Tax Commission, shall institute such action in the Court of Common Pleas for Richland County or any county in the State in which such corporations has an office or place of business, as he prefers. The State Tax Commission, upon good cause shown, may, in their discretion, remit the penalty, or any part thereof, prescribed in this Act.

§ 11. Insurance Companies and Associations Exempt.—The provisions of this Act shall not apply to insurance, fraternal, beneficial or mutual protection associations or companies.

§ 12. Dissolution of Domestic Corporations.—Every domestic corporation in case of dissolution revocation of charter, or abandonment of its corporate purposes shall file with the Secretary of State a certificate of such dissolution, revocation of charter, or abandonment. In case of dissolution or abandonment by voluntary action of the corporation, such certificate shall be signed by the President, Secretary, and a majority of the Board of Directors of the corporation. In case of dissolution or revocation of charter by action of a competent Court, such certificate shall be signed by the Clerk of the Court entering the decree of dissolution or revocation. The fees for making or filing such certificate with the Secretary of State shall be taxed in the cost in favor of the party paying the same.

§ 13. Withdrawal of Foreign Corporations.—Every foreign corporation when it shall retire from business in this State, is hereby required to file with the Secretary of State a certificate to that effect, signed by the President, and Secretary of the corporation. The fee for filing certificates of dissolution, revocation of charter, abandonment, or retirement of corporations shall be five dollars. The mere retirement from business of a domestic or foreign corporation without having filed the certificate provided for in this section, shall not exempt it from the requirements to make their reports and pay fees in accordance with the provisions of this Act.

§ 14. Sections of Civil Code, 1912, and Amendatory Acts Repealed.—That Sections 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, of the Civil Code of Laws of South Carolina, 1912, Volume I, and all Acts amendatory thereto, be, and the same are hereby, repealed.

§ 15. All Acts or parts of Acts inconsistent herewith are repealed.

§ 16. That this Act shall take effect immediately upon its approval by the Governor.

Approved the 1st day of March, A. D. 1922.

No. 532.

[See § (4430) *Infra*.]

AN ACT to Amend Section 3015, Volume I, Code of Laws of South Carolina, 1912, Relating to Powers of Municipal Corporations, so as to Authorize Municipal Corporations to Issue Bonds and Condemn Property, as Now Provided by Law for Railroad Corporations, and to Contract for the Erection of Plants, Etc.

Section 1. Sec. 3015, Civil Code, 1912, Vol. I, Amended—Powers of Municipal Corporations as to Public Utilities, Condemnation, Etc.—Be it enacted by the General Assembly of the State of South Carolina: That Section 3015, Volume I, Code of Laws of South Carolina, 1912, be, and the same is hereby, amended by striking out all of said section and inserting in lieu thereof the following, to be known as Section 3015:

Section 3015. All cities and towns shall have full power and authority to construct, purchase, operate, and maintain waterworks and electric light works within or without, or partially within and partially without their corporate limits, for the use and benefit of such cities and towns and the inhabitants thereof, and to purchase, own and operate and maintain machinery and equipment and apparatus for generating either electricity or gas for the use and benefit of such cities and towns and the inhabitants thereof, and to acquire existing waterworks by condemnation in the manner now provided by law for railroad corporations to acquire rights of way, or to contract for the erection of plants for waterworks, sewerage or lighting purposes, one or all for the use of such cities and towns, and the inhabitants thereof, and to sell, convey and dispose of any and all such properties; and to meet the costs of acquiring said properties, or any of them, cities and towns may issue coupon or registered bonds bearing interest at a rate not to exceed six per centum per annum, payable in any legal tender money of the United States of America, and fix the time of payment of such bonds in such matter that the bonds shall mature and be payable in annual or other series or installments, or at such time as the City or Town Council may fix in said bonds, but not exceeding forty years after date of issue with the privilege of redemption at such time as the City or Town Council may fix in said bonds: *Provided*, That before any bonds shall be issued, or any such construction, or purchase, or any such sale, or conveyance and disposal of any such property, or any part thereof, shall be made under the provisions of this section, the City or Town Council of the municipality shall submit the question of such construction or purchase and the issue of such bonds, or of such sale, conveyance and disposal of such property, to the qualified registered electors of the city or town, at an election to be ordered for that purpose by the City or Town Council to be conducted in accordance with the laws governing municipal elections: and *Provided, further*, That before any election shall be held under the provisions of this Section, at least the majority of the resident freeholders of the city or town, as shown by its tax books, shall petition the City or Town Council that the said election be ordered; and if a majority of the electors voting in such election shall vote for the issue of such bonds, and the construction, or purchase of such property in question, the City or Town Council shall so declare by ordinance, and shall

acquire the property and issue the bonds and turn them over to the Board of Commissioners of Public Works for such city or town, or other officer or body authorized by law to receive such bonds. And if a majority of the electors voting in any such election shall vote for the sale of the property in question, the City or Town Council shall sell, convey and transfer the same as so authorized. In all elections held under this section the polls shall be opened at 8 o'clock in the forenoon and shall be closed at 4 o'clock in the afternoon: and, *Provided, further*, That proceedings to condemn existing waterworks shall not be instituted until after an election ordered by the City or Town Council upon thirty days' notice shall have determined, by a majority of the qualified electors of the city or town the policy of the city or town in favor of municipal ownership of waterworks. Every sale, conveyance and transfer of any water, gas or electric light works, plant or system, or any part thereof, heretofore made by any city or town is hereby declared to be lawful and valid.

§ 2. That all Acts and parts of Acts inconsistent with this Act are hereby repealed.

§ 3. That this Act shall take effect immediately upon its approval by the Governor.

Approved the 10th day of March, A. D. 1922.

**TABLE OF SECTIONS OF VOLUME III
OF THE CIVIL CODE OF 1922
WHERE FOUND IN VOLUMES I OF THE
CIVIL CODE OF 1912 AND 1902**

1922	1912	1902	1922	1912	1902	1922	1912	1902
1	1	1	49	-----	-----	97	92	88
2	2	-----	50	-----	-----	98	93	89
3	3 ^a	2	51	-----	-----	99	94	90
4	4	3	52	42	39	100	95	91
5	5	4	53	43	40	101	96	92
6	6	5	54	44	41	102	97	93
7	7	6	55	45	42	103	98	94
8	8	7	56	46	43	104	99	95
9	9	8	57	47	44	105	100	96
10	10	9	58	48	45	106	101	97
11	11	10	59	49	46	107	102	98
12	12	11	60	50	47	108	103	99
13	13	-----	61	51	48	109	104	100
14	14	12	62	52	49	110	105	101
15	15	13	63	53	50	111	106	102
16	16	14	64	54	51	112	107	103
17	17	15	65	55	52	113	108	104
18	18	16	66	56	53	114	109	105
19	19	17	67	57	54	115	110	106
20	20	18	68	58	55	116	111	107
21	21	19	69	59	56	117	112	108
22	22	20	70	60	57	118	113	109
23	23	21	71	61	58	119	114	110
24	24	22	72	62	59	120	115	111
25	25	23	73	63	60	121	116	112
26	26	24	74	64	61	122	117	113
27	27	25	75	65	62	123	118	114
28	28	26	76	66	63	124	119	115
29	29	27	77	67	64	125	120	116
30	30	28	78	68	65	126	121	117
31	31	-----	79	69	66	127	122	118
32	-----	-----	80	70	67	128	123	119
33	-----	-----	81	71	68	129	124	120
34	32	29	82	72	69	130	125	121
35	33	30	83	73	70	131	126	122
36	34	31	84	74	71	132	-----	-----
37	35	32	85	75	72	133	-----	-----
38	36	33	86	76	73	134	-----	-----
39	37	34	87	77	74	135	-----	-----
40	38	-----	88	78	75	136	137	-----
41	39	36	89	79	76	137	131	128
42	40	37	90	80	77	138	-----	-----
43	41	38	91	86	82	139	-----	-----
44	-----	-----	92	87	83	140	-----	-----
45	-----	-----	93 ^a	88	84	141	-----	-----
46	-----	-----	94	89	85	142	127	123
47	-----	-----	95	90	86	143	-----	-----
48	-----	-----	96	91	87	144	130	126

1922	1912	1902	1922	1912	1902	1922	1912	1902
145	138	130	209	207	181	273	270	243
146	139	131	210	208	182	274	271	244
147	140	132	211	209	183	275	272	245
148	141	133	212	210	184	276	273	246
149	142	134	213	311	185	277	274	247
150	143	135	214	212	186	278	275	248
151	144	137	215	213	187	279	276	249
152	145	138	216	214	188	280	277	250
153	146	139	217	215	189	281	278	251
154	147	140	218	216	190	282	279	252
155	148	141	219	217	191	283	280	253
156	149	142	220	218	192	284	281	254
157	150	143	221	219	193	285	282	255
158	151	144	222	220	194	286	.....	.....
159	152	145	223	221	195	287	.....	.....
160	153	146	224	222	196	288	.....	.....
161	154	147	225	223	197	289	.....	.....
162	155	148	226	224	198	290	.....	.....
163	156	149	227	225	199	291	.....	.....
164	157	150	228	226	200	292	.....	.....
165	158	151	229	227	201	293	.....	.....
166	159	152	230	228	202	294	.....	.....
167	160	136	231	229	203	295	.....	.....
168	161	.....	232	230	204	296	.....	.....
169	162	.....	233	231	205	297	.....	.....
170	163	.....	234	232	206	298	.....	.....
171	164	.....	235	233	207	299	.....	.....
172	165	.....	236	234	208	300	.....	.....
173	166	.....	237	235	209	301	.....	.....
174	167	.....	238	236	210	302	.....	.....
175	168	.....	239	237	211	303	.....	.....
176	169	.....	240	238	212	304	.....	.....
177	170	.....	241	239	213	305	.....	.....
178	171	.....	242	240	214	306	.....	.....
179	177	.....	243	241	215	307	.....	.....
180	178	.....	244	242	216	308	.....	.....
181	179	.....	245	243	217	309	.....	.....
182	180	154	246	244	218	310	.....	.....
183	181	155	247	245	219	311	.....	.....
184	182	156	248	246	220	312	.....	.....
185	183	157	249	247	221	313	.....	.....
186	184	158	250	248	222	314	.....	.....
187	185	159	251	249	223	315	.....	.....
188	186	160	252	250	224	316	.....	.....
189	187	161	253	251	225	317	.....	.....
190	188	162	254	252	226	318	.....	.....
191	189	163	255	253	227	319	.....	.....
192	190	164	256	254	228	320	.....	.....
193	191	165	257	255	229	321	.....	.....
194	192	166	258	256	230	322	.....	.....
195	193	167	259	257	231	323	.....	.....
196	194	168	260	258	232	324	.....	.....
197	195	169	261	259	233	325	.....	.....
198	196	170	262	260	234	326	.....	.....
199	197	171	263	261	235	327	.....	.....
200	198	172	264	.....	.....	328	.....	.....
201	199	173	265	262	236	329	.....	.....
202	200	174	266	263	237	330	.....	.....
203	201	175	267	264	238	331	.....	.....
204	202	176	268	265	238	332	285	258
205	203	177	269	266	239	333	.....	.....
206	204	178	270	267	240	334	286	259
207	205	179	271	268	241	335	287	260
208	206	180	272	269	242	336	288	261

1922	1912	1902	1922	1912	1902	1922	1912	1902
337	289	262	401	342	314	464	412	371
338	290	263	402	343	315	465	413	372
339	291	.....	403	344	316	466	414	373
340	292	264	404	345	317	467	415	374
341	293	265	405	346	318	468	416	375
342	294	266	406	347	319	467	417	376
343	295	267	407	348	320	470	418	.....
344	296	268	408	349	321	471	419	377
345	297	269	409	350	322	472	420	378
346	298	270	410	351	323	473	421	378
347	299	271	411	352	324	474	422	379
348	300	272	412	353	.....	475	423	380
349	301	.....	413	361	.....	476	424	.....
350	1790	.....	414	362	.....	477	425	.....
351	.....	.....	415	363	.....	478	426	.....
352	.....	.....	416	364	.....	479	427	381
353	.....	.....	417	365	.....	480	.....	382
354	.....	.....	418	366	.....	481	429	383
355	302	273	419	367	.....	482	430	384
356	303	274	420	368	.....	483	431	385
357	304	275	421	369	.....	484	432	.....
358	.....	.....	422	370	.....	485	.....	.....
359	.....	.....	423	371	.....	486	.....	.....
360	.....	.....	424	372	.....	487	.....	.....
361	.....	.....	425	373	.....	488	433	.....
362	.....	.....	426	374	332	489	434	386
363	.....	.....	427	375	333	490	435	387
364	.....	.....	428	376	334	491	440	392
365	.....	.....	429	377	335	492	441	393
366	.....	.....	430	378	336	493	442	394
367	.....	.....	431	379	337	494	443	396
368	.....	.....	432	380	338	495	444	397
369	.....	.....	433	381	339	496	445	398
370	.....	.....	434	382	340	497	446	399
371	.....	.....	435	383	342	498	447	400
372	305	276	436	384	343	499	448	401
373	306	277	437	385	344	500	449	402
374	307	278	438	386	345	501	450	403
375	308	279	439	387	346	502	451	.....
376	309	280	440	388	347	503	452	404
377	310	281	441	389	348	504	453	405
378	311	282	442	390	349	505	454	406
379	314	285	443	391	350	506	455	407
380	315	286	.....	.....	351	507	456	408
381	316	287	444	392	357	508	457	409
382	317	288	445	393	352	509	458	410
383	318	289	446	394	353	510	459	411
384	319	290	447	395	354	511	460	412
385	320	291	448	396	355	512	461	413
386	321	292	449	397	356	513	462	414
387	326	297	450	398	357	514	463	415
388	327	298	451	399	358	515	464	416
389	328	299	452	400	359	516	465	417
390	329	300	453	401	360	517	466	418
391	330	301	454	402	361	518	467	419
392	331	303	455	403	362	519	468	420
393	332	304	456	404	363	520	469	421
394	333	305	457	405	364	521	470	422
395	334	306	458	406	365	522	471	423
396	335	307	459	407	366	523	472	424
397	336	308	460	408	367	524	473	425
398	337	309	461	409	368	525	474	426
399	340	312	462	410	369	526	475	427
400	341	313	463	411	370	527	476	428

1922	1912	1902	1922	1912	1902	1922	1912	1902
528	477	429	591	541		654		
529	478	430	592	542		655		
530	479		593			656		
531	480	431	594			657		
532	481	432	595	509		658		
533	482	433	596	543		659		
534	483	434	597	547		660		
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TABLE OF SECTIONS IN CIVIL CODE

1801

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1915			1977			2035		
1916			1978			2036		
1917			1979			2037		
1918			1980			2038		
1919			1981			2039		
1920			1982			2040		
1921			1983			2041		
1922			1984			2042	1149	833
1923			1985			2043	1150	834
1924			1986			2044	1151	835
1925			1987			2045	1152	
1926			1988			2046	1153	
1927			1989			2047	1154	

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2049	1156		2112	1291	893	2176	1352	948
2050	1157		2113	1292	894	2177	1363	
2051	1158	833	2114	1293	895	2178	1354	949
2052	1159	.....	2115	1294	896	2179	1355	950
2053	1160	836	2116	1295	897	2180	1356	.....
2054	1161	837	2117	1296	898	2181	1357	.....
2055	1162	838	2118	1297	899	2182	1358	951
2056	1163	839	2119	1298	900	2183	1359	952
2057	1164	840	2120	1299	901	2184	1360	953
2058	1165	841	2121	1300	902	2185	1361	954
2059	1166	842	2122	1301	903	2186	1362	955
2060	1167	843	2123	1302	.....	2187	1363	956
2061	1168	.....	2124	1303	905	2188	1364	957
2062	1169	844	2125	1304	906	2189	1365	958
2063	1170	845	2126	1305	907	2190	1366	959
2064	1171	846	2127	1306	908	2191	1367	960
2065	1172	847	2128	1307	909	2192	1368	961
2066	1173	848	2129	1308	910	2193	.....	.....
2067	1174	849	2130	1309	911	2194	.....	.....
2068	1175	850	2131	1310	912	2195	.....	.....
2069	1176	851	2132	1311	913	2196	1369	962
2070	1177	852	2133	1312	914	2197	1370	963
2071	1178	853	2134	1313	915	2198	1371	964
2072	1179	854	2135	1314	916	2199	1372	965
2073	1180	855	2136	1315	917	2200	.....	.....
2074	1181	856	2137	1316	918	2201	.....	.....
2075	1182	857	2138	1317	919	2202	.....	.....
2076	1183	858	2139	1318	920	2203	.....	.....
2077	1184	859	2140	1319	921	2204	.....	.....
2078	1185	860	2141	1320	922	2205	.....	.....
2079	1186	861	2142	1321	923	2206	.....	.....
2080	1187	862	2143	1322	924	2207	.....	.....
2081	1188	863	2144	1323	925	2208	.....	.....
2082	1189	864	2145	1324	926	2209	.....	.....
2083	1190	865	2146	1325	927	2210	.....	.....
2084	1191	866	2147	1326	928	2211	.....	.....
2085	1192	867	2148	1327	929	2212	.....	.....
2086	1193	868	2149	1328	930	2213	.....	.....
2087	1194	869	2150	1329	931	2214	.....	.....
2088	1195	870	2151	1330	932	2215	.....	.....
2089	1196	871	2152	1331	933	2216	.....	.....
2090	1197	872	2153	1332	934	2217	.....	.....
2091	1198	873	2154	1333	935	2218	.....	.....
2092	1199	874	2155	1334	936	2219	1373	966
2093	1200	875	2156	1335	937	2220	.....	.....
2094	1201	876	2157	1336	938	2221	.....	.....
2095	1202	877	2158	1337	939	2222	.....	.....
2096	.....	.....	2159	1338	940	2223	1374	967
2097	.....	.....	2160	.....	.....	2224	1375	968
2098	1277	878	2161	.....	.....	2225	1376	969
2099	1278	879	2162	.....	.....	2226	1377	970
2100	1279	880	2163	1339	941	2227	1378	971
2101	1280	881	2164	1340	942	2228	1379	972
2102	1281	{ 882	2165	1341	943	2229	1380	973
		{ 883	2166	1342	.....	2230	1381	974
2103	1282	884	2167	1343	.....	2231	1332	975
2104	1283	885	2168	1344	.....	2232	1383	.....
2105	1284	886	2169	1345	.....	2233	1384	976
2106	1285	887	2170	1346	.....	2234	1385	.....
2107	1286	888	2171	1347	.....	2235	1386	977
2108	1287	889	2172	1348	944	2236	1387	978
2109	1288	890	2173	1349	945	2237	1388	979
2110	1289	891	2174	1350	946	2238	1389	980

TABLE OF SECTIONS IN CIVIL CODE

1809

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2242	1392	{ 983	2305			2369		
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2245	1395	986	2308	1569	1084	2372		
2246	1396	987	2309	1570	1085	2373		
2247	1397	988	2310	1571	1086	2374		
2248	1398	989	2311	1572	1087	2375		
2249	1399	990	2312	1573	1088	2376		
2250	1400	991	2313			2377		
2251	1401	992	2314			2378		
2252	1402	993	2315	1574	1089	2379		
2253	1403	994	2316	1575		2380		
2254	1404	995	2317	1576		2381		
2255	1405	996	2318	1577		2382		
2256	1406	997	2319	1578		2383		
2257	1407	998	2320	1579		2384		
2258		999	2321	1580		2385		
2259			2322	1581		2386		
2260			2323	1582		2387		
2261			2324	1583		2388		
2262			2325	1584	1090	2389		
2263	1408	1000	2326	1585	1091	2390		
2264	1409	1001	2327	1586	1092	2391		
2265	1410	1002	2328			2392		
2266	1411	1003	2329			2393	1596	
2267	1471	1004	2330			2394		
2268	1472	1046	2331			2395		
2269	1473	1047	2332			2396		
2270	1474	1048	2333	1587	1093	2397		
2271	1475	1049	2334	1588	1094	2398		
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2273	1477	1051	2336	1591	1097	2400	1618	
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2276	1480	1054	2339	1594	1100	2403	1621	
2277		1055	2340	1595	1101	2404	1622	
2278			2341	1597	1103	2405	1623	
2279			2342	1598	1104	2406	1624	
2280			2343	1599		2407	1626	
2281			2344	1600		2408	1627	
2282			2345	1601		2409	1628	
2283	1529	1056	2346	1602	1105	2410	1629	
2284	1530	1057	2347	1603	1106	2411		
2285	1531	1058	2348	1604	1107	2412		
2286	1532	1059	2349	1605	1108	2413	1630	
2287	1533	1060	2350	1606	1109	2414	1631	
2288	1534	1061	2351	1607	1110	2415		
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2291			2354			2418	1633	1116
2292			2355			2419	1634	1117
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2298	1538	1065	2361	1613		2425	1642	1125
2299	1539	1066	2362	1614		2426	1641	1124
2300	1540	1067	2363	1615		2427	1643	1126
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			2365	1617		2429		

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2435			2499	1665	1141	2563	1714	
2436	1644	1127	2500	1666	1142	2564	1715	1185
2437	1645	1128	2501	1667	1143	2565	1716	
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2439	1647	1130	2503	1669	1145	2567	1718	1187
2440	1648	1131	2504	1670	1146	2568	1719	1188
2441	1649	1132	2505	1671	1147	2569	1720	1189
2442	1650	1133	2506	1672	1148	2570	1721	1190
2443	1651	1134	2507	1673	1149	2571	1722	1191
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2446	1653		2510	1676	1152	2574	1725	1194
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2472			2436			2600	1739	
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2476			2540	1703	1179	2604		
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2484			2548	1707	1183	2612	1749	
2485			2549	1708	1184	2613	1750	1209
2486			2550	1730	1200	2614	1751	
2487	1589	1095	2551			2615	1752	1210
2488			2552			2616	1753	1211
2489			2553			2617	1754	1212
2490			2554	1709		2618	1755	1213
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2636	1767		2699	1811	1243	2763		
2637	1768	1219	2700	1812	1244	2764		
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2643	1774	1225	2706	1816	1248	2770	1841	
2644	1775	1226	2707	1817	1249	2771	1842	
2645	1776	1227	2708	1818	1250	2772	1843	
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2647	1778	1229	2710	1820	1252	2774	1845	
2648	1779	1230	2711	1821	1253	2775		
2649	1780	1231	2712	1822	1254	2776		
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2668			2731			2795	1862	1276
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2814			2878			2940	1964	
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2823	1883	1297	2887			2949	1973	1348
2824	1884	1298	2888			2950	1974	
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2842	1902	1315	2906	1932		2968		
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2856	1909	1322	2918	1943		2982		
2857	1910	1323	2919	1944		2983		
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2868	1918	1326	2930	1955		2994		
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2872	1922	1330	2934	1958		2998		
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2874	1924	1332	2936	1960		3000		
2875	1925	1333	2937	1961		3001		
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3012			3076	2131	1402	3140	2186	1455
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TABLE OF SECTIONS IN CIVIL CODE

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5344	3572	2484	5408	3631	2537	5472	3693	2609
5345	3573	2485	5409	3632	2538	5473	3694	2610
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5537	3758	2665	5601	3947	2844	5665	4135	3030
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